

**TENTATIVE AGENDA & MEETING NOTICE
BOARD OF COUNTY COMMISSIONERS**

**TUESDAY, OCTOBER 3, 2023
5:30 P.M.**

**WATAUGA COUNTY ADMINISTRATION BUILDING
COMMISSIONERS' BOARD ROOM**

TIME	#	TOPIC	PRESENTER	PAGE
5:30	1	CALL REGULAR MEETING TO ORDER		
	2	APPROVAL OF MINUTES: September 19, 2023, Regular Meeting September 19, 2023, Closed Session		1
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5:35	4	PUBLIC COMMENT – Will last up to 1-hour dependent on number of speakers	CHAIRMAN TURNBOW	13
5:40	5	ECONOMIC DEVELOPMENT COMMISSION CHILD CARE STUDY PROPOSAL	MR. JOE FURMAN	15
5:45	6	QUEEN/WATER STREET PARKING DECK MATTERS	MR. ROBERT MARSH	
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6:00	9	MISCELLANEOUS ADMINISTRATIVE MATTERS	MR. DERON GEOUQUE	
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AGENDA ITEM 2:

APPROVAL OF MINUTES:

September 19, 2023, Regular Meeting
September 19, 2023, Closed Session

DRAFT**MINUTES****WATAUGA COUNTY BOARD OF COMMISSIONERS
TUESDAY, SEPTEMBER 5, 2023**

The Watauga County Board of Commissioners held a regular meeting, as scheduled, on Tuesday, September 5, 2023, at 5:30 P.M. in the Commissioners' Board Room located in the Watauga County Administration Building, Boone, North Carolina.

Chairman Turnbow called the meeting to order at 5:33 P.M. The following were present:

PRESENT: Larry Turnbow, Chairman
 Charlie Wallin, Vice-Chairman
 Todd Castle, Commissioner
 Braxton Eggers, Commissioner
 Ray Russell, Commissioner
 Andrea Capua, County Attorney
 Deron Geouque, County Manager
 Anita J. Fogle, Clerk to the Board

Commissioner Russell opened with a prayer and Commissioner Castle led the Pledge of Allegiance.

APPROVAL OF MINUTES

Chairman Turnbow called for additions and/or corrections to the September 5, 2023, regular minutes.

Commissioner Eggers, seconded by Commissioner Castle, moved to approve the September 5, 2023, regular meeting minutes as presented.

VOTE: Aye-5
 Nay-0

APPROVAL OF AGENDA

Chairman Turnbow called for additions and/or corrections to the September 19, 2023, agenda.

County Manager Geouque requested to add closed session for personnel matters per, G. S. 143-318.11(a)(6) and possible action after closed session.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to approve the September 5, 2023, agenda as amended.

VOTE: Aye-5
 Nay-0

PUBLIC COMMENT

Ms. Alana Baird shared her concerns with housing issues and requested the Board adopt a minimal housing standard.

HOUSING MARKET UPDATE

Ms. Sarah Odio, Assistant Director (Housing and Revitalization) with the Development Finance Initiative (DFI) at the UNC School of Government (SOG), shared an update on the potential development of the County-owned Brookshire property and the data on the housing market in Watauga County. Ms. Odio stated that approximately 46% of households in Watauga County were low-to-moderate income (LMI) including at least 1,700 LMI renters and 950 LMI homeowners who have severe housing needs. It was estimated that 41% of LMI homeowners and 63% of LMI renters had housing needs. Unaffordable housing affects various types of households including elderly families, elderly living alone, small to large families, as well as single dwellers. Currently, the average income of households moving into the County exceeded the income of those moving out. The demand for workforce housing was most likely greater than housing needs indicated. Watauga County was less affordable than surrounding counties and the cost to own a home nearly doubled over the past five years. For renters, the number of available units dwindles as rent continues to rise. Vacancies were low, at 2%, for those wanting to buy or rent and purpose-built off-campus student housing represented half of the Town of Boone rental supply while seasonal housing dominated the municipal supply. Development in Watauga was slowly returning to pre-recession levels. Currently there was no public housing in Watauga County; however, Northwest Regional Housing Authority managed approximately 2,000 vouchers and, of the 260 income-restricted, privately held affordable units in Watauga County, 95% of those were in the Town of Boone. 65% of those were built between 1980 and 2000 with only 35% being built since the year 2000. Vacancy rates remained at 1% with continued waiting lists. None of the units had subsidies expiring in the next five years.

In summary, the greatest need was for extremely low-income households for all sizes and types of units. Low and declining rental supply and the high rate of seasonal units limited options for renters. New developments exceed median home and rent prices and were likely serving the increasingly high-income households moving in from out-of-state. As home values and rents continued to rise, LMI households, represented in the majority of the top occupations in the County, may need to seek housing elsewhere. The demand from the estimated 6,800 workers earning low-income wages in Watauga and living outside the County was not accounted for in need.

Ms. Odio stated that there has been discussion with the Town of Boone regarding water/sewer needs for a development on the Brookshire Road property and the Town unanimously agreed to a “soft” agreement as the current Council could not legally bind a future Council. Commissioner Russell stated that a resolution from the Town of Boone would help to understand the commitment level.

In response to Vice-Chairman Wallin’s concerns with annexation, County Attorney Capua stated that, although she had not reviewed the settlement agreement with the Town of Boone, she believed it included language that the County could test the waters in regards to annexation of a

property for a specific project without having to provide architectural drawings. Ms. Capua stated that she would review the agreement. Ms. Odio stated that their architects would make sure the project was feasible; however, if the project proceeded after that, whichever private developer chosen for the project would have their own architect. Commissioner Wallin stated that the only way to move forward was to see what would work on the Brookshire property.

Commissioner Russell stated that the County needed rentals for service workers and stated that the project would not be feasible for ten units but possibly would be for 50. Commissioner Russell stated that a sense of price points would be helpful to determine if the project would be feasible and stated that there needed to be a range on the possibilities of how many units would fit on the property. Commissioner Russell believed that single dwelling units as well as high rises were not feasible.

Commissioner Eggers stated that a firmer agreement from the Town of Boone was needed and was concerned about tearing down the mountain for the project.

Commissioner Castle was concerned with people coming into the County and buying up property so locals couldn't afford to live here. The County was losing legacy homes and farms which was a problem. Commissioner Castle stated that Ashe, Caldwell, and Wilkes Counties as well as Mountain City, TN, were only five to seven years behind Watauga County with the same issues. Commissioner Castle also shared concerns of property owners near the Brookshire property who had recently had issues with construction of the student housing project adjacent to the County-owned property.

Chairman Turnbow stated that it was a risk to pursue but without understanding all the points of knowing what could and couldn't be done with the Brookshire property an informed decision couldn't be made.

Chairman Turnbow, seconded by Commissioner Russell, moved to authorize Ms. Odio to move forward with the architect and design phase of the project and to allocate funds from the contingency budget line.

The following additional comments were made prior to the vote:

Commissioner Eggers stated that he understood but needed a better commitment from the Town of Boone before being comfortable with moving forward.

Commissioner Russell stated that moving forward was in good faith and he hoped others would make good faith efforts as well.

Commissioner Castle stated that the County was serious and had shown good faith by funding the \$50,000 to \$60,000 presented by Ms. Odio.

County Attorney Capua stated that she would talk with the Town of Boone Attorney as she was not willing to give up on the settlement agreement.

Commissioner Wallin stated that he wanted to continue to see if the Brookshire property could be developed as it was the only way to move forward.

Chairman Turnbow stated that it was a risk to pursue but without understanding all points it wouldn't be known what could or couldn't be done such as the maximum number of units and amount of greenspace available. The Chairman also stated that the County needed to be courteous of the residence near the Brookshire property and that he respected the opinions of all Commissioners.

At this time a vote was taken on the motion:

VOTE: Aye-3(Turnbow, Wallin, Russell)
Nay-2(Castle, Eggers)

Ms. Odio stated that the next time a presentation was made it would include conceptual plans and gap funding needs.

Commissioners Russell and Eggers stated that Ms. Odio presented a great study on the project.

Chairman Turnbow stated that by moving forward, the County would get the information needed to make the best decisions regarding potentially moving forward with the project but he understood the frustrations. The Chairman stated that the County would continue to gather information to make the best decisions for all concerned, regarding affordable housing, by continuing to look at all scenarios as Watauga County was in a unique situation in the State.

CHANGE ORDER REQUEST FOR QUEEN/WATER STREET PARKING DECK

Mr. Bill Dixon, Appalachian Architecture, presented proposed Change Order 1 for the Queen/Water Street Parking Deck project in the amount of \$3,535.49. The Change Order was to cover expenses for the relocation of electrical service that conflicts with the shoring. Adequate funds were available to cover the overage as the project came in under budget.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to approve Change Order 1 for the Queen/Water Street Parking Deck in the amount of \$3,535.49.

VOTE: Aye-3(Turnbow, Wallin, Russell)
Nay-2(Castle, Eggers)

PROPOSED APPALCART RURAL OPERATING ASSISTANCE PROGRAM (ROAP) GRANT APPLICATION

Mr. Craig Hughes, AppalCART Director, gave a brief status update beginning with the news that they were projecting the use of \$400,000 from their fund balance to cover expenses in Fiscal Year (FY) 2024. Mr. Hughes stated that the AppalCART Board was working to identify additional revenues and hoped that partners would continue to find value in their services and would arrange to assist with meeting their financial obligations. Mr. Hughes shared how AppalCART benefits

those who ride as well as those who commute in local traffic. Ridership in FY 2023 was 1,429,555 and had increased so far this year. AppalCART provided 259,494 fixed route trips this FY; 15,474 more than the same time last year. Total ridership trips, as of September 17, 2023, was 264,474. Mr. Hughes stated that AppalCART was recently awarded funding for four electric buses and a 180-kw charging station through two grants. One was a Federal Transit Administration Low or No Emission Grant and the second was a Carbon Reduction Program grant through the North Carolina Department of Transportation (NCDOT). Mr. Hughes shared his appreciation for letters of support from the County which were submitted with grant applications.

Mr. Hughes presented the Rural Operating Assistance Program (ROAP) grant application for FY 2024. Watauga County was awarded \$194,986 which did not require a local match. This was a small increase over FY 2023 funding. The funding total would be split into three categories.

The Elderly and Disabled Transportation Assistance Program (EDTAP) allocation, in the amount of \$75,433, was split as follows: Department of Social Services (DSS) in the amount of \$25,085, Project on Aging (POA) in the amount of \$19,500, AppalCART in the amount of \$10,348, and Watauga Opportunities in the amount of \$20,500.

The Employment (EMPL) allocation, in the amount of \$16,434, to Watauga Opportunities to provide transportation for their clients to employment and job training.

The Rural General Public (RGP) allocation, in the amount of \$103,119, used primarily to provide rural trips in the mornings and afternoon to and from Boone. The RGP no longer required a 10% match; however, AppalCART intended to continue charging a nominal fare of \$1 to \$2 per trip to stretch those funds as far as possible.

Commissioner Russell, seconded by Vice-Chairman Wallin, moved to approve the Rural Operating Assistance Program (ROAP) grant application for FY 2024 as presented by Mr. Hughes.

VOTE: Aye-5
Nay-0

FY 2024 VEHICLE PURCHASE REQUEST

Major Kelly Redmon with the Watauga County Sheriffs' Office requested to purchase eight (8) 2024 AWD Dodge Durango Police SUVs in the amount of \$40,440.16 each from Ilderton Dodge Inc. Ilderton Dodge was awarded the Sheriffs' Association's vendor vehicle procurement contract. Adequate funds were available to cover the expenditure. Major Redmon stated that, due to supply issues over the past few years, he would wait and request the purchase of equipment packages for these vehicles after it was determined that they would be delivered.

Vice-Chairman Wallin, seconded by Commissioner Eggers, moved to approve the purchase of eight (8) 2024 Dodge Durango Police SUVs, AWD at \$40,440.16 from Ilderton Dodge as presented by Major Redmon.

VOTE: Aye-5
Nay-0

TAX MATTERS***A. Monthly Collections Report***

Mr. Larry Warren, Tax Administrator, presented the Tax Collections Report for the month of August 2023. The report was presented for information only and, therefore, no action was required.

B. Refunds and Releases

Mr. Larry Warren, Tax Administrator, presented the Refunds and Releases Report for August 2023 for Board approval:

TO BE TYPED IN MINUTE BOOK

Mr. Warren explained that a software glitch caused the large number of refunds. The bills were never sent out but approval was requested to allow staff to correct the issue.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to approve the Refunds and Releases Report for August 2023 as presented.

VOTE: Aye-5
Nay-0

PROPOSED UTILITY EASEMENT TO TOWN OF BOONE FOR WATER PERMIT CLOSEOUT

Mr. Phillip Harrison, Operations Services Manager, presented a proposed utility easement with the Town of Boone for the Scale House construction project. The easement would provide access over the relocated water main for their operations and maintenance of the line that cuts through the County's property. The easement has been delineated and recorded, as shown in the plat. County Attorney Capua stated that she had reviewed the easement and approved its content.

Commissioner Russell, seconded by Commissioner Castle, moved to approve the easement as presented by Mr. Harrison.

VOTE: Aye-5
Nay-0

MISCELLANEOUS ADMINISTRATIVE MATTERS***A. Boards and Commissions***

County Manager Geouque presented the following:

AppalCART Board

The AppalCART Board recommended the reappointment of David Jackson, Frank “Quint” David, and Joe Eller to the AppalCART Board to maintain the continuity of the current Board. The terms would be for two years each.

Vice-Chairman Wallin, seconded by Commissioner Russell, moved to waive the second reading and reappoint David Jackson, Frank “Quint” David, and Joe Eller to two-year terms on the AppalCART Board.

VOTE: Aye-5
Nay-0

Board of Adjustment

The Board of Adjustment terms of Alyson Browett (Valle Crucis Historic District); John Prickett (Howard’s Creek Watershed), and Emily Bish (Alternate), were set to expire in November 2023. Mr. Prickett was willing to continue to serve for an additional three (3) year term; however, Ms. Browett and Ms. Bish did not wish to be reappointed.

Commissioner Castle, seconded by Commissioner Russell, moved to waive the second reading and reappoint John Prickett to the Watauga County Board of Adjustment for a three-year term.

VOTE: Aye-5
Nay-0

Valle Crucis Historic Preservation Commission (VCHPC)

The Valle Crucis Historic Preservation Commission terms of Dr. Susan Mast and Ms. Heidi Tester expire in September. Dr. Mast and Ms. Tester were both willing to continue to serve if reappointed. A volunteer application was received from Ms. Alyson Browett who was also interested in serving on the VCHPC. The terms were for three years. These were first readings; however, Mr. Jason Walker, Planning and Inspections Director, stated that there may be more applications to come.

No action was taken as this was a first reading.

B. Announcements

County Manager Geouque announced the following:

- The High Country Council of Governments’ 48th Annual Banquet was scheduled for Friday, October 6, 2023, from 6:00 to 9:00 P.M. in the Grandview Ballroom at The Northwest End Zone, Appalachian State University.
- You are invited to “Spirit of Boone,” the Boone Area Chamber of Commerce’s 74th Annual Membership Gathering on Thursday, September 21, 2023, from 6:00 to 9:00 P.M. in the Grandview Ballroom at Appalachian State's Northwest End Zone Facility.

The County's Broadband Expansion Project with Blue Ridge Energy and SkyLine/SkyBest would be presented with the Dan Meyer Community Partnership Award at the event. The award recognizes a community leader for their efforts to bring multiple parties together for a common cause. Meyer served as President/CEO of the Chamber for 12 years before retiring in August of 2016.

CLOSED SESSION

At 7:34 P.M., Vice-Chairman Wallin, seconded by Commissioner Eggers, moved to enter Closed Session to discuss Personnel Matters, per G. S. 143-318.11(a)(6).

VOTE: Aye-5
Nay-0

Vice-Chairman Wallin, seconded by Commissioner Castle, moved to resume the open meeting at 8:22 P.M.

VOTE: Aye-5
Nay-0

POSSIBLE ACTION AFTER CLOSED SESSION

There was no action after closed session.

ADJOURN

Vice-Chairman Wallin, seconded by Commissioner Eggers, moved to adjourn the meeting at 8:23 P.M.

VOTE: Aye-5
Nay-0

Larry Turnbow, Chairman

ATTEST:
Anita J. Fogle, Clerk to the Board

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AGENDA ITEM 3:

APPROVAL OF THE OCTOBER 3, 2023, AGENDA

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AGENDA ITEM 4:

PUBLIC COMMENT

MANAGER'S COMMENTS:

Public Comment will last up to 1-hour dependent upon the number of speakers.

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AGENDA ITEM 5:

ECONOMIC DEVELOPMENT COMMISSION CHILD CARE STUDY PROPOSAL

MANAGER'S COMMENTS:

Mr. Joe Furman, Chamber of Commerce Economic Development Director, will request the Board approve \$50,000 from the County Economic Development Capital Reserve Account for a study on child care in Watauga County. The County's EDC Board voted to recommend to the County Commissioners approval of the funding.

Board action is required to allocate the \$50,000 from the EDC Capital Reserve Account to conduct a study of child care in Watauga County.



WATAUGA ECONOMIC DEVELOPMENT
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MEMORANDUM

TO: Board of Commissioners, County Manager
FROM: Joe Furman
SUBJECT: Child Care Study
DATE: September 26, 2023

Attached is a proposal to perform a study of child care in Watauga County; you may recall me mentioning it previously. Here is the link to a similar study completed for the Wilkes EDC: <https://info.wilkesedc.com/childcarestudy>. The Watauga study would be undertaken by the same team that performed the Wilkes study. The purpose is to gather pertinent information from statistical sources and stakeholders, to identify gaps in service, and to make recommendations of action steps to fill the gaps. The study is projected to take seven months to complete. Having such information in our possession would be valuable when seeking grants or other funding and in recruiting providers, as well as equipping us with accurate numbers to back up what we know anecdotally. At last week's EDC meeting, I requested the EDC to approve funding up to the entire \$50,000 cost of the study. The source of the funds would be the County's Economic Development Capital Reserve Account (which currently contains \$461,000); the EDC voted to recommend the County Commissioners to approve using the capital reserve account to fund the study. Private funds are being solicited to help pay for the study - as of September 26, \$2,500.00 has been pledged. I hope to be able to report by next week's meeting that additional private funds have been secured and that the County will not need to provide the full cost of the study.



CHILDCARE STUDY PROPOSAL

Watauga County, NC

A COLLABORATIVE & ECONOMIC APPROACH

Building an innovative childcare ecosystem in Watauga County, NC.

The goal of this study is to provide documentation of the existing childcare network and estimates of the gap of care to meet the current needs of Watauga County children and parents. The project will also address how the lack of suitable child care affects labor force participation and the economic development of a community.

Recommendations will be given for building a family-friendly strategy in Watauga County that will enhance the labor force participation of its citizens and provide needed early childhood education for the future workforce.

The team will include Dr. Pamela Shue, an expert in early childhood care and education, and Cyndi Dancy a researcher bringing years of economic development experience to the project. The blend of expertise in early care and education along with economic development helps to address the imperative of quality childcare and why it is needed for a community to thrive.

The childcare study will:

1. Document the current state of childcare in Watauga County.
2. Explore the population and labor market trends for Watauga County.
3. Estimate the projected growth of the population, and how it will affect childcare and workforce.
4. Consider practical and potential innovations in the childcare ecosystem that could benefit the community and provide concrete recommendations for action.

Process And Team Approach

Phase 1: Discovery

- Define/confirm scope
- Research current state
- Stakeholder engagement

Phase 2: Analysis

- Identify strengths
- Evaluate trends
- Quantify current gaps

Phase 3: Recommendations

- Recommendations and action steps
- Identify community champions

PHASE 1: DISCOVERY

Scope of Project

Ages Included:

It is suggested that two different childcare situations be studied separately:

- Childcare from birth to 5 years
- Out-of-school care for school-aged children from kindergarten to middle school

Geographies Included:

- Childcare facilities within Watauga County, NC
- Residents of Watauga County
- Labor market area (Commuters/possible commuters to Watauga County in labor study context)

Some comparisons can be made to the state, nation, and up to three other counties to illustrate trends.

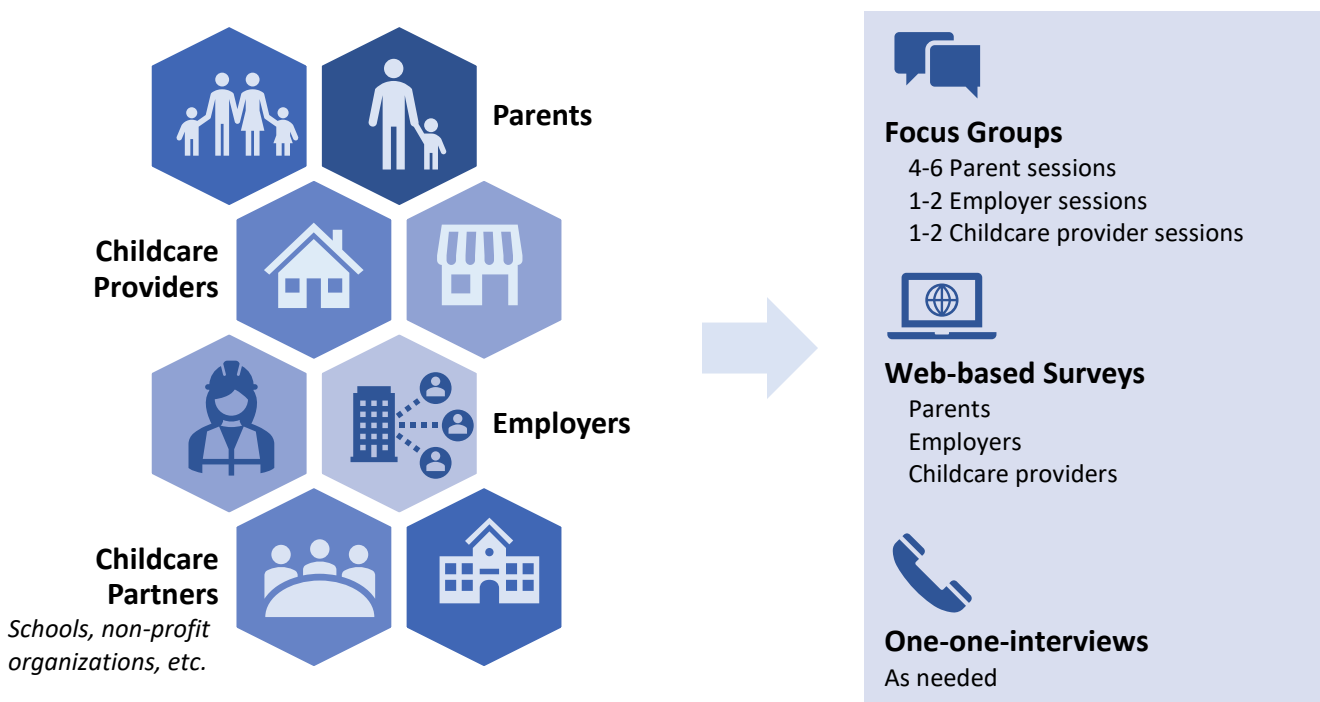
Childcare System:

The current childcare system will focus on licensed childcare and out-of-school programs offered in Watauga County with a focus on meeting the needs of parents' work schedules. This includes

- Childcare facilities:
 - 1) Licensed facilities – specific data on capacity, ages, etc.
 - 2) Other childcare providers – trends, anecdotal and qualitative notes
 - 3) Childcare infrastructure – trends, anecdotal

Stakeholder Engagement

Collecting data and input from several audience groups is essential for establishing local trends, needs, and opinions on childcare. Methods could include in-person focus groups, web-based focus groups, online surveys, and one-one-interviews. The stakeholder groups are:



Watauga County Childcare Study Proposal 2023

Demographic & Economic Trends

Elements from this research include:



- Population growth trends, migration
- Demographics by age
- Household and family living situations
- Composition and sources of income



- Labor Force & Participation
- Employment growth
- Wages
- Commuting trends

PHASE 2: ANALYSIS

Incorporate findings from Phase 1 to uncover patterns and trends in existing care and look at the reasoning behind trends. Identify childcare needs and develop a list of strengths and weaknesses or gaps in care in Watauga County.

Collaboratively the group will leverage their area of expertise to transform the data into a part of the overall story.

PHASE 3: RECOMMENDATIONS

The discovery and analysis phases will lead the team to collaboratively formulate recommendations to meet existing gaps and improve Watauga County's early childhood ecosystem. Suggestions will include action steps and identifying organizations within the community as champions and leaders of these recommendations. Where possible, best practices and case studies will be included.

COMMUNICATION & DELIVERABLES

At the conclusion of Phase 2, the consultant team will engage with the Watauga County funder group and key individuals involved – the study group – to review findings and collaboratively curate a framework to guide work on recommendations. Draft chapters of the discovery process will be shared with this select group to inform discussions on the recommendation outline.

A full report will be delivered in a digital format to encompass findings, stakeholder engagement highlights as well as recommendations and action steps for the community to utilize for improving the Watauga County childcare ecosystem.

One presentation to an audience of the study group's choosing will also be made to share key elements of discovery and recommendation.

TIMELINE

PHASES 1 & 2: Discovery & Analysis

With an anticipated start in the fall of 2023, the team will work to collect data and reach out to stakeholders through mid-November. The process of analysis will begin concurrent with discovery and continue through the end of the year.

PHASE 3: Recommendations

The consultant team will meet with the study group to discuss the recommendation framework at the end of January 2024 with the final delivery of a report to occur by the end of March.

Allowing time for holidays, this project as proposed is estimated to take approximately 7 months.

Watauga County Childcare Study Proposal 2023

PROJECT TEAM

The team will include Dr. Pamela Shue, an expert in early childhood care and education, and Cyndi Dancy a researcher bringing years of economic development experience to the project. The diversity of backgrounds will enable the team to approach the childcare crisis from different viewpoints allowing a more complete view of why this issue matters to the entire community.

DR. PAMELA SHUE, ED.D. AND M.ED.

Associate Professor in Department of Family and Child Studies at Appalachian State University

Dr. Pamela Shue works as an associate professor at Appalachian State University but has also worked for the North Carolina Department of Public Instruction, where she served as the Deputy State Superintendent of Early Education. Prior to that position, she was the director of the NC Division of Child Development and Early Education and an associate professor at the University of North Carolina at Charlotte. She has over 30 years' experience in the early childhood education field.

CYNDI DANCY

*Owner and Principal
Dancy Research*

Cyndi Dancy is based in the Piedmont Triad Region of NC and has more than 30 years of economic development experience spanning local and regional organizations including the Greensboro Chamber and Charlotte Regional Partnership. Cyndi has an eye for the details of economic development, finding the story in the data without losing sight of the big picture. Specialties include labor market analysis, site location research, geospatial analytics, marketing, and business development.

COST

The cost for performing the study outlined in this proposal is based on the time invested by the consultant team. The work to achieve expected deliverables in a quality and timely fashion is estimated in this proposal to cost \$50,000. This cost includes:

Consultant cost:

Cyndi Dancy	\$25,000
Pamela Shue, Childcare and Early Childhood Development	\$20,000

Stakeholder Engagement & Other Expenses	\$5,000
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Estimated expenses are to be billed at cost as reimbursable expenses capped at \$5,000. These include event costs, participant prizes/incentives, and Appalachian State student time and travel.

BILLING

Billing for this project will occur after Phases 1&2 and upon delivery of the final report from consultants. Expenses will be billed separately as they occur on a monthly basis.

AGENDA ITEM 6:**QUEEN/WATER STREET PARKING MATTERS*****A. Request for Exemption from Mini-Brooks Act*****MANAGER'S COMMENTS:**

County staff is requesting board approval for a resolution exempting the County from the quality-based selection process required by the Mini-Brooks Act (N.C.G.S 143-64.3 1). The statute allows local governments to exempt specific projects from the provisions of the general statute if the estimated fee is less than \$50,000. The reason for the requested exemption is the specialty of the scope of services for the project. The architect is recommending the Board approve the exemption and hire ECS to provide materials testing and special inspection services.

Staff recommends the Board approve the resolution.



WATAUGA COUNTY MAINTENANCE DEPARTMENT

274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430
Fax (828) 264-1473

TO: Deron Geouque, County Manager

FROM: Robert Marsh, Maintenance Director *RM*

DATE: September 25, 2023

RE: Exemption from Mini-Brooks Act and Request for Approval of Engineering Services for the Water Street Parking Deck Project

BACKGROUND

County staff is requesting board approval for a resolution exempting the County from the quality-based selection process required by the Mini-Brooks Act (N.C.G.S 143-64.31). The statute allows local governments to exempt specific projects from the provisions of the general statute if the estimated fee is less than \$50,000. ECS Southeast, LLC has submitted a proposal to the County for soils engineering and materials testing for an estimated fee of \$47,300. ECS is an N.C. licensed engineering firm specializing in geotechnical investigations and materials testing. Their proposal has been reviewed by the project design team and forwarded to the County with a request to approve the ECS proposal and contract with them quickly in order to avoid unnecessary delays in the project schedule.

RECOMMENDATION

Staff recommends the County approve the written resolution and, if suitable, approve said resolution and then approve the proposal submitted by ECS, Southeast LLC in the amount of \$47,300.

FISCAL IMPACT

The County has funds available to pay for this expense in the Watauga County Water Street Parking Deck project budget line.

STATE OF NORTH CAROLINA

DRAFT

COUNTY OF WATAUGA

Resolution Exempting Watauga County, North Carolina from the Provisions of N.C.G.S. 143-64.31 (the Mini-Brooks Act) Pertaining to Construction of Watauga County Water Street Parking Deck

WHEREAS, N.C.G.S. 143-64.31 requires the initial selection of firms to provide architectural, engineering and surveying services (collectively “design services”) to be based on qualification and without regard to fee; and

WHEREAS, the County proposes to enter into a contract with ESC Southeast, LLC, for soils engineering and materials testing services for the construction of the Watauga County Water Street Parking Deck Project; and

WHEREAS, N.C.G.S. 143-64.32 authorizes units of local government to exempt contracts for design services from the qualifications-based selection requirements of N.C.G.S. 143-64.31 if the estimated fee is less than \$50,000.00; and

WHEREAS, the estimated professional fee for the work done in connection with the Project is less than \$50,000.00.

NOW, THEREFORE, BE IT RESOLVED:

1. The above-described Project is hereby made exempt from the provisions of N.C.G.S. 143-64.31.
2. This Resolution shall be effective upon adoption.

ADOPTED by the Board of County Commissioners on this 3rd, day of October, 2023.

Larry Turnbow, Chairman
Watauga County Board of Commissioners

ATTEST:

Anita J. Fogle, Clerk to the Board

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AGENDA ITEM 6:**QUEEN/WATER STREET MATTERS*****B. Proposed Engineering Services by ECS Southeast, LLP*****MANAGER'S COMMENTS:**

ECS Southeast, LLC has submitted a proposal to the County for soils engineering and materials testing for an estimated fee of \$47,300. ECS is an N.C. licensed engineering firm specializing in geotechnical investigations and materials testing. Their proposal has been reviewed by the project design team and forwarded to the County with a request to approve the ECS proposal and contract with them quickly in order to avoid unnecessary delays in the project schedule. The contract for these services is outside of the VPC contract to avoid markup from the contractor and architect. Adequate funds have been budgeted in the Water Street Park Deck Project fund.

Staff recommends approval of the proposal submitted by ECS, Southeast LLC in the amount of \$47,300.



WATAUGA COUNTY MAINTENANCE DEPARTMENT

274 Winklers Creek Road, Suite B, Boone, NC 28607 - Phone (828) 264-1430

Fax (828) 264-1473

TO: Deron Geouque, County Manager

FROM: Robert Marsh, Maintenance Director *RM*

DATE: September 25, 2023

RE: Exemption from Mini-Brooks Act and Request for Approval of Engineering Services for the Water Street Parking Deck Project

BACKGROUND

County staff is requesting board approval for a resolution exempting the County from the quality-based selection process required by the Mini-Brooks Act (N.C.G.S 143-64.31). The statute allows local governments to exempt specific projects from the provisions of the general statute if the estimated fee is less than \$50,000. ECS Southeast, LLC has submitted a proposal to the County for soils engineering and materials testing for an estimated fee of \$47,300. ECS is an N.C. licensed engineering firm specializing in geotechnical investigations and materials testing. Their proposal has been reviewed by the project design team and forwarded to the County with a request to approve the ECS proposal and contract with them quickly in order to avoid unnecessary delays in the project schedule.

RECOMMENDATION

Staff recommends the County approve the written resolution and, if suitable, approve said resolution and then approve the proposal submitted by ECS, Southeast LLC in the amount of \$47,300.

FISCAL IMPACT

The County has funds available to pay for this expense in the Watauga County Water Street Parking Deck project budget line.



ECS Southeast, LLP

Proposal for Construction Materials Testing and Special Inspection Services

Watauga County Parking Deck – CMT & SI

N. Water Street & Queen Street
Boone, North Carolina

ECS Proposal 09.29632-P

September 25, 2023





September 25, 2023

Deron Geouque
 Watauga County Manager
 Watauga County
 969 West King Street
 Boone, NC, 28607

Reference: Proposal for Construction Materials Testing & Special Inspections
 Watauga County Parking Deck
 N. Water Street & Queen Street
 Boone, Watauga County, North Carolina
 ECS Proposal No. 09.29632-P

Dear Mr. Geouque:

ECS Southeast, LLP (ECS) appreciates this opportunity and is pleased to submit this proposal to provide Construction Material Testing and Special Inspections Services for the above-referenced project. This proposal reviews our understanding of the project information, outlines our proposed scope of services, and presents our fee estimate—together with the applicable schedule of unit rates for this project.

Our considerable experience with similar projects will help us provide efficient, cost-effective construction observation, testing, and engineering consulting services. Also, our automated Field Reporting and Electronic Distribution (FRED) system can provide an efficient reporting of field and laboratory activities as discussed later.

We are presently staffed with over 45 personnel including registered professional engineers, geologists, and scientists. Our professional staff has experience ranging from 5 to 35 years in practice in the fields of environmental engineering, geotechnical engineering, special inspection observations and construction materials testing. We have technicians that are trained and certified in ASTM, ACI, NCDOT and ICC testing procedures and metals technicians / CWI's trained and certified in both visual and nondestructive testing in accordance with ICC, AWS and ASNT recommendations.

We have discussed the Mini Brooks Act requirements with Robert Marsh, Watauga County Maintenance, and we understand that the project will be requested for exemption at the next County Commissioner's meeting.

PROJECT UNDERSTANDING

We understand that the project consists of the construction of a 2-story parking deck. The facility's construction will consist of pre-cast concrete with structural steel connections supported by shallow foundations (Grade beams) and foundation walls, with a concrete slab on the lower-level parking deck area. Asphalt and concrete pavements are planned at the entrance drive areas with associated underground utilities and storm drainage. Lower level of the parking deck ranges from 3266 to 3274. A total of 140 parking lots are planned for the parking deck. Project information was provided by Mr. Alan Crees of Municipal Engineering Services.

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We have received a preliminary set of drawings, project specifications, and the project subsurface exploration report. ECS has not been provided with a construction schedule nor a schedule of special inspections. As requested, ECS also proposes to perform limited confirming Wildcat DCP (WDCP) observations and testing at the final finished grade elevations for comparison with the provided geotechnical engineering report. ECS will provide recommendations for achieving the revised bearing capacities of 4,000-psf along the central column line and 3,000-psf for the perimeter foundations which may include limited undercutting to suitable bearing soils. These tests provide data on the near-surface soil conditions.

SCOPE OF SERVICES

We propose to provide qualified construction testing technicians, engineering interns, and registered engineers to perform the requested construction materials testing and observations on an on-call basis. Our scope noted below assumes the anticipated special inspections based on past experience that will be performed in general accordance with project specifications and drawings as specified by the Structural Engineer of Record.

A) Earthwork/Foundations:

1. Test foundation bearing conditions with a Wildcat Dynamic Cone Penetrometer to confirm the provided geotechnical report boring log data.
 - In WDCP testing, a cone with a diameter of 1.47 inches is driven into the soil by a 35-pound hammer falling 15 inches. The number of blows required to drive the cone through 10-centimeter intervals is recorded. The blows obtained from WDCP can be correlated to Standard Penetration Test (SPT) N-values. A simple spread sheet computer program logs the hammer blows per 10 cm and converts this number to Standard Penetration Test (SPT) N value for the corresponding soil depth. This value can be used as a qualitative indication of the in place relative density of cohesionless soils. In a less reliable way, it also indicates the consistency of cohesive soils.
2. Perform appropriate laboratory testing on materials proposed for use as fill, backfill, and paving subgrade in accordance with project specifications. Testing may include:
 - Grain Size Distribution, ASTM D-422
 - #200 Material Washed Sieve Analysis, ASTM C-117
 - Proctor Moisture Density Relationships ASTM D-698, D-1557 or AASHTO T-180, T-99
3. Observe conditions of bottom of excavations prior to foundation preparation, including proofrolling and other testing of subgrades and suggest and observe corrective measures.
4. Perform Dynamic Cone Penetrometer (ASTM STP-399) for suitable bearing conditions during excavation of shallow foundations with a net allowable bearing pressure of 3,000 and 4,000-psf.
5. Observe the placement of fill and backfill (including backfill in utility trenches and against foundation walls) to test compliance with project requirements.
6. Perform in-place density tests as required by project specifications, and test for compaction per the Nuclear Gauge Test Method (ASTM D-6938), or Drive Tube Method (ASTM D-2937).
7. Where deficiencies are noted during fill or backfill placement, suggest and observe remedial actions, including reworking and re-compacting of materials.
8. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

Additional Service not included in our cost of services for this project:

- * *Observe undercutting operations to document removal of unsuitable materials including debris, trash, muck, problem clays or stones with a maximum dimension greater than 6 inches.*

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- * *Observe foundation drainage and drainage materials and report compliance with the Contract Documents and the manufacturer's recommendations.*

B) Cast-in-Place Concrete:

1. Observe placement of reinforcing steel and document proper size, grade, spacing cover, cleanliness, length, location and type of splices, and report compliance with project plans and specifications.
2. Sample concrete at the frequency stated in the project specifications and perform the following tests and functions:
 - Confirm mix design
 - Slump
 - Air Content (Volumetric or Pressure Pot)
 - Temperature
 - Batch-to-placement time
 - Unit Weight
 - Cast test cylinders
 - Sampling, testing, and curing of specimens in the field shall be performed in accordance with applicable ASTM guidelines and project requirements. Additional tests shall be performed as needed in the event deficiencies are encountered. Compliance with extreme weather procedures will also be documented.
3. Cure and test concrete cylinders in the laboratory as directed by the project specifications and in accordance with ASTM C-31 and C-39. Each set proposed consists of five 4" x 8" cylinders.
4. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

Additional Service not included in our cost of services for this project:

- * *Cost associated with cast-in-place concrete assumes 4" x 8" cylinders; however, if the project requires 6" x 12" cylinders, an additional surcharge of 1.5 x the cost of 4" x 8" cylinders will be applied.*

C) Structural Steel:

1. Observe fabricated items for compliance with project specifications unless fabricator has been approved by design professional. We have assumed that the fabricator has been approved by the design professional and will not require fabricator shop visits.
2. Perform the following observations as related to on-site structural steel erection and high strength bolting:
 - * Visual observation of bolted connections.
 - Bearing-type connections
 - Slip-critical connections
3. Perform the following observations as related to on-site structural steel erection and welded connections:
 - * Observation of following welded connections:
 - Complete and partial penetration groove welds
 - Multi-pass fillet welds
 - Single pass fillet welds exceeding 5/16 inches
 - * Observation of following welded connections:
 - Single pass fillet welds 5/16 inches or less

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- Floor and roof deck welds
- * Perform ultrasonic or radiation testing to determine quality of observed welds as required by approved construction documents.
- 4. Observation of steel framing and frame joints for compliance with approved construction documents:
 - * Bracing and stiffening elements
 - * Location of framing members
 - * Connection detail at framing location
- 5. Provide documentation of events in the field and notify the appropriate persons upon recognition of non-compliant items.

Additional Service not included in our cost of services for this project:

- * Review certified mill test reports and notify Structural Engineer of any apparent deviations from specifications, as required.
- * Visually observe and perform production bend testing on shear studs in accordance with project specifications.

D) Structural Masonry:

1. Observe procedures and materials to document compliance with project drawings and specifications.
2. Cast grout prisms as required in the specifications and test grout for compressive strength as specified in ASTM C 1019. Each set proposed consists of four 3.5" x 3.5" prisms.
3. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

Additional Service not included in our cost of services for this project:

- * Test compressive strength of concrete masonry (f'_m) by using unit strength method described in ACI 530.1.
- * Observe construction of CMU block prisms as required in the specifications, and test for compressive strength as specified in ASTM E 447.
- * Cast mortar cylinders and test mortar for compressive strength as specified in ASTM C 780.

E) Paving

1. Observe proofrolling of subgrades, and suggest and observe corrective action at excessively soft areas prior to placement of subbase course.
2. Observe placement of subbase course and perform appropriate in-place density tests as directed by specifications.
3. Observe placement, rolling operations and temperature of paving mixture at time of placement.
4. Perform asphalt cores to document asphalt thickness and density in our laboratory.
5. Provide documentation of events in the field and notify the appropriate persons upon recognition of deficiencies.

SERVICES NOT INCLUDED IN OUR SCOPE OF SERVICES THAT WE CAN PROVIDE UPON REQUEST:

F) Segmental Retaining Walls:

1. Observe the foundation bearing soils for suitable bearing capacity in the reinforced zone.
2. Perform laboratory tests to confirm suitability of soil backfill according to wall design.
 - a. Atterberg Limits (ASTM D 4318)

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3. Perform in-place density tests on compacted reinforced and retained fill soils.
4. Observe segmental blocks and geogrid materials to confirm they are in compliance with the wall design.
5. Observe placement of washed stone drainage materials and drainage pipes.
6. Submit detailed reports for field activities and findings.
7. Provide construction documentation summary letter upon completion of wall construction.

UNDERSTANDING CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTIONS

Construction Materials Testing (CMT) and Special Inspection (SI) services are performed to help provide the project's contractors, designers, owners and local code officials some indication of the level of compliance obtained by the installing contractors with the project specification. These services are provided at intervals which typically are defined by the project specifications and on some occasions by the applicable building code. Test locations for most materials, i.e. soils, concrete and fireproofing, are generally based upon random selection; as such not all materials incorporated into a construction project are tested or observed.

Obviously the greater the testing frequency, the greater the confidence level that the test results are representative of other untested areas; however, no amount of testing can assure 100% compliance. Testing and observation services provided by ECS do not relieve the installing contractors from their obligation to install all materials in accordance with the applicable project plans and specifications. ECS makes reasonable effort to test in accordance with the applicable project requirements and to identify areas of materials that may not comply with the project specifications. However, due to the random nature of our testing, we cannot guarantee that all materials have been installed in accordance with the specifications.

The responsibility to correct or remediate non-complying conditions, even non-complying conditions discovered after testing or during subsequent phases of construction remains solely with the installing contractors.

COMMUNICATIONS

To expedite the timely distribution of our daily reports, our field personnel utilize wireless hand-held technology to collect, process, and return data to our Greensboro office. Our use of this powerful technology typically facilitates electronic distribution of our reports within approximately **24-48 hours**. This enhanced reporting technology allows us to simultaneously communicate our testing data with all project team members.

We anticipate our services will be needed on a full-time basis during earthwork and foundation installation and typically on an on-call basis thereafter. **The appropriate contractor or owner representative should contact our project manager to provide the appropriate level of staffing to meet the project requirements. All scheduling requests must be made by 3:30pm on the previous day so that the proper personnel may be scheduled for the required task.** If scheduling does not occur as requested, the project team will be notified with two email warnings and the third subsequent failure to schedule as noted will result in a 50% increase in our fee for personnel assigned to the task. Each scheduling request will be assigned a work order number so that the scheduled testing is documented. We also ask that we be provided with one full set of up-to-date project drawings and specifications prior to starting work on this project.

ECS will transmit reports by e-mail (and up to three hard copies via U.S. Mail, if requested). Please list those to whom the reports should be sent and provide their e-mail addresses or mailing addresses, as appropriate, on the attached Proposal Acceptance Form.

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ECS Southeast, LLP

FEES/COST OF SERVICES

Based on the proposed scope of services and our fee schedule, ECS estimates that the cost for our services for this project will be on the order of \$47,300. A cost estimate is attached. ECS will invoice Watauga County for our services on a unit-rate basis in accordance with the unit rates provided in the attached Project Fee Schedule. Invoices will be submitted on a monthly basis—typically on or about the 10th day of each month.

Our estimated cost provided does not constitute a lump-sum or not-to-exceed price for our services. Additional visits, retests, and unanticipated scopes of services may be required and will be invoiced in accordance with the attached fee schedule.

At the time of this proposal, a construction schedule was not available, and this cost estimate is based on our assumption of the construction schedule considering the construction drawings and specifications provided. The actual cost may be more or less than our cost estimate and will depend on the duration of construction and the frequency of testing scheduled by the general contractor.

AUTHORIZATION

If the scope of work as outlined above and the attached Terms and Conditions are acceptable to you, please sign the attached Proposal Acceptance Form on behalf of Watauga County and return one copy of the Proposal Acceptance Form to ECS. Please note that the attached Terms and Conditions of Service are incorporated herein by reference and are an integral part of this agreement between us.

Alternatively, you could issue a letter of acceptance or purchase order. If you opt to do so, ECS would ask that you include the proposal number and date hereof on such documents in order to incorporate this proposal by reference.

By signing the Proposal Acceptance Form—or by referencing this proposal in other documents intended to authorize ECS to proceed with the scope of services described above—you are also accepting the Terms and Conditions of Service and making this proposal the agreement between ECS and Watauga County.

This proposal is valid for a period of sixty (60) days; beyond that date it may be necessary to revise our schedule or fee. Fully completing and signing the attached Proposal Acceptance Form on behalf of Watauga County will provide formal authorization for ECS to enter the site and perform the above work, as well as providing proper invoicing instructions and distribution lists for reports and correspondence. Please provide any specific instructions or details not covered in this proposal on the attached Proposal Acceptance Form. Please note we have provided a place for you to enter invoicing instructions and report distribution.

We look forward to the opportunity to work with you on this project and hope to serve as your consultant in the future. If you have questions, or if we can be of additional service, please contact us at (336) 856-7150.

Respectfully submitted,

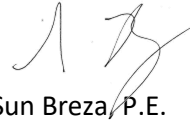
September 25, 2023

ECS Southeast, LLP

ECS SOUTHEAST, LLP



Nik Koppula, E.I.T
Project Manager




Sun Breza, P.E.
Principal Engineer

Attachments: Cost Estimate
ECS Fee Schedule
Proposal Acceptance Form
ECS Terms and Conditions of Service

September 25, 2023

ECS Southeast, LLP

				2023 FEE ESTIMATE			
CONSTRUCTION MATERIALS TESTING AND SPECIAL INSPECTION SERVICES							
Watauga County Parking Deck - Boone, North Carolina							
ECS Proposal No. 09.29632-P							
Field Services:				Quantity	Unit Rate	Cost	
Field Technician:							
Confirming Wildcat DCP's	2 visits	@	8 hours/visit	16 hours	@	\$100.00 / hour	\$1,600.00
Earthwork (Grading/Storm/Sewer)	5 visits	@	8 hours/visit	40 hours	@	\$58.00 / hour	\$2,320.00
MSE/CIP Wall Backfill	5 visits	@	8 hours/visit	40 hours	@	\$58.00 / hour	\$2,320.00
Foundation Bearing Grade Testing	2 visits	@	10 hours/visit	20 hours	@	\$58.00 / hour	\$1,160.00
Foundation Concrete Testing	2 visits	@	8 hours/visit	16 hours	@	\$58.00 / hour	\$928.00
Wall/Column Concrete	4 visits	@	8 hours/visit	32 hours	@	\$58.00 / hour	\$1,856.00
Slab-on-Grade Concrete	3 visits	@	8 hours/visit	24 hours	@	\$58.00 / hour	\$1,392.00
Exterior Slab Concrete	2 visits	@	8 hours/visit	16 hours	@	\$58.00 / hour	\$928.00
Pavement Observations	1 visits	@	8 hours/visit	8 hours	@	\$100.00 / hour	\$800.00
Cylinder Pickups	5 visits	@	5 hours/visit	25 hours	@	\$58.00 / hour	\$1,450.00
Staff Professional:							
Reinforcing Steel Observations	4 visits	@	5 hours/visit	20 hours	@	\$100.00 / hour	\$2,000.00
Masonry Observations	4 visits	@	6 hours/visit	24 hours	@	\$100.00 / hour	\$2,400.00
Structural Steel	4 visits	@	8 hours/visit	32 hours	@	\$130.00 / hour	\$4,160.00
Project Manager:							
Site Meetings/Observations (PE)	1 visits	@	5 hours/visit	5 hours	@	\$195.00 / hour	\$975.00
Proofrolls	3 visits	@	5 hours/visit	15 hours	@	\$130.00 / hour	\$1,950.00
Mileage (round trip):	45 visits	@	220 miles/visit	9900 miles	@	\$0.80 / mile	\$7,920.00
Field Services Subtotal:							\$34,159.00
Laboratory Testing:				Quantity	Unit Rate	Cost	
Standard Proctor, Natural Moisture, Atterberg, Wash200:	1 samples	@			@	\$400.00 / sample	\$400.00
Compressive Strength of Concrete Cylinders:	20 sets	@			@	\$19.00 / cylinder	\$1,900.00
Comp. Strength of Grout Specimen:	4 sets	@			@	\$19.00 / prism	\$304.00
Laboratory Testing Subtotal:							\$2,604.00
Equipment Expenses:				Quantity	Unit Rate	Cost	
Basic Equipment:	45 day(s)	@			@	\$50.00 / day	\$2,250.00
Nuclear Density Gauge:	1 day(s)	@			@	\$75.00 / day	\$75.00
UT:	2 day(s)	@			@	\$175.00 / day	\$350.00
Equipment Expenses Subtotal:							\$2,675.00
Project Management/Report Review:				Quantity	Unit Rate	Cost	
Principal Engineer:	13.00 hours	@			@	\$195.00 / hour	\$2,535.00
Senior Project Manager:	26.00 hours	@			@	\$130.00 / hour	\$3,380.00
Staff Professional:	11.25 hours	@			@	\$100.00 / hour	\$1,125.00
Secretary:	13.00 hours	@			@	\$58.00 / hour	\$754.00
Project Management Subtotal:							\$7,794.00
ESTIMATED TOTAL COST:							\$47,300.00



**2022 ECS SOUTHEAST, LLP
FEE SCHEDULE**

Soil or Materials Field or Lab Technician

1800-Soils/Concrete CMT Technician	\$ 58.00/hour
1700-Senior Field Technician.....	\$ 65.00/hour
1816/1865-Specialty Technician, Asphalt/GPR/FF-FL/PT	\$ 100.00/hour
7101/7102/7152-Steel Technician	\$ 130.00/hour

Note: Overtime Standard Rate is 1.50 for services performed on holidays, Saturday, Sunday, before **6:00 AM** or after **6:00 PM** or exceeding 8 hours per day Monday thru Friday.

Expenses

3350-Transportation Cost.....	\$ 0.80/mile
3381-Basic Field Equipment & Supplies	\$ 50.00/visit
5130-Coring Equipment with Generator	\$ 275.00/day
5000-Nuclear Density Equipment	\$ 75.00/day
6086-Swiss Hammer	\$ 100.00/day
7220-Ultrasonic Testing Equipment & Supplies.....	\$ 175.00/day
7149-Magnetic & Dye Penetrant Testing Equipment & Supplies.....	\$ 175.00/day
6062-Floor Flatness Equipment (Dip Stick)	\$ 200.00/day
8610-GPR Equipment	\$ 275.00/day
6061-Windsor Probe Testing.....	\$ 150.00/day, plus cost of consumable probes \$ 25.00 per shot
ACI On-site Curing Box.....	\$ 1,500.00/box
Rental Equipment, Sub-Contract Services & Non-standard Supplies	Cost x 1.15

Note: The above charges will be made for tests and equipment operated by ECS personnel in addition to personnel charges already listed.

Laboratory Testing

4100-Natural Moisture Content (ASTM D-2216)	\$ 25.00/each
4300-Atterberg Limits Testing (ASTM D-4318)	\$ 100.00/each
4800-Standard Proctor A or B (ASTM D-698).....	\$ 175.00/each
4803-Standard C (ASTM D-698) and Modified Proctor (ASTM D-1557).....	\$ 200.00/each
4841-Direct Shear Test (ASTM D-3080).....	\$ 600.00/each
5087-Asphalt, Bulk Specific Gravity (AASHTO T-166).....	\$ 75.00/each
6000-Compressive Strength of Concrete Cylinders (ASTM C-39).....	\$ 19.00/each
6010/6030-Grout/Mortar Cubes (ASTM C-109)	\$ 19.00/each
6020-Masonry Grout Prisms (ASTM C-1019)	\$ 19.00/each
6050-Compressive Strength of Masonry Block Prisms (ASTM C-1314).....	\$ 50.00/each
6063-Concrete Core Samples (ASTM, C-42) and Beams (ASTM C-78).....	\$ 75.00/each
6092-Particle Size Distribution (Gradation)(ASTM D-6913).....	\$ 100.00/each

Note: Test fee includes normal laboratory technician time, sample preparation, equipment and supplies required for each test.

Project Management

1950/1995-Administrative Assistant.....	\$ 58.00/hour
1513/1510-Staff Professional	\$ 100.00/hour
1302/1310-Project Manager	\$ 130.00/hour
1200/1210-Senior Project Manager.....	\$ 155.00/hour
1100-Principal Engineer.....	\$ 195.00/hour

Note: Charges for engineering and technical personnel will be made for time spent in the field, in engineering analysis, in preparation and review of reports, and in portal to portal travel to the job site at 0.25 hour increments.

**PROPOSAL
ACCEPTANCE FORM
ECS SOUTHEAST, LLP
(Please Print or Type)**

Project Name: Watauga County Parking Deck – CMT & SI
Location: Boone, Watauga County, North Carolina
Estimate: \$47,300.00

Please complete and return this Proposal Acceptance Form to ECS as shown at the bottom of this form. By signing and returning this form, you are authorizing ECS to proceed, providing ECS permission to enter the site, and making this proposal the agreement between ECS and Watauga County. Your signature also indicates you have read this document and the *Terms and Conditions of Service* in their entirety and agree to pay for services as above set forth.

CLIENT AND BILLING INFORMATION

Name of Client: _____
 Contact Person: _____
 Telephone No. _____
 E-mail: _____

	<u>Responsible for Payment</u>	<u>Approval of Invoice (if different)</u>
Contact Name:	_____	_____
Company Name:	_____	_____
Address	_____	_____
Address	_____	_____
City, State, Zip	_____	_____
Telephone No.:	_____	_____
Fax No:	_____	_____
E-mail Address:	_____	_____

The reports are normally e-mailed directly to client. If you require copies to others, please provide their names, e-mail addresses and fax numbers below.

Name	E-mail Address	Phone Number	Fax Number
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Special Instructions: _____

Client Signature: × _____ Date: _____

(hereinafter the "Proposal")

ECS SOUTHEAST, LLP TERMS AND CONDITIONS OF SERVICE

The professional services (the "Services") to be provided by ECS SOUTHEAST, LLP ["ECS"] pursuant to the Proposal shall be provided in accordance with these Terms and Conditions of Service ("Terms"), including any addenda as may be incorporated or referenced in writing shall form the Agreement between ECS and Client.

1.0 INDEPENDENT CONSULTANT STATUS - ECS shall serve as an independent professional consultant to CLIENT for Service on the Project, identified above, and shall have control over, and responsibility for, the means and methods for providing the Services identified in the Proposal, including the retention of Subcontractors and Subconsultants

2.0 SCOPE OF SERVICES - It is understood that the fees, reimbursable expenses and time schedule defined in the Proposal are based on information provided by CLIENT and/or CLIENT'S contractors and consultants. CLIENT acknowledges that if this information is not current, is incomplete or inaccurate, if conditions are discovered that could not be reasonably foreseen, or if CLIENT orders additional services, the scope of services will change, even while the Services are in progress.

3.0 STANDARD OF CARE

3.1 In fulfilling its obligations and responsibilities enumerated in the Proposal, ECS shall be expected to comply with and its performance evaluated in light of the standard of care expected of professionals in the industry performing similar services on projects of like size and complexity at that time in the region (the "Standard of Care"). Nothing contained in the Proposal, the agreed-upon scope of Services, these Terms and Conditions of Service or any ECS report, opinion, plan or other document prepared by ECS shall constitute a warranty or guaranty of any nature whatsoever.

3.2 CLIENT understands and agrees that ECS will rely on the facts learned from data gathered during performance of Services as well as those facts provided by the CLIENT. CLIENT acknowledges that such data collection is limited to specific areas that are sampled, bored, tested, observed and/or evaluated. Consequently, CLIENT waives any and all claims based upon erroneous facts provided by the CLIENT, facts subsequently learned or regarding conditions in areas not specifically sampled, bored, tested, observed or evaluated by ECS.

3.3 If a situation arises that causes ECS to believe compliance with CLIENT'S directives would be contrary to sound engineering practices, would violate applicable laws, regulations or codes, or will expose ECS to legal claims or charges, ECS shall so advise CLIENT. If ECS' professional judgment is rejected, ECS shall have the right to terminate its Services in accordance with the provisions of Section 25.0, below.

3.4 If CLIENT decides to disregard ECS' recommendations with respect to complying with applicable Laws or Regulations, ECS shall determine if applicable law requires ECS to notify the appropriate public officials. CLIENT agrees that such determinations are ECS' sole right to make.

4.1 CLIENT DISCLOSURES

4.2 Where the Scope of Services requires ECS to penetrate a Site surface, CLIENT shall furnish and/or shall direct CLIENT'S consultant(s) or agent(s) to furnish ECS information identifying the type and location of utility lines and other man-made objects known, suspected, or assumed to be located beneath or behind the Site's surface. ECS shall be entitled to rely on such information for completeness and accuracy without further investigation, analysis, or evaluation.

4.3 "Hazardous Materials" shall include but not be limited to any substance that poses or may pose a present or potential hazard to human health or the environment whether contained in a product, material, by-product, waste, or sample, and whether it exists in a solid, liquid, semi-solid or gaseous form. CLIENT shall notify ECS of any known, assumed, or suspected regulated, contaminated, or other similar Hazardous Materials that may exist at the Site prior to ECS mobilizing to the Site.

4.4 If any Hazardous Materials are discovered, or are reasonably suspected by ECS after its Services begin, ECS shall be entitled to amend the scope of Services and adjust its fees to reflect the additional work or personal protective equipment and/or safety precautions required by the existence of such Hazardous Materials.

5.0 INFORMATION PROVIDED BY OTHERS - CLIENT waives, releases and discharges ECS from and against any claim for damage, injury or loss allegedly arising out of or in connection with errors, omissions, or inaccuracies in documents and other information in any form provided to ECS by CLIENT or CLIENT'S agents, contractors, or consultants, including such information that becomes incorporated into ECS documents.

6.0 CONCEALED RISKS - CLIENT acknowledges that special risks are inherent in sampling, testing and/or evaluating concealed conditions that are hidden from view and/or neither readably apparent nor easily accessible, e.g., subsurface conditions, conditions behind a wall, beneath a floor, or above a ceiling. Such circumstances require that certain assumptions be made regarding existing conditions, which may not be verifiable without expending additional sums of money or destroying otherwise adequate or serviceable portions of a building or component thereof. Accordingly, ECS shall not be responsible for the verification of such conditions unless verification can be made by simple visual observation. Client agrees to bear any and all costs, losses, damages and expenses (including, but not limited to, the cost of ECS' Additional Services) in any way arising from or in connection with the existence or discovery of such concealed or unknown conditions.

7.1 RIGHT OF ENTRY/DAMAGE RESULTING FROM SERVICES

7.2 CLIENT warrants that it possesses the authority to grant ECS right of entry to the Site for the performance of Services. CLIENT hereby grants ECS and its subcontractors and/or agents, the right to enter from time to time onto the property in order for ECS to perform its Services. CLIENT agrees to indemnify and hold ECS harmless from any claims arising from allegations that ECS trespassed or lacked authority to access the Site.

7.3 CLIENT warrants that it possesses all necessary permits, licenses and/or utility clearances for the Services to be provided by ECS except where ECS' Proposal explicitly states that ECS will obtain such permits, licenses, and/or utility clearances.

7.4 ECS will take reasonable precautions to limit damage to the Site and its improvements during the performance of its Services. CLIENT understands that the use of exploration, boring, sampling, or testing equipment may cause minor, but common, damage to the Site. The correction and restoration of such common damage is CLIENT'S responsibility unless specifically included in ECS' Proposal.

7.5 CLIENT agrees that it will not bring any claims for liability or for injury or loss against ECS arising from (i) procedures associated with the exploration, sampling or testing activities at the Site, (ii) discovery of Hazardous Materials or suspected Hazardous Materials, or (iii) ECS' findings, conclusions, opinions, recommendations, plans, and/or specifications related to discovery of contamination.

8.0 UNDERGROUND UTILITIES

8.1 ECS shall exercise the Standard of Care in evaluating client-furnished information as well as information readily and customarily available from public utility locating services (the "Underground Utility Information") in its effort to identify underground utilities. The extent of such evaluations shall be at ECS' sole discretion.

8.2 CLIENT recognizes that the Underground Utility Information provided to or obtained by ECS may contain errors or be incomplete. CLIENT understands that ECS may be unable to identify the locations of all subsurface utility lines and man-made features.

8.3 CLIENT waives, releases, and discharges ECS from and against any claim for damage, injury or loss allegedly arising from or related to subterranean structures (pipes, tanks, cables, or other utilities, etc.) which are not called to ECS' attention in writing by CLIENT, not correctly shown on the Underground Utility Information and/or not properly marked or located by the utility owners, governmental or quasi-governmental locators, or private utility locating services as a result of ECS' or ECS' subcontractor's request for utility marking services made in accordance with local industry standards.

9.0 SAMPLES

9.1 Soil, rock, water, building materials and/or other samples and sampling by-products obtained from the Site are and remain the property of CLIENT. Unless other arrangements are requested by CLIENT and mutually agreed upon by ECS in writing, ECS will retain samples not consumed in laboratory testing for up to sixty (60) calendar days after the issuance of any document containing data obtained from such samples. Samples consumed by laboratory testing procedures will not be stored.

9.2 Unless CLIENT directs otherwise, and excluding those issues covered in Section 10.0, CLIENT authorizes ECS to dispose of CLIENT'S non-hazardous samples and sampling or testing process by-products in accordance with applicable laws and regulations.

10.0 ENVIRONMENTAL RISKS

10.1 When Hazardous Materials are known, assumed, suspected to exist, or discovered at the Site, ECS will endeavor to protect its employees and address public health, safety, and environmental issues in accordance with the Standard of Care. CLIENT agrees to compensate ECS for such efforts.

10.2 When Hazardous Materials are known, assumed, or suspected to exist, or discovered at the Site, ECS and/or ECS' subcontractors will exercise the Standard of Care in containerizing and labeling such Hazardous Materials in accordance with applicable laws and regulations, and will leave the containers on Site. CLIENT is responsible for the retrieval, removal, transport and disposal of such contaminated samples, and sampling process byproducts in accordance with applicable law and regulation.

10.3 Unless explicitly stated in the Scope of Services, ECS will neither subcontract for nor arrange for the transport, disposal, or treatment of Hazardous Materials. At CLIENT'S written request, ECS may assist CLIENT in identifying appropriate alternatives for transport, off-site treatment, storage, or disposal of such substances, but CLIENT shall be solely responsible for the final selection of methods and firms to provide such services. CLIENT shall sign all manifests for the disposal of substances affected by contaminants and shall otherwise exercise prudence in arranging for lawful disposal.

10.4 In those instances where ECS is expressly retained by CLIENT to assist CLIENT in the disposal of Hazardous Materials, samples, or wastes as part of the Proposal, ECS shall do so only as CLIENT'S agent (notwithstanding any other provision of this AGREEMENT to the contrary). ECS will not assume the role of, nor be considered a generator, storer, transporter, or disposer of Hazardous Materials.

10.5 Subsurface sampling may result in unavoidable cross-contamination of certain subsurface areas, as when a probe or excavation/boring device moves through a contaminated zone and links it to an aquifer, underground stream, pervious soil stratum, or other hydrous body not previously contaminated, or connects an uncontaminated zone with a contaminated zone. Because sampling is an essential element of the Services indicated herein, CLIENT agrees this risk cannot be eliminated. Provided such services were performed in accordance with the Standard of Care, CLIENT waives, releases and discharges ECS from and against any claim for damage, injury, or loss allegedly arising from or related to such cross-contamination.

10.6 CLIENT understands that a Phase I Environmental Site Assessment (ESA) is conducted solely to permit ECS to render a professional opinion about the likelihood of the site having a Recognized Environmental Condition on, in, beneath, or near the Site at the time the Services are conducted. No matter how thorough a Phase I ESA study may be, findings derived from its conduct are highly limited and ECS cannot know or state for an absolute fact that the Site is unaffected or adversely affected by one or more Recognized Environmental Conditions. CLIENT represents and warrants that it understands the limitations associated with Phase I ESAs.

11.0 OWNERSHIP OF DOCUMENTS

11.1 ECS shall be deemed the author and owner (or licensee) of all documents, technical reports, letters, photos, boring logs, field data, field notes, laboratory test data, calculations, designs, plans, specifications, reports, or similar documents and estimates of any kind furnished by it [the "Documents of Service"] and shall retain all common law, statutory and other reserved rights, including copyrights. CLIENT shall have a limited, non-exclusive license to use copies of the Documents of Service provided to it in connection with the Project for which the Documents of Service are provided until the completion of the Project.

11.2 ECS' Services are performed and Documents of Service are provided for the CLIENT'S sole use. CLIENT understands and agrees that any use of the Documents of Service by anyone other than the CLIENT, it's licensed consultants and its contractors is not permitted. CLIENT further agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its contractors' use of ECS' Documents of Service.

11.3 CLIENT agrees to not use ECS' Documents of Service for the Project if the Project is subsequently modified in scope, structure or purpose without ECS' prior written consent. Any reuse without ECS' written consent shall be at CLIENT'S sole risk and without liability to ECS or to ECS' subcontractor(s). CLIENT agrees to indemnify and hold ECS harmless for any errors, omissions or damage resulting from its use of ECS' Documents of Service after any modification in scope, structure or purpose.

11.4 CLIENT agrees to not make any modification to the Documents of Service without the prior written authorization of ECS. To the fullest extent permitted by law, CLIENT agrees to indemnify, defend, and hold ECS harmless from any damage, loss, claim, liability or cost (including reasonable attorneys' fees and defense costs) arising out of or in connection with any unauthorized modification of the Documents of Service by CLIENT or any person or entity that acquires or obtains the Documents of Service from or through CLIENT. CLIENT represents and warrants that the Documents of Service shall be used only as submitted by ECS.

12.0 SAFETY

12.1 Unless expressly agreed to in writing in its Proposal, CLIENT agrees that ECS shall have no responsibility whatsoever for any aspect of site safety other than for its own employees. Nothing herein shall be construed to relieve CLIENT and/or its contractors, consultants or other parties from their responsibility for site safety. CLIENT also represents and warrants that the General Contractor is solely responsible for Project site safety and that ECS personnel may rely on the safety measures provided by the General Contractor.

12.2 In the event ECS assumes in writing limited responsibility for specified safety issues, the acceptance of such responsibilities does not and shall not be deemed an acceptance of responsibility for any other non-specified safety issues, including, but not limited to those relating to excavating, trenching, shoring, drilling, backfilling, blasting, or other construction activities.

13.0 CONSTRUCTION TESTING AND REMEDIATION SERVICES

13.1 CLIENT understands that construction testing and observation services are provided in an effort to reduce, but cannot eliminate, the risk of problems arising during or after construction or remediation. CLIENT agrees that the provision of such Services does not create a warranty or guarantee of any type.

13.2 Monitoring and/or testing services provided by ECS shall not in any way relieve the CLIENT'S contractor(s) from their responsibilities and obligations for the quality or completeness of construction as well as their obligation to comply with applicable laws, codes, and regulations.

13.3 ECS has no responsibility whatsoever for the means, methods, techniques, sequencing or procedures of construction selected, for safety precautions and programs incidental to work or services provided by any contractor or other consultant. ECS does not and shall not have or accept authority to supervise, direct, control, or stop the work of any contractor or consultant or any of their subcontractors or subconsultants.

13.4 ECS strongly recommends that CLIENT retain ECS to provide construction monitoring and testing services on a full time basis to lower the risk of defective or incomplete Work being installed by CLIENT'S contractor(s). If CLIENT elects to retain ECS on a part time basis for any aspect of construction monitoring and/or testing, CLIENT accepts the risks that a lower level of construction quality may occur and that defective or incomplete work may result and not be detected by ECS' part time monitoring and testing. Unless the CLIENT can show that the error or omission is contained in ECS' reports, CLIENT waives, releases and discharges ECS from and against any other claims for errors, omissions, damages, injuries, or loss alleged to arise from defective or incomplete work that was monitored or tested by ECS on a part time basis. Except as set forth in the preceding sentence, CLIENT agrees to indemnify and hold ECS harmless from all damages, costs, and attorneys' fees, for any claims alleging errors, omissions, damage, injury or loss allegedly resulting from Work that was monitored or tested by ECS on a part time basis.

14.0 **CERTIFICATIONS** - CLIENT may request, or governing jurisdictions may require, ECS to provide a "certification" regarding the Services provided by ECS. Any "certification" required of

ECS by the CLIENT or jurisdiction(s) having authority over some or all aspects of the Project shall consist of ECS' inferences and professional opinions based on the limited sampling, observations, tests, and/or analyses performed by ECS at discrete locations and times. Such "certifications" shall constitute ECS' professional opinion of a condition's existence, but ECS does not guarantee that such condition exists, nor does it relieve other parties of the responsibilities or obligations such parties have with respect to the possible existence of such a condition. CLIENT agrees it cannot make the resolution of any dispute with ECS or payment of any amount due to ECS contingent upon ECS signing any such "certification."

15.0 BILLINGS AND PAYMENTS

15.1 Billings will be based on the unit rates, plus travel costs, and other reimbursable expenses as stated in the Professional Fees section of the Proposal. Any Estimate of Professional Fees stated in these Terms shall not be considered as a not-to-exceed or lump sum amount unless otherwise explicitly stated. CLIENT understands and agrees that even if ECS agrees to a lump sum or not-to-exceed amount, that amount shall be limited to number of hours, visits, trips, tests, borings, or samples stated in the Proposal.

15.2 CLIENT agrees that all Professional Fees and other unit rates shall be adjusted annually to account for inflation based on the most recent 12-month average of the Consumer Price Index (CPI-U) for all items as established by www.bls.gov when the CPI-U exceeds an annual rate of 2.0%.

15.3 Should ECS identify a Changed Condition(s), ECS shall notify the CLIENT of the Changed Condition(s). ECS and CLIENT shall promptly and in good faith negotiate an amendment to the Scope of Services, Professional Fees, and time schedule.

15.4 CLIENT recognizes that time is of the essence with respect to payment of ECS' invoices, and that timely payment is a material consideration for this agreement. All payment shall be in U.S. funds drawn upon U.S. banks and in accordance with the rates and charges set forth in the Professional Fees. Invoices are due and payable upon receipt.

15.5 If CLIENT disputes all or part of an invoice, CLIENT shall provide ECS with written notice stating in detail the facts of the dispute within fifteen (15) calendar days of the invoice. CLIENT agrees to pay the undisputed amount of such invoice promptly.

15.6 ECS reserves the right to charge CLIENT an additional charge of one-and-one-half (1.5) percent (or the maximum percentage allowed by Law, whichever is lower) of the invoiced amount per month for any payment received by ECS more than thirty (30) calendar days from the date of the invoice, excepting any portion of the invoiced amount in dispute. All payments will be applied to accrued interest first and then to the unpaid principal amount. Payment of invoices shall not be subject to unilateral discounting or set-offs by CLIENT.

15.7 CLIENT agrees that its obligation to pay for the Services is not contingent upon CLIENT'S ability to obtain financing, zoning, approval of governmental or regulatory agencies, permits, final adjudication of a lawsuit, CLIENT'S successful completion of the Project, settlement of a real estate transaction, receipt of payment from CLIENT'S client, or any other event unrelated to ECS provision of Services. Retainage shall not be withheld from any payment, nor shall any deduction be made from any invoice on account of penalty, liquidated damages, or other sums incurred by CLIENT. It is agreed that all costs and legal fees including actual attorney's fees, and expenses incurred by ECS in obtaining payment under this Agreement, in perfecting or obtaining a lien, recovery under a bond, collecting any delinquent amounts due, or executing judgments, shall be reimbursed by CLIENT.

15.8 Unless CLIENT has provided notice to ECS in accordance with Section 16.0 of these Terms, payment of any invoice by the CLIENT shall mean that the CLIENT is satisfied with ECS' Services and is not aware of any defects in those Services.

16.0 DEFECTS IN SERVICE

16.1 CLIENT, its personnel, its consultants, and its contractors shall promptly inform ECS during active work on any project of any actual or suspected defects in the Services so to permit ECS to take such prompt, effective remedial measures that in ECS' opinion will reduce or eliminate the consequences of any such defective Services. The correction of defects attributable to ECS' failure to perform in accordance with the Standard of Care shall be provided at no cost to CLIENT. However, ECS shall not be responsible for the correction of any deficiency attributable to CLIENT- furnished information, the errors, omissions, defective materials, or improper installation of materials by CLIENT'S personnel, consultants or contractors, or work not observed by ECS. CLIENT shall compensate ECS for the costs of correcting such defects.

16.2 Modifications to reports, documents and plans required as a result of jurisdictional reviews or CLIENT requests shall not be considered to be defects. CLIENT shall compensate ECS for the provision of such Services.

17.0 **INSURANCE** - ECS represents that it and its subcontractors and subconsultants maintain Workers Compensation insurance, and that ECS is covered by general liability, automobile and professional liability insurance policies in coverage amounts it deems reasonable and adequate. ECS shall furnish certificates of insurance upon request. The CLIENT is responsible for requesting specific inclusions or limits of coverage that are not present in ECS insurance package. The cost of such inclusions or coverage increases, if available, will be at the expense of the CLIENT.

18.1 LIMITATION OF LIABILITY

18.2 CLIENT AGREES TO ALLOCATE CERTAIN RISKS ASSOCIATED WITH THE PROJECT BY LIMITING ECS' TOTAL LIABILITY TO CLIENT ARISING FROM ECS' PROFESSIONAL LIABILITY, I.E. PROFESSIONAL ACTS, ERRORS, OR OMISSIONS AND FOR ANY AND ALL CAUSES INCLUDING NEGLIGENCE, STRICT LIABILITY, BREACH OF CONTRACT, OR BREACH OF WARRANTY, INJURIES, DAMAGES, CLAIMS, LOSSES, EXPENSES, OR CLAIM EXPENSES (INCLUDING REASONABLE ATTORNEY'S FEES) RELATING TO PROFESSIONAL SERVICES PROVIDED UNDER THIS AGREEMENT TO THE FULLEST EXTENT PERMITTED BY LAW. THE ALLOCATION IS AS FOLLOWS.

18.2.1 If the proposed fees are \$10,000 or less, ECS' total aggregate liability to CLIENT shall not exceed \$20,000, or the total fee received for the services rendered, whichever is greater.

18.2.2 If the proposed fees are in excess of \$10,000, ECS' total aggregate liability to CLIENT shall not exceed \$40,000, or the total fee for the services rendered, whichever is greater.

18.2 CLIENT agrees that ECS shall not be responsible for any injury, loss or damage of any nature, including bodily injury and property damage, arising directly or indirectly, in whole or in part, from acts or omissions by the CLIENT, its employees, agents, staff, consultants, contractors, or subcontractors to the extent such injury, damage, or loss is caused by acts or omissions of CLIENT, its employees, agents, staff, consultants, contractors, subcontractors or person/entities for whom CLIENT is legally liable.

18.3 CLIENT agrees that ECS' liability for all non-professional liability arising out of this agreement or the services provided as a result of the Proposal be limited to \$500,000.

19.0 INDEMNIFICATION

19.1 Subject Section 18.0, ECS agrees to hold harmless and indemnify CLIENT from and against damages arising from ECS' negligent performance of its Services, but only to the extent that such damages are found to be caused by ECS' negligent acts, errors or omissions, (specifically excluding any damages caused by any third party or by the CLIENT.)

19.2 To the fullest extent permitted by Law, CLIENT agrees to indemnify, and hold ECS harmless from and against any and all liability, claims, damages, demands, fines, penalties, costs and expenditures (including reasonable attorneys' fees and costs of litigation defense and/or settlement) ["Damages"] caused in whole or in part by the negligent acts, errors, or omissions of the CLIENT or CLIENT'S employees, agents, staff, contractors, subcontractors, consultants, and clients, provided such Damages are attributable to: (a) the bodily injury, personal injury, sickness, disease and/or death of any person; (b) the injury to or loss of value to tangible personal property; or (c) a breach of these Terms. The foregoing indemnification shall not apply to the extent such Damage is found to be caused by the sole negligence, errors, omissions or willful misconduct of ECS.

19.3 It is specifically understood and agreed that in no case shall ECS be required to pay an amount of Damages disproportional to ECS' culpability. **IF CLIENT IS A HOMEOWNER, HOMEOWNERS' ASSOCIATION, CONDOMINIUM OWNER, CONDOMINIUM OWNER'S ASSOCIATION, OR SIMILAR RESIDENTIAL OWNER, ECS RECOMMENDS THAT CLIENT RETAIN LEGAL COUNSEL BEFORE ENTERING INTO THIS AGREEMENT TO EXPLAIN CLIENT'S RIGHTS AND OBLIGATIONS HEREUNDER, AND THE LIMITATIONS, AND RESTRICTIONS IMPOSED BY THIS AGREEMENT. CLIENT AGREES THAT FAILURE OF CLIENT TO RETAIN SUCH COUNSEL SHALL BE A KNOWING WAIVER OF LEGAL COUNSEL AND SHALL NOT BE ALLOWED ON GROUNDS OF AVOIDING ANY PROVISION OF THIS AGREEMENT.**

19.4 **IF CLIENT IS A RESIDENTIAL BUILDER OR RESIDENTIAL DEVELOPER, CLIENT SHALL INDEMNIFY AND HOLD HARMLESS ECS AGAINST ANY AND ALL CLAIMS OR DEMANDS DUE TO INJURY OR LOSS INITIATED BY ONE OR MORE HOMEOWNERS, UNIT-OWNERS, OR THEIR HOMEOWNER'S ASSOCIATION, COOPERATIVE BOARD, OR SIMILAR GOVERNING ENTITY AGAINST CLIENT WHICH RESULTS IN ECS BEING BROUGHT INTO THE DISPUTE.**

19.5 **IN NO EVENT SHALL THE DUTY TO INDEMNIFY AND HOLD ANOTHER PARTY HARMLESS UNDER THIS SECTION 19.0 INCLUDE THE DUTY TO DEFEND.**

20.0 CONSEQUENTIAL DAMAGES

20.1 CLIENT shall not be liable to ECS and ECS shall not be liable to CLIENT for any consequential damages incurred by either due to the fault of the other or their employees, consultants, agents, contractors or subcontractors, regardless of the nature of the fault or whether such liability arises in breach of contract or warranty, tort, statute, or any other cause of action. Consequential damages include, but are not limited to, loss of use and loss of profit.

20.2 ECS shall not be liable to CLIENT, or any entity engaged directly or indirectly by CLIENT, for any liquidated damages due to any fault, or failure to act, in part or in total by ECS, its employees, agents, or subcontractors.

21.0 SOURCES OF RECOVERY

21.1 All claims for damages related to the Services provided under this agreement shall be made against the ECS entity contracting with the CLIENT for the Services, and no other person or entity. CLIENT agrees that it shall not name any affiliated entity including parent, peer, or subsidiary entity or any individual officer, director, or employee of ECS, specifically including its professional engineers and geologists.

21.2 In the event of any dispute or claim between CLIENT and ECS arising out of in connection with the Project and/or the Services, CLIENT and ECS agree that they will look solely to each other for the satisfaction of any such dispute or claim. Moreover, notwithstanding anything to the contrary contained in any other provision herein, CLIENT and ECS' agree that their respective shareholders, principals, partners, members, agents, directors, officers, employees, and/or owners shall have no liability whatsoever arising out of or in connection with the Project and/or Services provided hereunder. In the event CLIENT brings a claim against an affiliated entity, parent entity, subsidiary entity, or individual officer, director or employee in contravention of this Section 21, CLIENT agrees to hold ECS harmless from and against all damages, costs, awards, or fees (including attorneys' fees) attributable to such act.

22.0 THIRD PARTY CLAIMS EXCLUSION - CLIENT and ECS agree that the Services are performed solely for the benefit of the CLIENT and are not intended by either CLIENT or ECS to benefit any other person or entity. To the extent that any other person or entity is benefited by the Services, such benefit is purely incidental and such other person or entity shall not be deemed a third party beneficiary to the AGREEMENT. No third-party shall have the right to rely on ECS' opinions rendered in connection with ECS' Services without written consent from both CLIENT and ECS, which shall include, at a minimum, the third-party's agreement to be bound to the same Terms and Conditions contained herein and third-party's agreement that ECS' Scope of Services performed is adequate.

23.0 DISPUTE RESOLUTION

23.1 In the event any claims, disputes, and other matters in question arising out of or relating to these Terms or breach thereof (collectively referred to as "Disputes"), the parties shall promptly attempt to resolve all such Disputes through executive negotiation between senior representatives of both parties familiar with the Project. The parties shall arrange a mutually convenient time for the senior representative of each party to meet. Such meeting shall occur within fifteen (15) days of either party's written request for executive negotiation or as otherwise mutually agreed. Should this meeting fail to result in a mutually agreeable plan for resolution of the Dispute, CLIENT and ECS agree that either party may bring litigation.

CLIENT shall make no claim (whether directly or in the form of a third-party claim) against ECS unless CLIENT shall have first provided ECS with a written certification executed by an independent engineer licensed in the jurisdiction in which the Project is located, reasonably specifying each and every act or omission which the certifier contends constitutes a violation of the Standard of Care. Such certificate shall be a precondition to the institution of any judicial proceeding and shall be provided to ECS thirty (30) days prior to the institution of such judicial proceedings.

23.2 Litigation shall be instituted in a court of competent jurisdiction in the county or district in which ECS' office contracting with the CLIENT is located. The parties agree that the law applicable to these Terms and the Services provided pursuant to the Proposal shall be the laws of the Commonwealth of Virginia, but excluding its choice of law rules. Unless otherwise mutually agreed to in writing by both parties, CLIENT waives the right to remove any litigation action to any other jurisdiction. Both parties agree to waive any demand for a trial by jury.

24.0 CURING A BREACH

24.1 A party that believes the other has materially breached these Terms shall issue a written cure notice identifying its alleged grounds for termination. Both parties shall promptly and in good faith attempt to identify a cure for the alleged breach or present facts showing the absence of such breach. If a cure can be agreed to or the matter otherwise resolved within thirty (30) calendar days from the date of the termination notice, the parties shall commit their understandings to writing and termination shall not occur.

24.2 Either party may waive any right provided by these Terms in curing an actual or alleged breach; however, such waiver shall not affect future application of such provision or any other provision.

25.0 TERMINATION

25.1 CLIENT or ECS may terminate this agreement for breach or these terms, non-payment, or a failure to cooperate. In the event of termination, the effecting party shall so notify the other party in writing and termination shall become effective fourteen (14) calendar days after receipt of the termination notice.

25.2 Irrespective of which party shall effect termination, or the cause therefore, ECS shall promptly render to CLIENT a final invoice and CLIENT shall immediately compensate ECS for Services rendered and costs incurred including those Services associated with termination itself, including without limitation, demobilizing, modifying schedules, and reassigning personnel.

26.0 TIME BAR TO LEGAL ACTION - Unless prohibited by law, and notwithstanding any Statute that may provide additional protection, CLIENT and ECS agree that a lawsuit by either party alleging a breach of this agreement, violation of the Standard of Care, non-payment of invoices, or arising out of the Services provided hereunder, must be initiated in a court of competent jurisdiction no more than two (2) years from the time the party knew, or should have known, of the facts and conditions giving rise to its claim, and shall under no circumstances shall such lawsuit be initiated more than three (3) years from the date of substantial completion of ECS' Services.

27.0 ASSIGNMENT - CLIENT and ECS respectively bind themselves, their successors, assigns, heirs, and legal representatives to the other party and the successors, assigns, heirs and legal representatives of such other party with respect to all covenants of these Terms. Neither CLIENT nor ECS shall assign these Terms, any rights thereunder, or any cause of action arising therefrom, in whole or in part, without the written consent of the other. Any purported assignment or transfer, except as permitted above, shall be deemed null, void and invalid, the purported assignee shall acquire no rights as a result of the purported assignment or transfer and the non-assigning party shall not recognize any such purported assignment or transfer.

28.0 SEVERABILITY - Any provision of these Terms later held to violate any law, statute, or regulation, shall be deemed void, and all remaining provisions shall continue in full force and effect. CLIENT and ECS shall endeavor to quickly replace a voided provision with a valid substitute that expresses the intent of the issues covered by the original provision.

29.0 SURVIVAL - All obligations arising prior to the termination of the agreement represented by these Terms and all provisions allocating responsibility or liability between the CLIENT and ECS shall survive the substantial completion of Services and the termination of the agreement.

30.0 TITLES; ENTIRE AGREEMENT

30.1 The titles used herein are for general reference only and are not part of the Terms and Conditions.

30.2 These Terms and Conditions of Service together with the Proposal, including all exhibits, appendixes, and other documents appended to it, constitute the entire agreement between CLIENT and ECS. CLIENT acknowledges that all prior understandings and negotiations are superseded by this agreement.

30.3 CLIENT and ECS agree that subsequent modifications to the agreement represented by these shall not be binding unless made in writing and signed by authorized representatives of both parties.

30.4 All preprinted terms and conditions on CLIENT'S purchase order, Work Authorization, or other service acknowledgement forms, are inapplicable and superseded by these Terms and Conditions of Service.

30.5 CLIENT'S execution of a Work Authorization, the submission of a start work authorization (oral or written) or issuance of a purchase order constitutes CLIENT'S acceptance of this Proposal and its agreement to be fully bound the foregoing Terms. If CLIENT fails to provide ECS with a signed copy of these Terms or the attached Work Authorization, CLIENT agrees that by authorizing and accepting the services of ECS, it will be fully bound by these Terms as if they had been signed by CLIENT

AGENDA ITEM 7:

PARKS AND RECREATION MATTERS

A. Out-of-State Travel Request

MANAGER’S COMMENTS:

Ms. Keron Poteat, Parks and Recreation Director, will request the Board approve out-of-state travel for Assistant Director Craig Lands, who was recently appointed as the Special Olympics Watauga County Coordinator for the Special Olympics North America's Tennis and Pickleball Championships, which will be held in Hilton Head, SC.

Other than use of the County van for travel, there will be no budget or financial travel commitment as Special Olympics will provide the rest.

Board action is required to approve the out-of-state travel.



WATAUGA COUNTY PARKS & RECREATION


100323 BCC Meeting

231 Complex Drive • Boone, NC 28607
Phone : (828) 264-9511
Fax : (828) 264-9523



www.wataugacounty.org

M E M O

To: Watauga County Commissioners & County Manager
From:  Keron J. Poteat, Director, WCPR
Date: September 27, 2023
Subject: Out-of-State Travel Request

I am requesting travel approval for Craig Lands, Assistant Director and newly appointed Special Olympics Watauga County Coordinator, to attend the Special Olympics North America Tennis and Pickleball Championships in Hilton Head, SC. Craig will be serving as the head coach for tennis for the event. Additionally, he'll be transporting our Special Olympics athletes, unified partners, and coaches to the event.

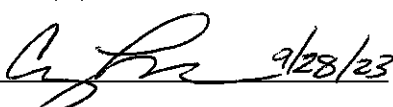
Outside of using the County van for travel, there is no budget or financial commitment for travel. Special Olympics Watauga County will provide all housing, food, and registration fees for the event. We are only seeking board approval for staff travel.

Thank you in advance for your consideration.

**WATAUGA COUNTY
TRAVEL AUTHORIZATION AND TRAVEL ADVANCE REQUEST**

DATE	Sep 27, 2023	BUDGET ACCOUNT NUMBER	
NAME:	Craig Lands	TITLE	Asst Dir/SO Coordinator
DEPARTMENT	WCPR		
DESTINATION	Hilton Head, SC	MEETING DATES FROM:	October 11
		TO:	October 14
Out of State travel? If yes, BCC approval is required and must be signed by County Manager.	<input checked="" type="radio"/> YES	DEPARTURE	Oct 11 @ 9 am
	<input type="radio"/> NO	RETURN	Oct 14 @ 11 pm
	Purpose	Special Olympics North America Tennis/Pickleball Championships	
Overnight Accommodations Required?	<input checked="" type="radio"/> YES	Name of Hotel/Motel	VRBO -- paid through SO Watauga County Funds
	<input type="radio"/> NO	Rate per night/person	
		Government Discount?	<input type="radio"/> YES <input type="radio"/> NO
Method of Transportation:	<input checked="" type="radio"/> County Vehicle <input type="radio"/> Personal Vehicle <input type="radio"/> Air <input type="radio"/> Other		
Cost		Explanation:	


Estimated Expenses					TOTALS
REGISTRATION FEES: Please indicate meals and/or banquets included in registration fee.					.00
MEALS	Breakfast:		X	8.00	.00
	Lunch:		X	10.00	.00
	Dinner:		X	16.00	.00
LODGING	Single Rate:		X		
*OTHER					
TOTAL					.00

Remarks: Craig will serve as the head coach for the tennis/pickleball for Watauga County athletes. (4 athletes/2 unified partners + 2 co		
Are funds requested in advance? <input type="radio"/> Yes <input checked="" type="radio"/> No Form is Mathematically Correct: <input type="radio"/> Yes <input type="radio"/> Approved as corrected	If settlement has not been made on this advance within 20 working days after completion of travel, I authorize this amount to be deducted from my next paycheck.  Employee/date	I believe this trip to be necessary and beneficial to Watauga County and funds were provided for this purpose in this departments appropriate budget account. Department Head _____ County Manager (Out of State) _____
Finance Staff/Date		



**SPECIAL OLYMPICS
NORTH AMERICA
TENNIS CHAMPIONSHIP
SOUTH CAROLINA 2023**



Presented by  PTR.

Wednesday, Oct 11

9 AM – 3 PM	Travel to Hilton Head	
3 PM – 6 PM	Free Time – Souvenir Shopping	HHI Shoppes
6:30 PM – 8:30 PM	Dinner with the Team	Residence

Thursday, Oct 12

9 – 11 AM	Practice Courts available	Van Der Meer Shipyard Courts
9 – 11 AM	Athlete and Coach Registration	Porch
11 AM – 12 PM	Lunch	Delegation Tents
12:30 – 2 PM	Pro Clinics – Athlete and Unified Partners	Shipyard Courts
1 PM	PTR Coaches Welcome	Sonesta Ballroom
3 – 5 PM	Unified Experience	Courts 1,2,7,8,12-20
5:30 – 6:30 PM	Welcome Picnic	Van Der Meer Porch
6:45 PM	Opening Ceremony	Court 12
7:30 PM	Pro Exhibition	Court 12

Friday Oct 13

8 AM – 3 PM	Singles Play– Level 3, 4, 5, 6	Courts 1,2,7,8,12-20
1 PM – 6 PM	Unified Doubles	Courts 1,2,7,8,12-20
11 AM – 1 PM	Lunch	Delegation Tents
7 PM	Dinner and Dance	Hilton Head Beach and Tennis

Saturday Oct 14

8 AM – 1PM	Singles	Courts 1,2,7,8,12-20
12PM – 3 PM	Unified Doubles – Levels 3, 4, 5, 6	Courts 1,2,7,8,12-20
11 AM – 1 PM	Lunch	Delegation Tents
12 Noon	PTR Equipment Distribution	2 nd floor Porch
3 PM – 4 PM	Ice Cream Social	Van Der Meer Shipyard
4:00 PM	Awards	Court 12
5:00 PM – 11:00 PM	Travel to Boone	

Sunday Oct 15

8 AM – 12 Noon	Rain Day (if needed)	
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AGENDA ITEM 7:

PARKS AND RECREATION MATTERS

B. Community Programming Update

MANAGER'S COMMENTS:

Ms. Keron Poteat, Parks and Recreation Director, will update the Board on programming for the community.

UNPLUG & RECHARGE

Year of the Trail Fall Hikes

Put on your hiking boots
and immerse yourself in nature!

Thursday, October 5th	Rough Ridge Trail
Wednesday, October 11th	Middle Fork Greenway Trail
Wednesday, October 18th	Bass Lake Loop
Wednesday, October 25th	Greenway Cross Country Trail

Meet at the Watauga Community Recreation Center at 10 am

Wear sturdy hiking shoes & comfortable clothing

Group hike setting \$5/person per trip

Sign up now! Space is limited!

Register @ rec.watgov.org 828.264.9511



Watauga County Parks & Recreation

Senior Road Trips

Part of the High Country Senior Games

Barter Theatre "Misery"

Tuesday, September 19th 10:00am-6:00pm
Abingdon, VA \$40

Carolina Classic Fair

Tuesday, October 3rd 9:00am-6:00pm
Winston-Salem, NC \$15

Sky Top Apple Orchard

Tuesday, November 7th 8:00am-6:00pm
Zirconia, NC \$15

Pigeon Forge Overnight Trip

Tuesday, December 5th

Trip fee includes admission cost and travel. Lunch & meals are on your own. All trips depart from & return to the Watauga Community Recreation Center. Register at rec.watgov.org

For more information, contact Craig Lands at 828-264-9511 or craig.lands@watgov.org

Watauga County Parks and Recreation, 231 Complex Drive, Boone, NC 28607

OUTDOOR

— Movie by the Park Series — by the Tot Lot at the WCRC

FREE

Presented by Watauga
County Parks & Recreation
and Sponsored by Blue
Cross & Blue Shield of
North Carolina

Sunday,
September 3rd
"Grease"
7:45-9:35 pm

Wednesday,
October 4th
"Monsters Inc."
7:30-9 pm

Tuesday,
December 19th
"Elf"
6-8 p.m.

Concessions
Facepainting
Games

*Bring your blankets, chairs, and the whole family!
Alcoholic beverages & tobacco products prohibited.*



WATAUGA COUNTY
PARKS & RECREATION

231 Complex Drive, Boone, NC
wataugacounty.org 828.264.9511



TRUNK-OR-TREAT

Join us for this free community event! Vendors needed to fill up our neigh"boo"hood. To register a trunk, visit rec.watgov.org

SUN
29 5-7
OCT PM

WATAUGA COMMUNITY
RECREATION CENTER
PARKING LOT

231 COMPLEX DRIVE, BOONE, NC
828.264.9511 REC.WATGOV.ORG



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AGENDA ITEM 8:

KILL/CHILL MATTERS

A. Economic Development Administration Grant Award Acceptance

MANAGER’S COMMENTS:

Mr. Jim Hamilton, Cooperative Extension Director, will request the Board accept the grant from the Department of Commerce’s Economic Development Administration (EDA) in the amount of \$817,558. The grant is part of the overall Kill/Chill Project.

Board approval is required to accept the grant from the Department of Commerce’s Economic Development Administration (EDA) in the amount of \$817,558.

Form ED-508
(Rev. 3/89)

Attachment No. 1

U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

PUBLIC WORKS PROJECT COST CLASSIFICATIONS

EDA Investment No. 04-79-07905

State: North Carolina

County: Watauga

<u>Cost Classification</u>	<u>Proposed</u>	<u>Approved</u>
Administrative and legal expenses	\$ 30,000	\$ 30,000
Land, structures, and rights-of-way appraisals, etc.		
Relocation expenses and payments (Cost incidental to transfer of titles)		
Architectural and engineering fees		
Other architectural and engineering fees		
Project inspection fees and audit		
Site Work		
Demolition and removal		
Construction	532,100	532,100
Equipment		
Miscellaneous		
Contingencies	505,458	505,458
TOTAL PROJECT COSTS	\$ 1,067,558	\$ 1,067,558

Remarks:

**U.S. DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION
STANDARD TERMS AND CONDITIONS FOR CONSTRUCTION PROJECTS**

Title II of the Public Works and Economic Development Act of 1965

Public Works and Economic Development Facilities
and
Economic Adjustment Assistance Construction Components



March 22, 2021

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PART I: GENERAL PROVISIONS

A. Construction Award Purpose

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

B. Authorities

1. In General

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

2. PWEDA

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

3. EDA Regulations

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

4. Conflicts Among Authorities

Any inconsistency or conflict among the authorities governing the Recipient's administration of this Award will be resolved in the following order of precedence: Federal laws and regulations (including the OMB Uniform Guidance), applicable notices published in the *Federal Register*, Executive Orders, OMB circulars, these EDA Construction STCs, specific award conditions, and any written policy guidance issued by EDA. However, a specific award condition may amend or take precedence over a provision of these EDA Construction STCs on a case-by-case basis, when warranted by the specific circumstances of the Award. In the event of a conflict between Parts I or II of these EDA Construction STCs and Part III, which incorporates the DOC Standard Terms and Conditions, Parts I and II will control.

C. Updates to Authorities

1. Updates to Regulations and Requirements

The DOC, EDA, or OMB may issue changes from time to time to the regulations and other policies and requirements that apply to this Award. Such changes may upon occasion increase

administrative or programmatic flexibility in administering this Award in a manner that is mutually beneficial to EDA and the Recipient. In addition, if required by law, these changes may impose new requirements. The implementation of any such regulatory, administrative, or programmatic change in administering this Award requires EDA's prior written approval.

2. **Applicability to the Award**

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

D. **Variations**

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

E. **Recipient as Trustee**

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

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

F. **Additional Funding**

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

G. **Definitions**

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

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

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

1. All data in the Application were true and correct when the Application was submitted and remain

- true and correct as of the date of this Award;
2. The Application was, as of the date of submission and the date of this Award, duly authorized as required by local law by the governing body of the Recipient; and
 3. The Recipient has read, understood, and will comply with all terms of this Award, including the assurances and certifications submitted as part of the Application (including assurances submitted through the System for Award Management (SAM.gov)).

Acceptance of the Award is established by any action on the part of the Recipient indicating an intent to accept the Award, including by signing the Financial Assistance Award (Form CD-450) (either via a “wet” signature or electronically) or by requesting any disbursement of Award funds. “Application” means all forms, documentation, and any information submitted to EDA as part and in furtherance of a request for an Award and includes submissions made in response to any request by EDA after submission of the initial Application.

**PART II:
SPECIAL REQUIREMENTS FOR EDA CONSTRUCTION PROJECTS**

A. Financial Requirements

1. Financial Reports

- a. During the period of performance, the Recipient must submit financial reports as follows, unless otherwise specified in a specific award condition.
 - i. *Reports on Award reimbursements.* In accordance with 2 CFR § 200.328 (“Financial reporting”), the Recipient must submit a “Federal Financial Report” (Form SF-425 or any successor form) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a specific award condition. Reports are due no later than 30 calendar days following the end of each reporting period, and instructions for completing and submitting Form SF-425 will be discussed during the Project kick-off meeting. Recipients may contact their EDA Project Officer with questions on how to complete or submit the report, if necessary, but they must submit reports on time and are encouraged to pose such questions sufficiently before the deadline to allow for complete, accurate, and timely submission of required reports.
 - ii. *Reports on Award advances.* While EDA generally does not advance funds, when the agency does so, the Recipient must submit Form SF-425 within 15 business days following the end of each quarter for an award where the Federal share of costs is under \$1 million. In accordance with 2 CFR § 200.328, because of increased risk and the need to ensure the appropriate use of Federal funds, where EDA advances funds under an award where the Federal share of costs is \$1 million or more the Recipient must submit Form SF-425 within 15 business days following the end of each month, or as otherwise specified in a specific award condition.
- b. The Recipient must submit a final Form SF-425 no later than 120 calendar days after the end date of the period of performance. *See also* Part II, section B.16.c “Final reporting deadline” of these EDA Construction STCs.
- c. Noncompliance with the financial reporting requirements may result in appropriate enforcement action under this Award, including but not limited to suspension of Award payments, disallowance of costs or termination of an award. A Recipient’s non-compliance with financial reporting requirements will also be taken into account in EDA’s consideration of any future applications for EDA financial assistance (*see* 2 CFR § 200.206(b)(2)(iii) and section A.06 (Unsatisfactory Performance or Non-Compliance with Award Provisions) of the DOC Standard Terms and Conditions, which are incorporated in Part III of these EDA Construction STCs).
- d. Financial reports should be submitted to the Project Officer in electronic format, unless otherwise specified in the specific award conditions.

2. Disbursements

- a. *Method of payment.* The Grants Officer determines the appropriate method of payment.

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

- b. *Disbursement requests.* The Recipient must use Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," to request reimbursement under the Award. Substantiating invoices and/or vouchers also must be provided. Each request for the disbursement of funds must be made to the Project Officer. Form SF-271 can be downloaded from the Grants.gov post-award reporting forms website at <https://www.grants.gov/web/grants/forms/post-award-reporting-forms.html>.
 - i. *Initial disbursement request.* For the initial disbursement only, the Recipient must complete and submit Form SF-3881, "ACH Vendor/Miscellaneous Payment Enrollment Form," along with Form SF-271, to the Project Officer.
 - ii. *Interim disbursement requests.* All requests for interim disbursement must be submitted using Form SF-271 and include substantiating invoices and/or vouchers.
 - iii. *Final disbursement request.* See Part II, section B.16 "Project Closeout Procedures" of these EDA Construction STCs.

3. Federal and Non-Federal Cost Sharing

- a. For purposes of this Award, the Federal share is the amount of EDA funds invested under the Award, while the non-Federal share, or "Matching Share," means non-EDA funds and any in-kind contributions that are approved by EDA and provided by the Recipient or by third parties as a condition of the Award.
- b. By accepting the Award, the Recipient certifies that the Matching Share of Project costs is committed to the Project, available as needed, and not conditioned or encumbered in any way that precludes its use consistent with the requirements of the Award. See 13 CFR § 301.5 ("Matching share requirements").
- c. In the case of an overrun at the construction bid opening, the Recipient may augment the Matching Share by an amount sufficient to cover the excess cost. The Recipient must furnish a letter to EDA identifying the source of the additional funds and confirming that all Matching Share meets the requirements of 13 CFR § 301.5. See 13 CFR § 305.10 ("Bid underrun and overrun").

4. Budget Revisions and Transfer of Funds

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

and guidance on proposed revisions to the budget.

- b. *Requesting budget revisions.* Requests for budget revisions to the EDA-approved budget must be submitted through the Project Officer to the Grants Officer, who will make the final determination on such requests and notify the Recipient in writing.
- c. *Budget revisions that require an amendment.* In accordance with 2 CFR § 200.308(f) and (h), an amendment executed by the Grants Officer are required for budget revisions when:
 - i. The revision results from changes in the scope or the objective of the Project;
 - ii. The need arises for additional EDA funds to complete the Project;
 - iii. The Federal share exceeds the simplified acquisition threshold (currently set at \$250,000) and the cumulative amount of transfers among direct cost categories exceeds or is expected to exceed 10 percent of the total budget as last approved by EDA; and
 - iv. A revision is desired that involves specific costs for which prior written approval requirements may be imposed consistent with applicable cost principles listed in subpart E of 2 CFR part 200 (“Cost Principles”).
- d. *Prior approval for transfers between construction and non-construction items.* When an Award supports both construction and non-construction work, the Recipient must obtain prior written approval from the Grants Officer before making any fund or budget transfer from non-construction to construction or vice versa. *See* 2 CFR § 200.308(h)(5).
- e. *Project underrun amounts.* Underrun amounts will be transferred to the contingencies line item. Contingency funds are to be used to address situations resulting from unknown conditions and changes required for the fulfillment of authorized activities under this Award. EDA may approve the use of underrun funds to increase the Federal share of the Project or further improve the Project, as long as EDA determines that the use is consistent with the original purpose of the Award. *See* 13 CFR § 308.1 (“Use of funds in projects constructed under projected cost”).
- f. *Additional EDA funding in case of Project overrun amounts.* In accepting this Award, the Recipient agrees to fund any overrun amounts from non-Federal sources, or if the Recipient is unable or unwilling to do so, to request termination of the Award. Additional EDA assistance for the Project is at the discretion of EDA and may not be approved.

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

- a. Indirect costs, or facilities and administrative (F&A) costs for educational institutions, are generally not applicable under this Award. See the definition of “indirect (facilities and administrative) (F&A) costs” at 2 CFR § 200.1.
- b. When indirect costs are applicable, they will not be allowable charges against the Award unless approved under the Award and specifically included as a line item in the Award’s approved budget. *See* section B.06 of the DOC Standard Terms and Conditions (“Indirect or Facilities and Administrative Costs”), which are incorporated into these EDA Construction STCs in Part III.

6. **Incurring Costs Prior to Award**

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

7. **Program Income**

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

- a. Administration, operation, maintenance, and repair of Project facilities in a manner consistent with good property management practice and in accordance with established building codes. This includes, where applicable, repayment of indebtedness resulting from any EDA-approved encumbrance (*e.g.*, approved mortgage) on the EDA-assisted facility. In the case of equipment, administration, operation, maintenance, and repair of the equipment, or the facility in which the equipment is located as required to maintain and operate the equipment, for the equipment's estimated useful life.
- b. Economic development activities that are authorized for support by EDA, provided such activities meet the economic development purposes of PWEDA and are located within the designated Project region.
- c. Any program income in excess of paragraphs a. and b. of this section that is generated during the period of performance must be deducted from total allowable Project costs in accordance with 2 CFR § 200.307(e)(1). *See also* 2 CFR § 200.307 ("Program income").

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

B. **Programmatic Requirements**

1. **Project Progress and Performance Reporting**

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

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

- b. Unless otherwise specified in a specific award condition, the Project progress report must contain the following information for each Project program, function, or activity:
 - i. A comparison of planned and actual accomplishments according to the timetable or list of Project objectives in this Award;
 - ii. An explanation of any delays or failures to meet the Project timetable or Project goals; and
 - iii. Any other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

Project progress reports must be submitted for each calendar quarter to the Project Officer. Each Project progress report must be submitted in accordance with the deadlines outlined in the specific award conditions, or, when not otherwise specified, Project progress reports will be due on a quarterly basis not later than January 31, April 30, July 31, and October 31 for the immediately previous quarter. The final Project progress report must be submitted to EDA no later than 120 calendar days after the end date of the period of performance. *See* Part II, section B.16.c “Project Closeout Procedures” of these EDA Construction STCs for more information on Project Closeout.

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

2. Time Extensions

- a. Unless otherwise authorized by a specific award condition, any extension of the period of performance can only be authorized by the Grants Officer in writing.
- b. The Recipient is responsible for implementing the Project in accordance with the development time schedule contained in this Award. As soon as the Recipient becomes aware that it may not be possible to meet the development time schedule, the Recipient must notify the Grants Officer. The Recipient’s notice to EDA must contain the following:
 - i. An explanation of the Recipient’s inability to complete work by the specified date (*e.g.*, a lengthy period of unusual weather delayed the contractor’s ability to excavate the site, major re-engineering required in order to obtain State or Federal approvals, unplanned environmental mitigation required);
 - ii. A statement describing any other contemplated changes to the Project;
 - iii. Documentation that demonstrates there is still a bona fide need for the Project; and
 - iv. A statement that no further delay is anticipated and that the Project can be completed within the revised time schedule.

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

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

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

4. **Programmatic Changes**

- a. In accordance with 2 CFR § 200.308 (“Revision of budget and program plans”), the Recipient must submit a written request for any proposed programmatic changes, including all changes to the scope of the Award, to the Project Officer. *See* Part II, section A.4 “Budget Revisions and Transfers of Funds” of these EDA Construction STCs for budget revisions that may require the prior written approval of EDA. In these cases, the Project Officer will forward the request to the Grants Officer, who makes the final decision on approving the request. In addition, the Recipient must request prior written approvals for certain items of cost in accordance with 2 CFR § 200.407 (“Prior written approval (prior approval)”).
- b. Any changes made to the Project without EDA’s approval are made at the Recipient’s own risk, and may result in disallowance of costs, suspension, termination, or other EDA action with respect to the Award. *See* 13 CFR § 302.7(b) (“Amendments and changes”).
- c. *Contract Change Orders.* After construction contracts for the Project have been executed, it may become necessary to alter them through a formal contract change order that must be issued by the Recipient and accepted by the contractor. All contract change orders must be reviewed by EDA, even if EDA is not participating in the cost of the change order or the contract price is to be reduced. Work on the Project may continue pending EDA review and approval of the change order, but all such work will be at the Recipient’s risk as to whether the cost of the work is eligible for EDA reimbursement. *See* 13 CFR § 305.13 (“Contract change orders”).

5. **Government Performance and Results Act**

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

6. **Beneficiary Compliance**

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

7. **Hold Harmless**

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

8. **Prohibition on Use of Third Parties to Secure Award**

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

9. **Payment of Attorneys' or Consultants' Fees**

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

10. **Recipient's Duty to Refrain from Employing Certain Government Employees**

- a. Pursuant to section 606(2) of PWEDA (42 U.S.C. § 3216), for the two-year period beginning on the date EDA executes this Award, any Recipient that is a nonprofit organization, District Organization, or for-profit entity agrees that it will not employ, offer any office or employment to, or retain for professional services any person who:
 - i. On the date EDA executes this Award or within the one-year period ending on that date, served as an officer, attorney, agent, or employee of the Department, and
 - ii. Occupied a position or engaged in activities that the Assistant Secretary determines

involved discretion with respect to the funding of an Award.

- b. In addition to the types of Recipients noted in paragraph a. above, EDA may require another Eligible Applicant to execute an agreement to abide by the above-described post-employment restriction on a case-by-case basis—for example, when an institution of higher education implements activities under or related to the Award through a separate nonprofit organization or association.
- c. The two-year period and associated restrictions referenced above also will apply beginning on the date that EDA executes any cost amendment to this Award that provides additional funds to the Recipient.

See also 13 CFR § 302.10 (“Attorneys’ and consultants’ fees, employment of expeditors, and post-employment restriction”).

11. Commencement of Construction

- a. *Delayed construction starts.* If significant construction (as determined by EDA) is not commenced within two years of the Award date or by the date estimated for start of construction in this Award (or the expiration of any extension granted in writing by EDA), whichever is later, this Award will be automatically suspended by a written notification issued by the Grants Officer and may be terminated if EDA determines, after consultation with the Recipient, that construction to completion cannot reasonably be expected to proceed promptly and expeditiously.
- b. *Early construction starts.* The Recipient must make a written request to EDA for early construction start permission (that is, after the date of Award, but before EDA gives formal approval for construction to commence). Costs incurred under a contract are only allowable after EDA determines that the award of the contract is in compliance with all terms and conditions of the Award. If construction commences prior to EDA’s determination, the Recipient proceeds at its own risk until EDA’s review and concurrence. *See* 13 CFR § 305.11 (“Contract awards; early construction start”).

12. Project Sign and Use of EDA Logo

- a. *Project sign.* The Recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign (or signs) in a conspicuous place at the Project site indicating that the Federal Government is participating in the Project. EDA will provide specifications for the sign and may require more than one sign if site conditions so warrant. If the EDA-recommended sign specifications conflict with State or local law, the Recipient may modify such recommended specifications so as to comply with State or local law. *See* 13 CFR § 305.12 (“Project sign”).
- b. *Use of EDA logo.* With EDA’s prior written permission, the Recipient may use the EDA logo to publicize the Award as well as to amplify the impact of the Award. In such cases, the EDA logo may be displayed on Award-related materials that discuss or advertise the purpose or use of the Project (e.g. websites, social media, fliers, pamphlets, brochures). To seek permission to use the EDA logo, the Recipient must contact the EDA Project Officer and provide a written description of how the Recipient proposes to use the EDA logo. In general,

the EDA logo may be used either alone or next to Recipient's logo. The EDA logo may not be used to endorse a third party as interpreted at EDA's sole discretion. The Recipient must not use the EDA logo in a negative or defamatory manner, and the Recipient must not use the U.S. Department of Commerce (DOC) logo. EDA may rescind such permission at any time.

13. **Efficient Administration of Project**

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

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

- a. An "Interested Party" is defined in 13 CFR § 300.3 ("Definitions") as "any officer, employee, or member of the board of directors or other governing board of the Recipient, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the Recipient, such as agents, advisors, consultants, attorneys, accountants, or shareholders." An Interested Party includes the Interested Party's Immediate Family and other persons directly connected to the Interested Party by law or through a business organization. "Immediate Family" is defined in 13 CFR § 300.3 as "a person's spouse (or domestic partner or significant other), parents, grandparents, siblings, children and grandchildren, but does not include distant relatives, such as cousins, unless the distant relative lives in the same household as the person."
- b. The Recipient must disclose in writing any potential conflicts of interest to EDA or the pass-through entity as soon as practicable after the identification of such potential conflict. In addition, the Recipient must maintain written standards of conduct to establish safeguards to prohibit an Interested Party from using its position for a purpose that constitutes or presents the appearance of personal or organizational conflicts-of-interest or of personal gain in the administration of an award. *See* 13 CFR § 302.17(a) and (b) ("Conflicts of interest"), 2 CFR § 200.112 ("Conflict of interest"), as applicable, and assurances submitted as part of the Application, including assurances submitted through SAM.gov or via Form SF-424D ("Assurances – Construction Projects").
- c. An Interested Party must not receive any direct or indirect financial or personal benefit in connection with this Award or its use for payment or reimbursement of costs by or to the Recipient. A conflict of interest generally exists when an Interested Party participates in a matter that has a direct and predictable effect on the Interested Party's personal or financial interests. A conflict also may exist where there is an appearance that an Interested Party's objectivity in performing his or her responsibilities under the Project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an Interested Party is unable to render impartial assistance, services or advice to the Recipient, a participant in the Project or to the Federal government. Additionally, a conflict of interest

- may result from non-financial gain to an Interested Party, such as benefit to reputation or prestige in a professional field. *See* 13 CFR § 302.17(a) and (b).
- d. Section F.01.c of the DOC Standard Terms and Conditions, which are incorporated as Part III of these EDA Construction STCs, specifies procurement-related conflicts of interest requirements. *See also* 2 CFR §§ 200.317-200.327 (“Procurement Standards”).

15. Records-Keeping Requirements

- a. *Records*. The Recipient must maintain records that document compliance with the terms and conditions of this Award. At a minimum, the Recipient’s records must fully disclose:
- i. The amount and disposition of all EDA funding under the Award;
 - ii. All Project expenditures and procurement actions;
 - iii. The total cost of the Project that the Award funds;
 - iv. Copies of all reports and disbursement requests submitted to EDA;
 - v. The benefits/impacts of the Project, as reported through GPRA and other reports to EDA;
 - vi. The amount and nature of the portion of Project costs provided by non-EDA sources;
 - vii. Contractor compliance with applicable Federal requirements; and
 - viii. Such other records as EDA requires the Recipient to maintain, including such records as will facilitate an effective audit.
- b. *Records retention*. In general, and in accordance with 2 CFR § 200.334 (“Retention requirements for records”), all records pertinent to this Award must be retained for a period of three years from the date of submission of the final Project expenditure report (the final Form SF-271 for disbursement). The only exceptions are the following:
- i. If any litigation, claim, or audit is started before the expiration of the three-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final actions taken.
 - ii. When the Recipient is notified in writing by EDA, its cognizant agency for either audit or indirect costs, its oversight agency for audit, or the relevant pass-through entity to extend the retention period, it must retain the records as directed.
 - iii. Records for real property and equipment acquired with Federal funds must be retained for three years after final disposition of the relevant real property or equipment.
 - iv. When records are transferred to or maintained by EDA or pass-through entity, the three-year retention requirement is not applicable to the Recipient.
 - v. *Records for program income transactions after the period of performance*. In some cases, Recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the Recipient’s fiscal year in which the program income is earned. *See also* Part II, section A.7 “Program Income” of these EDA Construction STCs.

- vi. *Indirect cost rate proposals and cost allocation plans.* This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
- (1) *If submitted for negotiation.* If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the three-year retention period for its supporting records starts from the date of such submission.
 - (2) *If not submitted for negotiation.* If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the three-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
- c. **Monitoring and reporting obligations.** The Recipient is responsible for monitoring any subrecipients and contractors to ensure their compliance with the records retention requirements. The Recipient must immediately notify the Project Officer if records are lost. *See* 2 CFR §§ 200.331 – 200.333 (“Subrecipient Monitoring and Management”).

16. Termination Actions

- a. In accordance with 2 CFR § 200.340 (“Termination”), this Award may be terminated in whole or in part as follows:
 - i. *Termination by EDA for the Recipient’s failure to comply with the terms and conditions of the Award.* EDA may terminate this Award, in whole or in part, if the Recipient fails to comply with the Terms and Conditions of the Award, including but not limited to:
 - (1) Any representation made by the Recipient to the Federal awarding agency in connection with the Application for Federal assistance is incorrect or incomplete in any material respect;
 - (2) The Project has changed substantially, without EDA prior approval, so as to affect significantly the accomplishment of the Project as intended (including an unauthorized use of property as provided in 13 CFR § 314.4 (“Unauthorized use of property”));
 - (3) The Recipient has violated commitments it made in its Application and supporting documents or has violated any of the Terms and Conditions of the Award;
 - (4) The conflicts-of-interest rules at 13 CFR § 302.17 (“Conflicts of interest”) are violated; or
 - (5) The Recipient fails to report immediately to EDA any change of authorized representative acting in lieu of or on behalf of the Recipient.

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

- ii. *Termination by EDA when the Award no longer effectuates program goals or agency priorities.* To the greatest extent authorized by law, EDA may terminate this Award if it no longer effectuates program goals or agency priorities.
 - iii. *Termination by the Recipient.* The Recipient may terminate this Award in whole or in part upon by sending the EDA Grants Officer written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if EDA determines in the case of partial termination that the reduced or modified portion of the EDA Award will not accomplish the purposes for which the EDA Award was made, EDA may terminate the Award in its entirety.
 - iv. *Termination pursuant to Award termination provisions.* EDA or the pass-through entity may terminate this Award pursuant to termination provisions included in the Award. Any Award-specific termination provision will be included as a specific award condition.
 - v. *Termination upon mutual agreement.* EDA and the Recipient may mutually agree to terminate this Award in whole or in part. In such cases, EDA and the Recipient must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.
- b. If the Award is wholly or partially terminated, the Recipient remains responsible for compliance with the requirements in 2 CFR §§ 200.344 (“Closeout”) and 200.345 (“Post-closeout adjustments and continuing responsibilities”).

17. Project Closeout Procedures

- a. *Project Closeout.* As defined at 2 CFR § 200.1, Project Closeout means the process by which EDA determines that all applicable administrative actions and all required work of the Award have been completed and takes actions as described at 2 CFR § 200.344 (“Closeout”). In the context of an EDA construction award, Project Closeout generally begins with the Recipient’s acceptance of the Project from the contractor(s).
- b. *Final disbursement.* When Project construction and final inspection have been completed, or substantially completed as determined by EDA, and the Recipient has accepted the Project from the contractor(s), the Recipient can begin the Closeout process by submitting the following documentation to EDA:
 - i. A request for final disbursement on an executed Form SF-271;
 - ii. A written certification that all costs charged against this Award (Federal and non-Federal shares) are for eligible activities and represent allowable costs, for which there is documentation in the Recipient’s records;
 - iii. An executed certificate of final acceptance signed by the Recipient and the Recipient’s architect/engineer;
 - iv. The Recipient’s certification that its current audit (in accordance with subpart F of 2 CFR part 200), if applicable, has been submitted to the Federal Audit Clearinghouse;

- v. The Recipient's certification that its currently valid single or program-specific audit in accordance with subpart F of 2 CFR part 200 ("Audit Requirements"), if applicable, does not contain any material findings (if the Recipient's currently valid audit does contain material findings, the Recipient must submit the applicable audit preferably via e-mail to the Project Officer, who will review with the Grants Officer); and
- vi. Other documentation as may be required by EDA.

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

As noted above, if the Recipient's most recent audit completed pursuant to subpart F of 2 CFR part 200 contains material findings, the Recipient must submit the audit, preferably via e-mail, to the Project Officer, who will review with the Grants Officer before final disbursement. If e-mail is unavailable, the Recipient may submit a hardcopy version of the audit to the Project Officer.

- c. *Final reporting deadline.* The Recipient must submit, no later than 120 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the Terms and Conditions of this Award. The Grants Officer may extend the 120 calendar day submission period upon a written request from the Recipient.
- d. *Deadline to liquidate obligations.* Unless EDA authorizes an extension, the Recipient must liquidate all financial obligations incurred under this Award no later than 120 calendar days after the end date of the period of performance.
- e. *Post-Closeout requirements.* As noted above in section B.12 "Efficient Administration of Project" of these EDA Construction STCs, after construction is completed and the Project is closed out financially, the Recipient has an ongoing responsibility to properly administer, operate, and maintain the Project for its estimated useful life (as determined by EDA) in accordance with Award purposes. *See* 13 CFR § 302.12 ("Project administration, operation and maintenance"). The Recipient must comply with all Award requirements and maintain records to document such compliance, which must be made available for inspection by EDA or other Government officials as required.

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

- i. The right of EDA to disallow costs and recover funds on the basis of a later audit or other Project review;
- ii. The Recipient's obligation to return any funds due as a result of later corrections or other transactions;
- iii. Audit requirements per subpart F of 2 CFR part 200; and
- iv. Requirements for property management and disposition, records retention, and

performance measurement reports. *See* subpart D of 2 CFR part 200 (“Post Federal Award Requirements”), as applicable.

- f. *GPRA reporting.* As required under GPRA and in accordance with a schedule that will be provided by EDA, the Recipient must submit additional Performance Measurement Reports, generally three, six, and nine years after the date of the Award to accurately and completely report the impacts of the Project, especially in terms of job creation and private investment leveraging.

18. Freedom of Information Act

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

C. Additional Requirements Related to Construction Projects

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

1. **The Davis-Bacon Act, as amended (40 U.S.C. §§ 3141–3144, 3146, 3147; 42 U.S.C. § 3212)**, which requires minimum wages for mechanics and laborers employed on Federal Government public works projects to be based on the wages that the Secretary of Labor determines to be prevailing for the corresponding classes of laborers and mechanics employed on projects of a character similar to the contract work in the civil subdivision of the State in which the Project is to be performed, or in the District of Columbia if the Project is to be performed there.
2. **The Contract Work Hours and Safety Standards Act, as amended (40 U.S.C. §§ 3701-3708)**, which provides work hour standards for every laborer and mechanic employed by any contractor or subcontractor in the performance of a Federal public works project.
3. **The National Historic Preservation Act of 1966, as amended (54 U.S.C. § 300101 *et seq.*), and the Advisory Council on Historic Preservation Guidelines (36 CFR part 800)**, which require stewardship of historic properties in projects involving Federal funds.
4. **Preservation of Historical and Archeological Data (54 U.S.C. § 312502)**, which requires appropriate surveys and preservation efforts if a Federally licensed project may cause

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

5. **The Architectural Barriers Act of 1968, as amended (42 U.S.C. § 4151 *et seq.*)**, and the regulations issued thereunder, which prescribe standards for the design and construction of any building or facility intended to be accessible to the public or that may house handicapped employees.
6. **The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. § 4601 *et seq.*)**, and implementing regulations issued at 49 CFR part 24 (“Uniform Relocation Assistance and Real Property Acquisition for Federal and Federally Assisted Programs”), which establish uniform policies for the fair and equitable treatment of persons, businesses, or farm operations affected by the acquisition, rehabilitation, or demolition of real property acquired for a project financed wholly or in part with Federal financial assistance.
7. **The Energy Conservation and Production Act (42 U.S.C. § 6834 *et seq.*)**, which establishes energy efficiency performance standards for the construction of new residential and commercial structures undertaken with Federal financial assistance.
8. **Executive Order 13717, “Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction”**, which requires that new buildings constructed with Federal assistance comply with the earthquake-resistant design provisions of the 2015 editions of the International Building Code (IBC) or the International Residential Code (IRC), nationally recognized building codes promulgated by the International Code Council (ICC), or equivalent codes, consistent with the provisions of and to the extent required by 40 U.S.C. § 3312.
9. **Compliance with Local Construction Requirements.** The Recipient will comply with current local building codes, standards, and other requirements applicable to the Project.

D. **Non-Discrimination Requirements**

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

E. **Audits**

1. **General**

- a. Recipients must comply with the audit requirements set out as subpart F to 2 CFR part 200 (“Audit Requirements”). Generally, if the Recipient expends \$750,000 or more in Federal awards during the Recipient’s fiscal year, the Recipient must have a single or program-specific audit conducted for that fiscal year. The cost of preparing the audit may be

included in the Project budget.

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

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

If the Recipient’s current audit required under subpart F of 2 CFR part 200 (“Audit Requirements”) contains material findings, the Recipient must submit a copy of the audit to the Project Officer, who will review it with the Grants Officer. *See also* Part II, section B.16 “Project Closeout Procedures” of these EDA Construction STCs.

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

F. Tribal Employment Rights Ordinances

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

G. EDA Contracting Provisions for Construction Projects

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

H. Property

1. Standards

With respect to any property acquired or improved in whole or in part with Award funds, the Recipient must comply with the Property Standards set forth at 2 CFR §§ 200.310 (“Insurance coverage”) through 200.316 (“Property trust relationship”), and EDA’s regulations at 13 CFR part 314. Property acquired or improved in whole or in part by the Recipient under this Award may consist of real property; personal property, including equipment and supplies; and intangible property, such as money, notes, contractual rights, and security interests. Any property reports required under 2 CFR §§ 200.310 through 200.316, such as periodic inventories and requests for disposition instructions, must be submitted to the Grants Officer through the Project Officer on

Form SF-428 and/or SF-429, as applicable. *See also* section A.01.d “Real Property, Tangible Property and Intangible Property Reports and Requests for Dispositions” of the DOC Standard Terms and Conditions, which are incorporated in Part III of these EDA Construction STCs.

2. Title

- a. Title to equipment, supplies, and intangible property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient. The use, management and disposition of equipment, supplies, and intangible property acquired in whole or in part under this Award must be in accordance with 2 CFR §§ 200.313 (“Equipment”), 200.314 (“Supplies”), and 200.315 (“Intangible property”), as applicable, and EDA regulations at 13 CFR part 314. *See also* section C.03 “Intellectual Property Rights” of the DOC Standard Terms and Conditions, which are incorporated in Part III of these EDA Construction STCs.
- b. Title to real property acquired in whole or in part under this Award generally vests upon acquisition in the Recipient, subject to the condition that the Recipient uses the real property for the authorized purpose of the Project. *See* 2 CFR § 200.311 (“Real property”) and EDA regulations at 13 CFR part 314.

3. EDA’s Interest in Award Property

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

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

- b. *Recording EDA’s Interest in Real Property.*
 - i. For all Projects involving the acquisition, construction, or improvement of a building, infrastructure, or other real property, as determined by EDA, the Recipient must execute and furnish to EDA, prior to initial Award disbursement or at such other time as EDA requires, a lien, covenant, or other statement, satisfactory to EDA in form and substance, of EDA’s interest in the property acquired or improved in whole or in part with the funds made available under this Award. EDA may permit such statement to be recorded after

- initial Award disbursement in the event that grant funds are being used to acquire such property or for authorized costs, such as design and engineering services. The statement must specify the estimated useful life of the Project and must include the disposition, encumbrance, and the Federal Share compensation requirements, as well as any other requirements specified by EDA in its reasonable discretion. *See* 13 CFR §§ 314.1 (“Definitions”) and 314.8(a) (“Recorded statement for real property”). *See also* 2 CFR § 200.316 (“Property trust relationship”).
- ii. This lien, covenant, or other statement of the Federal interest must be perfected and placed of record in the real property records of the jurisdiction in which the property is located, all in accordance with applicable law. EDA may require an opinion of counsel for the Recipient to substantiate that the document was validly executed and properly recorded. *See* 13 CFR § 314.8(b).
 - iii. Facilities in which the EDA assistance is only a small part of a larger project, as determined by EDA, may be exempted from the requirements listed in paragraphs H.3.b.i and ii above. *See* 13 CFR § 314.8(c).
 - iv. In extraordinary circumstances and at EDA’s discretion, EDA may choose to accept another instrument to protect EDA’s interest in the Project property, such as an escrow agreement or letter of credit, provided that EDA determines such instrument is adequate and a recorded statement in accord with section H.3.b.i above is not reasonably available. The terms and provisions of the relevant instrument must be satisfactory to EDA. The costs and fees for escrow services or letters of credit must be paid by the Recipient. *See* 13 CFR § 314.8(d).
- c. *Recording EDA’s Interest in Personal Property.* For all Projects involving the acquisition or improvement of significant items of equipment or other tangible personal property, including but not limited to watercraft, motor vehicles, machinery, equipment, removable fixtures, or structural components of buildings, the Recipient must execute a security interest, covenant, or other statement of EDA’s reversionary interest in the personal property acceptable in form and substance to EDA, which statement must be perfected and placed of record in accordance with applicable law (usually accomplished by filing a Uniform Commercial Code Financing Statement (Form UCC-1), as provided by State law), with continuances re-filed as appropriate. EDA may require an opinion of counsel for the Recipient to substantiate that the Form UCC-1 or other filing was validly executed and properly recorded. *See* 13 CFR § 314.9 (“Recorded statement for Project personal property”).
 - d. *EDA’s Interest and the estimated useful life.* The Recipient acknowledges that EDA retains an undivided equitable reversionary interest in property acquired or improved in whole or in part with grant funds made available through this Award throughout the estimated useful life (as determined by EDA) of the Project, except in applicable instances set forth at 13 CFR § 314.7(c) (“Title”). *See* 13 CFR § 314.2(a) (“Federal interest”).
 - e. *Unauthorized Use of Award Property.* The Recipient agrees that if any interest in property acquired or improved in whole or in part with Award funds is disposed of, encumbered, or alienated in any manner, or no longer used for the authorized purposes of the Award during the Project’s estimated useful life without EDA’s written approval, EDA will be entitled to recover the Federal Share, as defined at 13 CFR § 314.5 (“Federal share”). Examples of

alienation of Award property include sale or other conveyance of the Recipient's interest, leasing or mortgaging the property, or granting an option for any of the foregoing.

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

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

4. **Insurance and Bonding**

- a. *Insurance.* The Recipient must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided for property owned by the Recipient. Federally owned property need not be otherwise insured unless required by the Terms and Conditions of the Award. *See* 2 CFR § 200.310 ("Insurance coverage").
- b. *Bonding.* If the Award exceeds the simplified acquisition threshold as defined at 2 CFR § 200.1, EDA may accept the Recipient's or subrecipient's bonding policy and requirements if EDA or the pass-through entity determines that the Federal Interest is adequately protected. If not, the following minimum requirements will apply:
- i. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
 - ii. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
 - iii. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to ensure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract. *See* 2 CFR § 200.326 ("Bonding requirements").

5. **Leasing Restrictions.**

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

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

the Award;

- b. That said lease arrangement is for adequate consideration;
- c. That said lease arrangement is consistent with applicable EDA requirements concerning but not limited to nondiscrimination and environmental compliance; and
- d. That all revenue derived from said leasing arrangement shall be subject to Part II, section A.7 “Program Income” of these EDA Construction STCs.

6. **Eminent Domain**

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

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

7. **Disposal of Real Property**

- a. During the estimated useful life of the Project, if EDA and the Recipient determine that property acquired or improved in whole or in part with Award funds is no longer needed for the original purposes of this Award, EDA may, in its discretion, approve use of the property in other Federal grant programs or in programs that have purposes consistent with those authorized by PWEDA and 13 CFR chapter III. *See* 13 CFR § 314.3(b) (“Authorized use of property”).
- b. When property is not authorized for other uses as provided in section H.7.a above, EDA will provide disposition instructions to the Recipient, which may include directing the Recipient to sell the property and remit the Federal Share of the sales proceeds to EDA.

8. **Reporting on Property.**

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

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

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

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

I. Environmental Requirements

1. **General.** In addition to the environmental statutes, executive orders, and requirements set forth in section G.04 of the DOC Standard Terms and Conditions “Environmental Requirements,” which are incorporated in Part III of these EDA Construction STCs, the Recipient must comply with the following:
 - a. **Environmental Quality Improvement Act of 1970, as amended (42 U.S.C. §§ 4371-4375).** Federally supported public works facilities and activities that affect the environment must be implemented in compliance with policies established under existing law.
 - b. **The Lead-Based Paint Poisoning Prevention Act (42 U.S.C. § 4821 *et seq.*).** Use of lead-based paint in residential structures improved with Federal assistance is prohibited.
 - c. **The Farmland Protection Policy Act (7 U.S.C. §§ 4201–4209).** Projects are subject to review under this Act if they may irreversibly directly or indirectly convert farmland, including forest land, pastureland, cropland, or other land, to nonagricultural use.
 - d. **The Noise Control Act of 1972 (42 U.S.C. § 4901 *et seq.*).** Federally supported facilities and activities must comply with Federal, State, interstate, and local requirements respecting control and abatement of environmental noise to the same extent that any person is subject to such requirements.
 - e. **The Native American Graves Protection and Repatriation Act (25 U.S.C. § 3001 *et seq.*).** This Act provides a process for returning certain Native American cultural items to lineal descendants, culturally affiliated Indian tribes, and Native Hawaiian organizations.
2. **Compliance with Other Applicable Environmental Requirements**
 The Recipient agrees to promptly notify the Grants Officer in writing of any environmental requirement or restriction, regulatory or otherwise, with which it must comply. Before Project Closeout and final disbursement of Award funds, the Recipient further agrees to provide evidence

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

J. American-Made Equipment and Products

Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

See also section G.05.a (Buy-American Preferences) of the DOC Standard Terms and Conditions, which are incorporated in Part III of these EDA Construction STCs.

**PART III:
DEPARTMENT OF COMMERCE
STANDARD TERMS & CONDITIONS**

The DOC Standard Terms and Conditions dated November 12, 2020 are incorporated herein by reference herein as Part III of these EDA Construction STCs.

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

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



**DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS**

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PREFACE

This document sets out the standard terms and conditions (ST&Cs) applicable to this U.S. Department of Commerce (DOC or Commerce) financial assistance award (hereinafter referred to as the DOC ST&Cs or Standard Terms). A non-Federal entity¹ receiving a DOC financial assistance award must, in addition to the assurances made as part of the application, comply and require each of its subrecipients, contractors, and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (E.O.s), Office of Management and Budget (OMB) circulars, provisions of the OMB *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (codified at 2 C.F.R. Part 200) (OMB Uniform Guidance), provisions of these Standard Terms, and any other terms and conditions incorporated into this DOC financial assistance award. In addition, unless otherwise provided by the terms and conditions of this DOC financial assistance award, Subparts A through E of 2 C.F.R. Part 200 and the Standard Terms are applicable to for-profit entities, foreign public entities and to foreign organizations that carry out a DOC financial assistance award.²

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

Some of the Standard Terms herein contain, by reference or substance, a summary of the pertinent statutes, regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), E.O.s, OMB circulars, or the certifications and assurances provided by applicants through Standard Forms (*e.g.*, SF-424s) or through DOC forms (*e.g.* Form CD-511). To the extent that it is a summary, such Standard Term provision is not in derogation of, or an amendment to, any such statute, regulation, E.O., OMB circular, certification, or assurance.

¹ Note that the OMB Uniform Guidance uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because some of the provisions of these DOC ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these DOC ST&Cs use the terms “non-Federal entity,” “recipient,” and “subrecipient” consistent with their meanings in the OMB Uniform Guidance. In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward. As defined at 2 C.F.R. § 200.1:

“Non-Federal entity” is “a state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is “an entity, usually but not limited to non-Federal entities, that receives a Federal award directly from a Federal awarding agency. The term recipient does not include subrecipients or individuals that are beneficiaries of the award.”

“Subrecipient” is “an entity, usually but not limited to non-Federal entities, that receives a subaward from a pass-through entity to carry out part of a Federal award; but does not include an individual that is a beneficiary of such award. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

² See 2 C.F.R. § 200.1 for the definitions of “foreign public entity” and “foreign organization.”

DOC commenced implementation of the Research Terms and Conditions (RT&Cs) for Federal awards effective October 1, 2017; the RT&Cs address and implement the Uniform Guidance issued by OMB. For awards designated on the Form CD-450 (Financial Assistance Award) as Research, both the DOC ST&Cs and the RT&Cs as implemented by DOC apply to the award. The RT&Cs as well as the DOC implementation statement, agency specific requirements, prior approval matrix, subaward requirements, and national policy requirements are posted on the National Science Foundation's website – <https://www.nsf.gov/awards/managing/rtc.jsp>. The DOC ST&Cs and the RT&Cs are generally intended to harmonize with each other; however, where the DOC ST&Cs and the RT&Cs differ in a Research award, the RT&Cs prevail, unless otherwise indicated in a specific award condition.

A. PROGRAMMATIC REQUIREMENTS

.01 Reporting Requirements

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

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

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

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

3. Recipients (or pass-through entities as applicable) must submit a final performance report within 120 calendar days after the expiration of the period of performance. The subrecipient is required to submit its final performance report to the pass-through entity within 90 calendar days unless an extension has been granted.

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

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

1. **Real Property Status Reports and Requests for Dispositions:** Non-Federal entities must submit reports using Form SF-429 (Real Property Status Report) or any successor form, including appropriate attachments thereto, at least annually disclosing the status of real property that is Federally-owned property or real property in which the Federal Government retains a Federal Interest, unless the Federal Interest in the real property extends 15 years or longer. In cases where the Federal Interest attached is for a period of 15 years or more, the DOC or pass-through entity, at its option, may require the non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or, the DOC or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years). In addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-429, with appropriate attachments, relating to a non-Federal entity's request to acquire, improve or contribute real property under a DOC financial assistance award.

Non-Federal entities wishing to dispose of real property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-429, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.311(c). *See also* the real property standards set forth in Section C. of these Standard Terms (Property Standards).

2. **Tangible Personal Property Status Reports and Requests for Dispositions:** DOC or a pass-through entity may also require a non-Federal entity to submit periodic reports using Form SF-428 (Tangible Personal Property Report) or any successor form, including appropriate attachments thereto, concerning tangible personal property that is Federally-owned or tangible personal property in which the Federal Government retains an interest. In

addition, DOC or a pass-through entity may require a non-Federal entity to submit Form SF-428 in connection with a non-Federal entity's request to dispose of tangible personal property acquired under a DOC financial assistance award. Non-Federal entities wishing to dispose of tangible personal property acquired or improved, in whole or in part, pursuant to a DOC award must request disposition instructions, including the submission of Form SF-428, with appropriate attachments, from the Grants Officer in accordance with the requirements set forth in 2 C.F.R. § 200.313(e). *See also* the tangible property standards set forth in Section C. of these Standard Terms (Property Standards).

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

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

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

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

.02 Revisions of Program Plans

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

.03 Other Federal Awards with Similar Programmatic Activities

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

.04 Prohibition against Assignment by a Non-Federal Entity

A non-Federal entity must not transfer, pledge, mortgage, assign, encumber or hypothecate a DOC financial assistance award or subaward, or any rights to, interests therein or claims arising thereunder, to any party or parties, including but not limited to banks, trust companies, other financing or financial institutions, or any other public or private organizations or individuals without the express prior written approval of the DOC Grants Officer or the pass-through entity (which, in turn, may need to obtain prior approval from the DOC Grants Officer).

.05 Disclaimer Provisions

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

b. The acceptance of this award or any subaward by the non-Federal entity does not in any way constitute an agency relationship between the United States and the non-Federal entity or the non-Federal entity's contractors or subcontractors.

.06 Unsatisfactory Performance or Non-Compliance with Award Provisions

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

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

c. 2 C.F.R. §§ 200.340 (Termination) through 200.343 (Effects of suspension and termination) apply to an award that is terminated prior to the end of the period of performance

due to the non-federal entity's material failure to comply with the award terms and conditions. In addition, the failure to comply with the provisions of a DOC award may adversely impact the availability of funding under other active DOC or Federal awards and may also have a negative impact on a non-Federal entity's eligibility for future DOC or Federal awards.

B. FINANCIAL REQUIREMENTS

.01 Financial Management

a. In accordance with 2 C.F.R. § 200.302(a) (Financial Management), each State must expend and account for the Federal award in accordance with State laws and procedures for expending and accounting for the State's own funds. In addition, the State's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with Federal statutes, regulations, and the terms and conditions applicable to the Federal award. *See also* 2 C.F.R. § 200.450 (Lobbying) for additional management requirements to verify that Federal funds are not used for unallowable lobbying costs.

b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b). *See also* 2 C.F.R. §§ 200.334 (Retention requirements for records); 200.335 (Requests for transfer of records); 200.336 (Methods for collection, transmission and storage of information); 200.337 (Access to records); and 200.338 (Restrictions on public access to records).

.02 Award Payments

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

b. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.

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

non-Federal entity for allowable award costs.

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

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

1. ASAP account number – the Federal award identification number found on the cover sheet of the award;
2. Agency Location Code (ALC); and
3. Region Code.

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

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

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

g. Non-Federal entities receiving advance award payments must adhere to the depository requirements set forth in 2 C.F.R. §§ 200.305(b)(7) through (b)(11). Interest amounts up to \$500 per non-Federal entity's fiscal year may be retained by the non-Federal entity for administrative expenses.

.03 Federal and Non-Federal Sharing

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

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

.04 Budget Changes and Transfer of Funds among Categories

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

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

of budget and program plans) (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

.05 Program Income

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

.06 Indirect or Facilities and Administrative Costs

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

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

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

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

i. Within 90 calendar days of the award start date, the recipient must submit to the Grants Officer any documentation (indirect cost proposal, cost allocation plan, etc.) necessary to allow DOC to perform the indirect cost rate proposal review. Below are two sources available for guidance on how to put an indirect cost plan together:

- (A) Department of Labor: <https://www.dol.gov/oasam/boc/dcd/np-comm-guide.htm>
or
- (B) Department of the Interior: <https://www.doi.gov/ibc/services/finance/indirect-Cost-Services/>.

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

- iii. The recipient is required to annually submit indirect cost proposals no later than six months after the recipient's fiscal year end, except as otherwise provided by 2 C.F.R. § 200.414(g).
- 2. When DOC is not the oversight or cognizant Federal agency, the recipient must provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement within 30 calendar days of receipt of a negotiated rate agreement or submission of a negotiated rate proposal.
- 3. If the recipient is proposing indirect costs as part of a project budget, but is not required to have a negotiated rate agreement pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b (*i.e.*, a governmental department or agency that receives \$35 million or less in direct Federal funding), the recipient may be required to provide the Grants Officer with a copy of its Certificate of Indirect Costs as referenced in 2 C.F.R. Part 200, Appendix VII, Paragraph D.3. or such other documentation, acceptable in form and substance to the Grants Officer, sufficient to confirm that proposed indirect costs are calculated and supported by documentation in accordance with 2 C.F.R. Part 200, Appendix VII. In cases where the DOC is the recipient's cognizant Federal agency, the DOC reserves the right, pursuant to 2 C.F.R. Part 200, Appendix VII, Paragraph D.1.b, to require the recipient to submit its indirect cost rate proposal for review by DOC.
 - d. If the recipient fails to submit required documentation to DOC within 90 calendar days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
 - e. The maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient is the lesser of:
 - 1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
 - 2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by the cognizant agency for indirect costs and applicable to the period in which the cost was incurred, in accordance with 2 C.F.R. 200 Appendix III, C.7, provided that the rate is approved on or before the award end date.
 - f. In accordance with 2 CFR § 200.414(c)(3), DOC set forth policies, procedures, and general decision-making criteria for deviations from negotiated indirect cost rates. These policies and procedures are applicable to all Federal financial assistance programs awarded and administered by DOC bureaus as Federal awarding agencies and may be found at http://www.osec.doc.gov/oam/grants_management/policy/documents/FAM%202015-02.pdf.

g. In accordance with 2 CFR § 200.414(g), any non-Federal entity that has a negotiated indirect cost rate may apply to the entity's cognizant agency for indirect costs for a one-time extension of a currently negotiated indirect cost rate for a period of up to four years, reducing the frequency of rate calculations and negotiations between an institution and its cognizant agency.

h. In accordance with 2 CFR § 200.414(f), any non-Federal entity that does not have a current negotiated (including provisional) rate, except for those non-Federal entities described in paragraph D.1.b of Appendix VII to 2 CFR Part 200, may elect to charge a de minimis rate of 10 percent of modified total direct costs. No documentation is required to justify the 10 percent de minimis indirect cost rate.

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

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

b. Reasonable, necessary, allowable and allocable administrative award closeout costs are authorized for a period of up to 120 calendar days following the end of the period of performance. For this purpose, award closeout costs are those strictly associated with close-out activities and are typically limited to the preparation of final progress, financial, and required project audit reports, unless otherwise approved in writing by the Grants Officer. A non-Federal entity may request an extension of the 120-day closeout period, as provided in 2 C.F.R. § 200.344 (Closeout).

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

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

.08 Tax Refunds

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

.09 Internal Controls

Each recipient must comply with standards for internal controls described at 2 C.F.R. § 200.303 (Internal controls). The “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States referenced in § 200.303 are available online at <http://www.gao.gov/assets/80/76455.pdf> and the “Internal Control Integrated Framework” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) is available online at [Internal Control Guidance](#).

C. PROPERTY STANDARDS

.01 Standards

Each non-Federal entity must comply with the Property Standards set forth in 2 C.F.R. §§ 200.310 (Insurance coverage) through 200.316 (Property trust relationship).

.02 Real and Personal Property

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

b. The Grants Officer may require a non-Federal entity to execute and to record (as applicable) a statement of interest, financing statement (form UCC-1), lien, mortgage or other public notice of record to indicate that real or personal property acquired or improved in whole or in part with Federal funds is subject to the Federal Interest, and that certain use and disposition

requirements apply to the property. The statement of interest, financing statement (Form UCC 1), lien, mortgage or other public notice must be acceptable in form and substance to the DOC and must be placed on record in accordance with applicable State and local law, with continuances re-filed as appropriate. In such cases, the Grants Officer may further require the non-Federal entity to provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located, certifying that the Federal Interest has been protected, as required under the award and in accordance with applicable State and local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, must be returned to the Grants Officer. Without releasing or excusing the non-Federal entity from these obligations, the non-Federal entity, by execution of the financial assistance award or by expending Federal financial assistance funds (in the case of a subrecipient), authorizes the Grants Officer and/or program office to file such notices and continuations as it determines to be necessary or convenient to disclose and protect the Federal Interest in the property. The Grants Officer may elect not to release any or a portion of the Federal award funds until the non-Federal entity has complied with this provision and any other applicable award terms or conditions, unless other arrangements satisfactory to the Grants Officer are made.

.03 Intellectual Property Rights

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

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

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

1. Ownership. A non-Federal entity may have rights to inventions in accordance with 37 C.F.R. Part 401. These requirements are technical in nature and non-Federal entities are encouraged to consult with their Intellectual Property counsel to ensure the proper interpretation of and adherence to the ownership rules. Unresolved questions pertaining to a non-Federal entities' ownership rights may further be addressed to the Grants Officer.

2. Responsibilities - iEdison. The non-Federal entity must comply with all the requirements of the standard patent rights clause and 37 C.F.R. Part 401, including the standard patent rights clause in 37 C.F.R. § 401.14. Non-Federal entities are required to submit their disclosures, elections, and requests for waiver from any requirement for substantial U.S. manufacture, electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iedison.gov. Non-Federal entities may obtain a waiver of this electronic submission requirement by providing the Grants Officer with compelling reasons for allowing the submission of paper reports.

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

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

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

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

D. AUDITS

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

.01 Organization-Wide, Program-Specific, and Project Audits

- a. A recipient must, within 90 days of the end of its fiscal year, notify the Grants Officer of the amount of Federal awards, including all DOC and non-DOC awards, that the recipient expended during its fiscal year.
- b. Recipients that are subject to the provisions of Subpart F of 2 C.F.R. Part 200 and that expend \$750,000 or more in a year in Federal awards during their fiscal year must have an audit conducted for that year in accordance with the requirements contained in Subpart F of 2 C.F.R. Part 200. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted electronically to the Federal Audit Clearinghouse (FAC) through the FAC's Internet Data Entry System (IDES) (<https://harvester.census.gov/facides/>). In accordance with 2 C.F.R. § 200.425 (Audit services), the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer.
- c. Unless otherwise specified in the terms and conditions of the award, entities that are not subject to Subpart F of 2 C.F.R. Part 200 (e.g., for-profit entities, foreign public entities and foreign organizations) and that expend \$750,000 or more in DOC funds during their fiscal year (including both as a recipient and a subrecipient) must submit to the Grants Officer either: (i) a financial related audit of each DOC award or subaward in accordance with Generally Accepted Government Auditing Standards (GAGAS); or (ii) a project specific audit for each award or subaward in accordance with the requirements contained in 2 C.F.R. § 200.507. Within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period, unless a different period is specified in a program-specific audit guide, a copy of the audit must be submitted to the Grants Officer. In accordance with 2 C.F.R. § 200.425, the recipient may include a line item in the budget for the allowable costs associated with the audit, which is subject to the approval of the Grants Officer. Entities that are not subject to Subpart F of 2 C.F.R. Part 200 and that expend less than \$750,000 in DOC funds in a given fiscal year are

not required to submit an audit(s) for that year, but must make their award-related records available to DOC or other designated officials for review and audit.

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

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

.02 Audit Resolution Process

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

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

1. The recipient has 30 calendar days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
2. The recipient has 30 calendar days from the date of the transmittal of the final audit report to submit written comments and documentary evidence.
3. The DOC will review the documentary evidence submitted by the recipient and will notify the recipient of the results in an *Audit Resolution Determination Letter*. The recipient has 30 calendar days from the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal, unless this deadline is extended in writing by the DOC. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence to the DOC to dispute the validity of the audit resolution determination.
4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of applicable interest, penalties and administrative fees on the debt in accordance with 15 C.F.R. Part 19. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively.
5. The DOC will review the recipient's appeal and notify the recipient of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed to the Federal Government

a. The non-Federal entity must promptly pay any debts determined to be owed to the Federal Government. Any funds paid to a non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal government. In accordance with 2 C.F.R. § 200.346 (Collection of amounts due), if not paid within 90 calendar days after demand, DOC may reduce a debt owed to the Federal Government by:

1. Making an administrative offset against other requests for reimbursement;
2. Withholding advance payments otherwise due to the non-Federal entity; or
3. Taking any other action permitted by Federal statute.

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

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

.02 Late Payment Charges

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

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

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

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

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

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

Pursuant to 28 U.S.C. § 3201(e), unless waived by the DOC, a debtor who has a judgment lien against the debtor's property for a debt to the United States is not eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the Federal Government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

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

.01 Conflict of Interest and Code of Conduct

a. DOC Conflict of Interest Policy. In accordance with 2 C.F.R. § 200.112 (Conflict of interest), the non-Federal entity must disclose in writing any potential conflict of interest to the DOC or pass-through entity. In addition, a non-Federal entity will establish and maintain written standards of conduct that include 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 in the administration of an award. It is the DOC's policy to maintain the highest standards of conduct and to prevent real or apparent conflicts of interest in connection with DOC financial assistance awards.

b. A conflict of interest generally exists when an interested party participates in a matter that has a direct and predictable effect on the interested party's personal or financial interests. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. A conflict also may exist where there is an appearance that an interested party's objectivity in performing his or her responsibilities under the project is impaired. For example, an appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, an interested party is unable to render

impartial assistance, services or advice to the recipient, a participant in the project or to the Federal Government. Additionally, a conflict of interest may result from non-financial gain to an interested party, such as benefit to reputation or prestige in a professional field. For purposes of the DOC Conflict of Interest Policy, an interested party includes, but is not necessarily limited to, any officer, employee or member of the board of directors or other governing board of a non-Federal entity, including any other parties that advise, approve, recommend, or otherwise participate in the business decisions of the recipient, such as agents, advisors, consultants, attorneys, accountants or shareholders. This also includes immediate family and other persons directly connected to the interested party by law or through a business arrangement.

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

.02 Nonprocurement Debarment and Suspension

Non-Federal entities must comply with the provisions of 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which set forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

.03 Requirements for Subawards

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

b. The recipient or pass through entity may have more restrictive policies for the RTC *waived* prior approvals (no-cost extensions, re-budgeting, etc.) for their subaward recipients. Such restrictive policies must be addressed in their subaward agreements and in accordance with §200.331.

.04 Requirements for Procurements

a. States. Pursuant to 2 C.F.R. § 200.317 (Procurements by states), when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State must comply with 2 C.F.R. §§ 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), 200.322 (Domestic preferences for procurements), and

200.323 (Procurement of recovered materials), and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327 (Contract provisions).

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

.05 Whistleblower Protections

This award is subject to the whistleblower protections afforded by 41 U.S.C. § 4712 (Enhancement of contractor protection from reprisal for disclosure of certain information), which generally provide that an employee or contractor (including subcontractors and personal services contractors) of a non-Federal entity may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

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

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

.06 Small Businesses, Minority Business Enterprises and Women's Business Enterprises

In accordance with 2 C.F.R. § 200.321 (Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms), the recipient must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. DOC encourages non-Federal entities to use small

businesses, minority business enterprises and women’s business enterprises in contracts under financial assistance awards. The Minority Business Development Agency within the DOC will assist non-Federal entities in matching qualified minority business enterprises with contract opportunities. For further information visit MBDA’s website at <http://www.mbda.gov>. If you do not have access to the Internet, you may contact MBDA via telephone or mail:

U.S. Department of Commerce
 Minority Business Development Agency
 Herbert C. Hoover Building
 14th Street and Constitution Avenue, N.W.
 Washington, D.C. 20230
 (202) 482-0101

G. NATIONAL POLICY REQUIREMENTS

.01 United States Laws and Regulations

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

.02 Non-Discrimination Requirements

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

a. Statutory Provisions

1. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and DOC implementing regulations published at 15 C.F.R. Part 8 prohibiting discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
2. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
3. The Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by State and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
4. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and DOC implementing regulations published at 15 C.F.R. Part 8b prohibiting discrimination on the

basis of handicap under any program or activity receiving or benefiting from Federal assistance.

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

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

b. Other Provisions

1. Parts II and III of E.O. 11246 (Equal Employment Opportunity, 30 FR 12319),³ which requires Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of E.O. 11246 and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)).
2. E.O. 13166 (65 FR 50121, Improving Access to Services for Persons with Limited English Proficiency), requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them. The DOC issued policy guidance on March 24, 2003 (68 FR 14180) to articulate the Title VI prohibition against national origin discrimination affecting LEP persons and to help ensure that non-Federal entities provide meaningful access to their LEP applicants and beneficiaries.
3. In accordance with E.O. 13798 and Office of Management and Budget, M-20-09 – Guidance Regarding Federal Grants, states or other public grantees may not condition sub-awards of Federal grant money in a manner that would disadvantage grant applicants based on their religious character.

³ As amended by E.O. 11375(32 FR 14303), E.O. 11478 (34 FR 12985), E.O. 12086 (43 FR 46501), E.O. 12107 (44 FR 1055), E.O. 13279 (F67 FR 77141), E.O. 13665 (79 FR 20749), and E.O. 13672 (79 FR 42971).

c. Title VII Exemption for Religious Organizations

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

.03 LOBBYING RESTRICTIONS

a. Statutory Provisions

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

b. Disclosure of Lobbying Activities

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

.04 Environmental Requirements

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to approve: (1) a proposal for Federal assistance; (2) the proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Each non-Federal entity must comply with all environmental standards, to include those prescribed under

the following statutes and E.O.s and must identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

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

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 C.F.R. Parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions to determine whether they have significant impacts on the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements when the award activities remain subject to Federal authority and control. Non-Federal entities are required to identify to the awarding agency any direct, indirect or cumulative impact an award will have on the quality of the human environment and assist the agency in complying with NEPA. Non-Federal entities may also be requested to assist DOC in drafting an environmental assessment or environmental impact statement if DOC determines such documentation is required, but DOC remains responsible for the sufficiency and approval of the final documentation. Until the appropriate NEPA documentation is complete and in the event that any additional information is required during the period of performance to assess project environmental impacts, funds can be withheld by the Grants Officer under a specific award condition requiring the non-Federal entity to submit the appropriate environmental information and NEPA documentation sufficient to enable DOC to make an assessment on any impacts that a project may have on the environment.

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

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

submit any information sufficient to enable DOC to make the requisite assessment under the NHPA.

Additionally, non-Federal entities are required to assist the DOC in assuring compliance with the Archeological and Historic Preservation Act of 1974 (54 U.S.C. § 312502 *et seq.*, formerly 16 U.S.C. § 469a-1 *et seq.*); Executive Order 11593 (Protection and Enhancement of the Cultural Environment, May 13, 1971); Executive Order 13006 (Locating Federal Facilities on Historic Properties in Our Nation’s Central Cities, May 21, 1996); and Executive Order 13007 (Indian Sacred Sites, May 24, 1996).

c. Executive Order 11988 (Floodplain Management) and Executive Order 11990 (Protection of Wetlands)

Non-Federal entities must identify proposed actions in Federally defined floodplains and wetlands to enable DOC to decide whether there is an alternative to minimize any potential harm.

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

Non-Federal entities must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and E.O. 11738 (38 FR 25161), and must not use a facility on the Excluded Parties List (EPL) (located on the System for Award Management (SAM) website, SAM.gov) in performing any award that is nonexempt under 2 C.F.R. § 1532, and must notify the Program Officer in writing if it intends to use a facility that is on the EPL or knows that the facility has been recommended to be placed on the EPL.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

m. Executive Order 12898 (“Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations”)

Federal agencies are required to identify and address the disproportionately high and adverse human health or environmental effects of Federal programs, policies, and activities on low income and minority populations.

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

Non-Federal entities must identify to DOC any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with the National Marine Fisheries Service (NMFS) regarding the potential effects of their actions and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency

procedures previously established under NEPA, the ESA, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

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

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

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

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

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

Many prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

r. Executive Order 13112 (Invasive Species, February 3, 1999)

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

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

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the U.S.

Fish and Wildlife Service and fish and wildlife agencies of states must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

.05 OTHER NATIONAL POLICY REQUIREMENTS

a. Buy-American Preferences

Strengthening Buy-American Preferences for Infrastructure Projects. Recipients of covered programs (as defined in Executive Order 13858, 31 January 2019, and 2 C.F.R. §200.322 (Domestic preferences for procurements)) are hereby notified that they are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or subaward that is chargeable under this Award.

b. Criminal and Prohibited Activities

1. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal Government for money (including money representing grants, loans, or other benefits).
2. The False Claims Amendments Act of 1986 and the False Statements Accountability Act of 1996 (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious, or fraudulent statement, representation, or claim against the United States must be subject to imprisonment of not more than five years and must be subject to a fine in the amount provided by 18 U.S.C. § 287.
3. The Civil False Claims Act (31 U.S.C. §§ 3729 - 3733), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
4. The Copeland Anti-Kickback Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland Anti-Kickback Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
5. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 *et seq.*) and implementing regulations issued at 15 C.F.R. Part 11, which provides for fair and equitable treatment of displaced persons or persons whose property is acquired as a result of Federal or Federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

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

7. To ensure compliance with Federal law pertaining to financial assistance awards, an authorized representative of a non-Federal entity may be required to periodically provide certain certifications to the DOC regarding Federal felony and Federal criminal tax convictions, unpaid federal tax assessments, delinquent Federal tax returns and such other certifications that may be required by Federal law.

c. Drug-Free Workplace

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

d. Foreign Travel

1. Each non-Federal entity must comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.

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

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

4. If a foreign air carrier is anticipated to be used for any portion of travel under a DOC financial assistance award, the non-Federal entity must receive prior approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates

of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer must make the final determination and notify the non-Federal entity in writing (which may be done through the recipient in the case of subrecipient travel). Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which any non-Federal entity improperly used a foreign air carrier.

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

e. Increasing Seat Belt Use in the United States

Pursuant to E.O. 13043 (62 FR 19217), non-Federal entities should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented, or personally owned vehicles.

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

1. Use of award funds (Federal or non-Federal) or the non-Federal entity's provision of in-kind goods or services for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy may prohibit the acceptance of gifts, including travel payments for federal employees, from non-Federal entities regardless of the source. Therefore, before award funds may be used by Federal employees, non-Federal entities must submit requests for approval of such action to the Federal Program Officer who must review and make a recommendation to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing (generally through the recipient) of the final determination.
2. A non-Federal entity or its contractor may not issue a subaward, contract or subcontract of any part of a DOC award to any agency or employee of DOC or to other Federal employee, department, agency, or instrumentality, without the advance prior written approval of the DOC Grants Officer.

g. Minority Serving Institutions Initiative

Pursuant to E.O.s 13555 (White House Initiative on Educational Excellence for Hispanics) (75 FR 65417), 13592 (Improving American Indian and Alaska Native

Educational Opportunities and Strengthening Tribal Colleges and Universities) (76 FR 76603), and 13779 (White House Initiative to Promote Excellence and Innovation at Historically Black Colleges and Universities) (82 FR 12499), DOC is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. DOC's goals include achieving full participation of MSIs to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC encourages all applicants and non-Federal entities to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

h. Research Misconduct

The DOC adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by DOC must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Non-Federal entities must notify the Grants Officer of any allegation that meets the definition of research misconduct and detail the entity's inquiry to determine whether there is sufficient evidence to proceed with an investigation, as well as the results of any investigation. The DOC may take appropriate administrative or enforcement action at any time under the award, up to and including award termination and possible suspension or debarment, and referral to the Commerce OIG, the U.S. Department of Justice, or other appropriate investigative body.

i. Research Involving Human Subjects

1. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. Part 27 (Protection of Human Subjects). No research involving human subjects is permitted under this award unless expressly authorized by specific award condition, or otherwise in writing by the Grants Officer.
2. Federal policy defines a human subject as a living individual about whom an investigator (whether professional or student) conducting research (1) Obtains information or biospecimens through intervention or interaction with the individual, and uses, studies, or analyzes the information or biospecimens; or (2) Obtains, uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

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

- i. Documentation establishing approval of an activity in the project by an Institutional Review Board (IRB) under a Federal wide Assurance issued by Department of Health and Human Services or other Federal agency guidelines (*see also* 15 C.F.R. § 27.103);
- ii. Documentation to support an exemption for an activity in the project under 15 C.F.R. § 27.104(d);
- iii. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form;
- iv. Documentation of an IRB approval of continuing review approved prior to the expiration date of the previous IRB determination; and
- v. Documentation of any reportable events, such as serious adverse events, unanticipated problems resulting in risk to subjects or others, and instances of noncompliance.

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

j. Care and Use of Live Vertebrate Animals

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

k. Management and Access to Data and Publications

1. In General. The recipient acknowledges and understands that information and data contained in applications for financial assistance, as well as information and data contained in financial, performance and other reports submitted by recipients, may be used by the DOC in conducting reviews and evaluations of its financial assistance programs. For this purpose, recipient information and data may be accessed, reviewed and evaluated by DOC employees, other Federal employees, Federal agents and contractors, and/or by non-Federal personnel, all of who enter into appropriate or are otherwise subject to confidentiality and nondisclosure agreements covering the use of such information. Recipients are expected to support program reviews and evaluations by submitting required financial and performance information and data in an accurate and timely manner, and by cooperating with DOC and external program evaluators. In accordance with 2 C.F.R. § 200.303(e), recipients are reminded that they must take reasonable measures to safeguard protected personally identifiable information and other confidential or sensitive personal or business information created or obtained relating to a DOC financial assistance award.
2. Scientific Data. Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.
3. Publications, Videos, and Acknowledgment of Sponsorship.
 - i. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to federally-funded projects (*e.g.*, scientific research). Non-Federal entities must comply with the data management and access to data requirements established by the DOC funding agency as set forth in the applicable Notice of Funding Opportunity and/or in Specific Award Conditions.
 - ii. Non-Federal entities may be required to submit a copy of any publication materials, including but not limited to print, recorded, or Internet materials, to the funding agency.
 - iii. When releasing information related to a funded project, non-Federal entities must include a statement that the project or effort undertaken was or is sponsored by DOC and must also include the applicable financial assistance award number.
 - iv. Non-Federal entities are responsible for assuring that every publication of material based on, developed under, or otherwise produced pursuant to a DOC financial assistance award contains the following disclaimer or other disclaimer approved by the Grants Officer:

This [report/video/etc.] was prepared by [recipient name] using Federal funds under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do

not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce.

I. Homeland Security Presidential Directive

If the performance of this DOC financial assistance award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-controlled information systems (for purpose of this term “routine access” is defined as more than 180 calendar days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services’ (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under a financial assistance award must comply with DOC personal identity verification procedures that implement Homeland Security Presidential Directive 12 (Policy for a Common Identification Standard for Federal Employees and Contractors), Federal Information Processing Standard (FIPS) PUB 201, and OMB Memorandum M-05-24. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements listed in the term below. The recipient must insert the following term in all subawards and contracts when the subaward recipient or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

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

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

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

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

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

3. Definitions

- i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application. The export (shipment, transmission, or release/transfer) of export-controlled items may require a license from DOC.
 - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release or transfer of export-controlled items (specifically, technology or source code) to a foreign person (foreign national) in the U.S. Such release is "deemed" to be an export to the foreign person's most recent country of citizenship or permanent residency (*see* 15 C.F.R. § 734.13(a)(2) & (b)). A release may take the form of visual inspection or oral or written exchange of information. *See* 15 C.F.R. § 734.15(a). If such a release or transfer is made abroad to a foreign person of a country other than the country where the release occurs, it is considered a deemed re-export to the foreign person's most recent country of citizenship or permanent residency. *See* 15 C.F.R. § 734.14(a)(2). Licenses from DOC may be required for deemed exports or re-exports. An act causing the release of export-controlled items to a foreign person (e.g., providing or using an access key or code) may require authorization from DOC to the same extent that an export or re-export of such items to the foreign person would. *See* 15 C.F.R. § 734.15(b).
4. The non-Federal entity must secure all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that the export of such items, including in the form of release or transfer to foreign persons, is prevented, or licensed, as required by applicable Federal laws, E.O.s, and/or regulations, including the EAR.
 5. As applicable, non-Federal entity personnel and associates at DOC sites will be informed of any procedures to identify and protect export-controlled items from unauthorized export.

6. To the extent the non-Federal entity wishes to release or transfer export-controlled items to foreign persons, the non-Federal entity will be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports. Failure to obtain any export licenses required under the EAR may subject the non-Federal entity to administrative or criminal enforcement. See 15 C.F.R. part 764.
7. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, E.O.s or regulations.
8. Compliance with this term will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports and re-exports of defense articles and services subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including the release of defense articles to foreign persons in the United States and abroad.
9. The non-Federal entity must include the provisions contained in this term in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve research or other activities that implicate export-controlled items.

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

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if any non-Federal entity engages in certain activities related to trafficking in persons. The DOC hereby incorporates the following award term required by 2 C.F.R. § 175.15(b):

Trafficking in persons.

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

1. You as the recipient, your employees, subrecipients under this award, and subrecipients' employees may not—

- i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;*
- ii. Procure a commercial sex act during the period of time that the award is in effect; or*
- iii. Use forced labor in the performance of the award or subawards under the award.*

2. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —*

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

ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326 (Nonprocurement Debarment and Suspension).

b. Provision applicable to a recipient other than a private entity. *We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity—*

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

2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—

i. Associated with performance under this award; or

ii. 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 C.F.R. Part 180 (OMB Guidelines to Agencies on Governmentwide Debarment and Suspension – Nonprocurement), as implemented by DOC at 2 C.F.R. Part 1326, (Nonprocurement Debarment and Suspension).

c. Provisions applicable to any recipient.

1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.

2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

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

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

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

d. Definitions. For purposes of this award term:

1. *“Employee” means either:*

i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or

ii. 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.

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.*

3. *“Private entity”:*

i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25;

ii. Includes: (A) 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 C.F.R. § 175.25(b); and (B) A for-profit organization.

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).*

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

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

Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds \$30,000 in Federal funds for a subaward

to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. *Where and when to report.*

i. *You must report each obligating action described in paragraph a.1. of this award term to <http://www.fsrs.gov>.*

ii. *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 November 7, 2010, the obligation must be reported by no later than December 31, 2010.)*

3. *What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.*

b. Reporting Total Compensation of Recipient Executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

i. *the total Federal funding authorized to date under this Federal award equals or exceeds \$30,000 as defined in 2 C.F.R § 170.320;*

ii. *in the preceding fiscal year, you received—*

(A) *80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards), and*

(B) *\$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 C.F.R. § 170.320 (and subawards); and,*

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

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. *As part of your registration profile found at the System for Award Management (SAM) website located at <https://www.sam.gov>.*

ii. *By the end of the month following the month in which this award is made, and annually thereafter.*

c. Reporting of Total Compensation of Subrecipient Executives.

1. *Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you 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—*

i. *in the subrecipient's preceding fiscal year, the subrecipient received—*

(A) *80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards) and,*

(B) *\$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*

ii. *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/execomp.htm>).*

See also 2 C.F.R. § 200.300(b).

2. *Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:*

i. *To the recipient.*

ii. *By the end of the month following the month during which you make 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), you must report any required compensation information of the subrecipient by November 30 of that year.*

d. Exemptions. *If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.*

e. Definitions. For purposes of this award term:

1. *Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).*
2. *Non-Federal entity means all of the following, as defined in 2 C.F.R. 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; and,*
 - iv. *A domestic or foreign for-profit organization.*
3. *Executive means officers, managing partners, or any other employees in management positions.*
4. *Subaward:*
 - i. *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 you as the recipient award to an eligible subrecipient.*
 - ii. *The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 C.F.R § 200.331).*
 - iii. *A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.*
5. *Subrecipient means a non-Federal entity or Federal agency that:*
 - i. *Receives a subaward from you (the recipient) under this award; and*
 - ii. *Is accountable to you for the use of the Federal funds provided by the subaward.*
6. *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 C.F.R. § 229.402(c)(2)):*
 - i. *Salary and bonus.*
 - ii. *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.*

- iii. *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.*
- iv. *Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.*
- v. *Above-market earnings on deferred compensation which is not tax-qualified.*
- vi. *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.*

2. **System for Award Management (SAM) and Universal Identifier Requirements** -- as described in 2 C.F.R. Part 25, Appendix A, which is incorporated into this award:

System for Award Management (SAM) and Universal Identifier Requirements

a. ***Requirement for System for Award Management.*** *Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.*

b. ***Requirement for Unique Entity Identifier.*** *If you are authorized to make subawards under this Federal award, you:*

1. *Must notify potential subrecipients that no entity (see definition in paragraph c of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.*
2. *May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.*

c. ***Definitions for purposes of this term:***

1. *SAM means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.SAM.gov>).*

2. *Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.*
3. *Entity includes non-Federal entities as defined at 2 C.F.R. § 200.1 and also includes all of the following, for purposes of this part:*
 - i. *A foreign organization;*
 - ii. *A foreign public entity;*
 - iii. *A domestic for-profit organization; and*
 - iv. *A Federal agency.*
4. *Subaward has the meaning given in 2 C.F.R § 200.1.*
5. *Subrecipient has the meaning given in 2 C.F.R § 200.1.*

See also 2 C.F.R. § 200.300(b).

p. Recipient Integrity and Performance Matters (Appendix XII to 2 C.F.R. Part 200)

Reporting of Matters Related to Recipient Integrity and Performance

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
2. **Proceedings About Which You Must Report.** Submit the information required about each proceeding that:
 - i. Is relating to the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
 - ii. Reached its final disposition during the most recent five-year period; and

iii. Is one of the following:

- (A) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
- (B) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (C) An administrative proceeding, as defined in paragraph 5 of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (D) Any other criminal, civil, or administrative proceeding if:
 - I. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 - II. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - III. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. Reporting Procedures. Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

4. Reporting Frequency. During any period when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

5. Definitions. For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes:

(A) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

(B) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

q. **Never Contract with the Enemy (2 C.F.R Part 183; 2 C.F.R. § 200.215)**

Under 2 C.F.R. § 200.215 (Never contract with the enemy) Federal awarding agencies and recipients are subject to the regulations implementing Never Contract with the Enemy in 2 C.F.R. Part 183. These regulations affect covered contracts, grants and cooperative agreements that are expected to exceed \$50,000 within the period of performance, are performed outside the United States and its territories, and are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

1. **Applicability.** This term applies only to recipients of covered grants or cooperative agreements, as defined in 2 C.F.R. § 183.35 Definitions.

2. **Requirements.** As applicable, recipients must fulfill the requirements as described in the following terms from 2 C.F.R. Part 183, Appendix A, which is incorporated into this award:

a. ***Term 1. Prohibition on Providing Funds to the Enemy.***

1. *The recipient must—*

i. *Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;*

ii. *Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.*

2. *The recipient may include the substance of this clause, including this paragraph (1), in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

3. *The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by paragraph (1) of this clause or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities*

b. Term 2. Additional Access to Recipient Records.

1. *In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, except for awards awarded by the Department of Defense on or before Dec 19, 2017 that will be performed in the United States Central Command (USCENTCOM) theater of operations*

2. *The substance of this clause, including this paragraph (2), is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.*

r. Prohibition on certain telecommunications and video surveillance services or equipment (Public Law 115-232, section 889; 2 C.F.R. § 200.216)

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

- (1) Procure or obtain,
- (2) Extend or renew a contract to procure or obtain, or
- (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i). For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii). Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii). Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

s. Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

1. Unless there is an actual rescission of funds for specific grant or cooperative agreement obligations, non-Federal entities under Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Non-Federal entities are advised that ongoing activities by Federal employees involved in grant or cooperative agreement administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.

2. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction, or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise non-Federal entities that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, non-Federal entities whose ability to withdraw funds is subject to prior agency approval, which in general are non-Federal entities that have been designated high risk, non-Federal entities under construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able to draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Non-Federal entities should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Non-Federal entities whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.
3. The ASAP system should remain operational during a government shutdown. Non-Federal entities that do not require any Grants Officer or agency approval to draw down advance funds from their ASAP accounts should be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will still apply notwithstanding a government shutdown (see section B.02.b.1 of these terms).

EXHIBIT "A"

U.S. DEPARTMENT OF COMMERCE
Economic Development Administration (EDA)

Public Works and Development Facilities

Investment No.: 04-79-07905

Recipient: Watauga, North Carolina

SPECIFIC AWARD CONDITIONS

1. **PROJECT DEVELOPMENT TIME SCHEDULE:** The Recipient agrees to the following Project development time schedule:

Time allowed after Receipt of Financial Assistance Award for:

Return of Executed Financial Assistance Award..... 30 days
Start of Construction..... 18 Months from Date of Grant Award
Construction Period..... 24 Months

Project Closeout – All Project closeout documents including final financial information and any required program reports shall be submitted to the Government not more than 120 days after the date the Recipient accepts the completed project from the contractor(s).

The Recipient shall pursue diligently the development of the Project so as to ensure completion within this time schedule. Moreover, the Recipient shall notify the Government in writing of any event, which could delay substantially the achievement of the Project within the prescribed time limits. The Recipient further acknowledges that failure to meet the development time schedule may result in the Government’s taking action to terminate the Award in accordance with the regulations as provided in the CD-450.

2. **GOALS FOR WOMEN AND MINORITIES IN CONSTRUCTION:** Department of Labor regulations set forth in in 41 CFR 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all Federally assisted construction contracts in excess of \$10,000. The Recipient shall comply with these regulations and shall obtain compliance with 41 CFR 60-4 from contractors and subcontractors employed in the completion of the Project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 CFR 60-4. The goal for the participation of women in each trade area shall be as follows:

From April 1, 1981, until further notice: 6.9 percent

All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 CFR 60-4.6, or any successor regulations, shall hereafter be incorporated by reference into these Special Award Conditions.

Goals for minority participation shall be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The Recipient shall include the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all Federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 CFR 60-4.6.

3. **REPORT ON UNLIQUIDATED OBLIGATIONS:** All Recipients of an EDA grant award of more than \$100,000 whose Award has not been fully disbursed is required to submit Form SF-425, "*Financial Status Report*" to EDA semi-annually to report on the status of unreimbursed obligations. This report will provide information on the amount of allowable Project expenses that have been incurred, but not claimed for reimbursement by the Recipient. The first report shall be as of March 30 of each year and shall be submitted to EDA no later than April 30 of each year, and the second report shall be as of September 30 of each year and shall be submitted to EDA no later than October 30 of each year. The Recipient must submit a final financial report using Form SF-425 within 90 days of the expiration date of the Award (or from the date the Recipient accepts the Project from the contractor, whichever occurs earlier). Noncompliance with these requirements will result in the suspension of disbursements under this Award. Financial reports are to be submitted to the Project Officer.
4. **PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS:** Pursuant to E.O. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federal Funded Construction Projects," unless the Project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by Recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not: a) include any requirement or prohibition on Bidders, Offerors, Contractors, or Subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction Project(s); or b) otherwise discriminate against Bidders, Offerors, Contractors, or Subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction Project(s).
5. **ENGINEERING CERTIFICATE/CERTIFICATE OF TITLE:** The Recipient, prior to Solicitation of bids for construction of this Project, shall furnish to the Government an acceptable Engineering Certificate showing all lands, rights-of-way and easements necessary for construction of this Project along with an acceptable Certificate of Title on said lands, rights-of-way and easements showing good and merchantable title free of mortgages or other foreclosable liens and an Owners Certification as to Eminent Domain.

Specific Conditions

EXHIBIT "A"

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Investment No. 04-79-07905

6. **NONRELOCATION:** In signing this award of financial assistance, Recipient(s) attests that EDA funding is not intended by the Recipient to assist its efforts to induce the relocation of existing jobs that are located outside of its jurisdiction to within its jurisdiction in competition with other jurisdictions for those same jobs. In the event that EDA determines that its assistance was used for those purposes, EDA retains the right to pursue appropriate enforcement action in accord with the Standard Terms and Conditions of the Award, including suspension of disbursements and termination of the award for convenience or cause.
7. **REFUND CHECKS, INTEREST, OR UNUSED FUNDS:** If the Recipient needs to return money to EDA, it may use one of the following two methods:
- i. The first is the pay.gov website, which allows the Recipient to pay EDA online. The Recipient will have the option to make a one-time payment or to set up an account to make regular payments.
 - ii. The second is paper check conversion. All checks must be made payable to "Department of Commerce, Economic Development Administration" and include the award number and a description of no more than two words identifying the reason for the payment. A copy of the check should be provided to the EDA Project Officer. The check should be mailed to NOAA's Accounting Office, which processes EDA's accounting functions, at the following address:

NOAA OCFO
Attn: Finance Office, Travel Dept.
1315 East West Highway, SSMC3
Silver Spring, MD 20910

When funds are remitted to EDA by check, the check will be converted into an electronic funds transfer (EFT) by using the account information on the check to debit the payor's account electronically. The debit from the payor's account will usually occur within 24 hours. EDA will not return the check; the original will be destroyed, and a copy will be retained. If the EFT cannot be completed because of insufficient funds, EDA will charge a one-time fee of \$25.00, which will be collected by EFT.

8. **SCOPE OF WORK:** Recipient(s) agrees to undertake, prosecute and complete the Scope of Work (SOW) for this Project funded by this Award which SOW is approved and agreed to by the Government as subsequently amended in mutually agreed upon written change order(s) and/or SOW amendment(s), if any. The SOW shall be as set forth and described in a.) the application submitted by Recipient(s) and/or Recipient's authorized representative(s) to the Government for this Award together with b.) all enclosures, materials, documents and other submittals accompanying and supporting the application, c.) all additional materials, documents and/or correspondence requested by the Government and submitted by Recipient(s) and/or Recipient's authorized representative(s) in support and furtherance of the application and d.) such change(s) and/or SOW amendments, if any, requested in writing by the Recipient(s) and/or Recipient's authorized representative subsequent to the date of this Award and approved and agreed to in writing by the Government. To the extent such additional

materials, documents and/or correspondence amends and/or clarifies the application, such amendment or clarification shall be controlling. It is agreed that the Recipient(s) and Government intend that the SOW describes a discrete, detailed and specific project that is funded and authorized by this Award and to that end the application and the above-described additional information shall be fairly construed to and shall describe the SOW. The scope of work for this project is further described below:

This project will construct a new pump station, a 1150 linear feet of 4-inch HDPE force main, a grease trap, connections, valves, and surface restoration. The project will also construct 1200 linear feet of 6-inch water line, service line, backflow preventer, meter, valves, and surface restoration.

9. **CONSTRUCTION PERMITS:** Prior to the first disbursement of funds under this Award, the Recipient shall obtain and submit the permits described in section 3 of the Certificate of Engineer, Part One of the above referenced CERTIFICATE AS TO PROJECT SITE, RIGHTS-OF-WAY, AND EASEMENTS as part of these conditions.

10. **REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE**

A. General Reporting Requirement

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

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;

Reached its final disposition during the most recent five-year period; and

Is one of the following:

- (a) A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;

Specific Conditions

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Investment No. 04-79-07905

- (b) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
- (c) An administrative proceeding, as defined in paragraph E. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
- (d) Any other criminal, civil, or administrative proceeding if:
 - (i) It could have led to an outcome described in paragraph B.3.(a), (b), or (c) of this award term and condition;
 - (ii) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 - (iii) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph B of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this award term and condition, you must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report.

Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this award term and condition:

1. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings).

This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.

2. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
3. Total value of currently active grants, cooperative agreements, and procurement contracts includes:
 - (a) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - (b) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

11. **WASTE, FRAUD AND ABUSE:** Consistent with 2 CFR part 200, Recipient personnel responsible for managing the Recipient's finances and overseeing any contractors, sub-contractors or sub-grantees, will complete the training PowerPoint entitled "Fraud Awareness Training" and return the signed Certificate of Training Completion (page 32 or subsequent certification pages if there are more than one of the training) to EDA along with the signed CD-450 within 30 days of receipt.

Further, Recipient will monitor award activities for common fraud schemes, such as:

- false claims for materials and labor,
- bribes related to the acquisition of materials and labor,
- product substitution,
- mismarking or mislabeling on products and materials, and
- time and materials overcharging.

Should Recipient detect any Fraud Schemes or any other suspicious activity, Recipient will contact the Government's Atlanta Regional Counsel at 404-730-3002 and the Department of Commerce, Office of Inspector General, as indicated at <https://www.oig.doc.gov/Pages/Contact-Us.aspx>, as soon as possible.

12. **STANDARD TERMS AND CONDITIONS/UNIFORM GUIDANCE:** The Government promulgates regulations that are a.) in many instances Department of Commerce- or Bureau-specific and b.) also in more generic and government-wide in application. These regulations are codified and set out in the Code of Federal Regulations (CFR). Recently, the Office of Management and Budget revised the government-wide Uniform Guidance set forth in 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles and Audit Requirements for

Specific Conditions

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Investment No. 04-79-07905

Federal Awards. References and controlling language from 2 CFR Part 200 appear in the CD-450 Financial Assistance Award, these Specific Award Conditions, and in the Standard Terms and Conditions attached to all construction grants (Awards) made by the U.S. Department of Commerce, Economic Development Administration (EDA)

The most recent revisions to 2 CFR Part 200 governing EDA Awards became effective on November 12, 2020. Additional revisions to 2 CFR Part 200 are anticipated in the future. This Specific Award Condition (SAC) is provided to confirm that fact and advise the Recipient(s) that the version of 2 CFR Part 200 that took effect on November 12, 2020 currently applies to this award and supersedes conflicting provisions of 2 CFR Part 200 appearing in the SF-450 and/or Standard Terms and Conditions and this Exhibit (if any) attached to this Award. Future revisions to 2 CFR Part 200 may further supersede the version that took effect on November 12, 2020.

13. **PROJECT ADMINISTRATION SERVICE AGREEMENT:** The Recipient, prior to invitation for bids, must submit to the Government for approval a Project Administration Service Agreement for project administration services charged against the grant award.
14. **ENVIRONMENTAL:** Recipient hereby acknowledges the lack of records pertaining to an adjacent landfill. Recipient hereby agrees that it will proceed with the Project at its own risk with regard to any undiscovered contamination and any remediation or additional costs necessary therefore. Recipient further agrees that it will notify EDA if contamination is discovered and/or remediation activities are required or commenced within 30 days of such

discovery. Recipient further agrees that if the necessary remediation causes the Project to become unfeasible or impractical due to extensions of time or increases in cost, Recipient shall notify EDA of its intention to terminate the Project for convenience.

15. **STRENGTHENING BUY-AMERICAN PREFERENCES FOR INFRASTRUCTURE PROJECTS:** The Recipient(s) is/are encouraged to use, to the greatest extent practicable, iron and aluminum as well as steel, cement, and other manufactured products produced in the United States in every contract, subcontract, purchase order, or sub-award that is chargeable under this Award.

GRANT COOPERATIVE AGREEMENT

FINANCIAL ASSISTANCE AWARD

FEDERAL AWARD ID NUMBER
04-79-07905

RECIPIENT NAME
Watauga County

PERIOD OF PERFORMANCE
42 months after date of EDA approval

STREET ADDRESS
814 West King Street

FEDERAL SHARE OF COST
\$ **817,558**

CITY, STATE, ZIP CODE
Boone, North Carolina 28607

RECIPIENT SHARE OF COST
\$ **250,000**

AUTHORITY
Public Works and Economic Development Act of 1965, as amended

TOTAL ESTIMATED COST
\$ **1,067,558**

CFDA NO. AND NAME
11.307 Economic Adjustment Program

PROJECT TITLE
Water and Sewer Infrastructure

This Award Document (Form CD-450) signed by the Grants Officer constitutes an obligation of Federal funding. By signing this Form CD-450, the Recipient agrees to comply with the Award provisions checked below and attached. Upon acceptance by the Recipient, the Form CD-450 must be signed by an authorized representative of the Recipient and returned to the Grants Officer. If not signed and returned without modification by the Recipient within 30 days of receipt, the Grants Officer may unilaterally withdraw this Award offer and de-obligate the funds.

- DEPARTMENT OF COMMERCE FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
- R & D AWARD
- FEDERAL-WIDE RESEARCH TERMS AND CONDITIONS, AS ADOPTED BY THE DEPT. OF COMMERCE
- SPECIFIC AWARD CONDITIONS (See attached Exhibit "A")
- LINE ITEM BUDGET (See Attachment 1)
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 1327.101
- 48 CFR PART 31, CONTRACT COST PRINCIPLES AND PROCEDURES
- MULTI-YEAR AWARD. PLEASE SEE THE MULTI-YEAR SPECIFIC AWARD CONDITION.
- OTHER(S): EDA Standard Terms and Conditions for Construction Projects, dated March 22, 2021

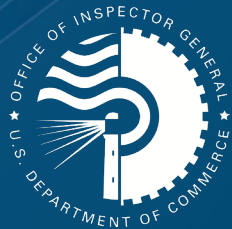
SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER H. Philip Paradice, Jr., Director, Atlanta Regional Office	DATE H. Philip Paradice, Jr. <small>Digitally signed by H. Philip Paradice, Jr. Date: 2023.09.08 13:27:17 -04'00'</small>
PRINTED NAME, PRINTED TITLE, AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL Deron Geogue, County Manager, Watauga County	DATE

Fraud Awareness Training

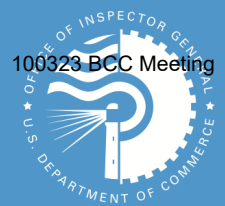


EDA's grantees **must** successfully complete this training and **submit the signed completion certificate(s)** to the EDA Project Officer listed in the Specific Award Conditions within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.



OVERVIEW



100323 BCC Meeting

- Overview of EDA's Programs
- The Department of Commerce (DOC)
Office of Inspector General (OIG)
- Fraud in EDA Programs
- Additional Items
- Certificate

Role of EDA: Facilitate the timely and effective delivery of Federal economic development assistance to support long-term community economic recovery planning and project implementation, redevelopment, and resiliency

EDA's Programs

- EDA's Programs enable EDA to make awards that support a wide range of activities.
- Eligible applicants and project types for each program is set forth in the respective Notices of Funding Opportunity.
- You must read and understand the requirements applicable to the program under which your award is funded, including the applicable Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions.

The U.S. Department of Commerce (DOC) Office of Inspector General (OIG)

- Created by IG Act of 1978 to:
 - Combat fraud, waste, and abuse within the DOC
 - Conduct audits and investigations of DOC operations
 - Keep the DOC and Congress informed
- Mission
 - To improve the programs and operations of the Department of Commerce through independent and objective oversight

This includes oversight of EDA Assistance Programs

- Office of Audit and Evaluation
- Office of Investigations
 - Criminal
 - Civil
 - Administrative
 - Employee misconduct
 - Public corruption

WHISTLEBLOWER PROTECTIONS



Federal employees, applicants, and employees of federal contractors **and grantees** who make certain disclosures—to OIG or elsewhere—are protected under the law from suffering retaliation because of those disclosures.

Basic elements of whistleblower protection law: (1) you make a protected disclosure; (2) you are subject to certain retaliatory acts; and (3) there is a causal connection between your protected disclosure and the retaliatory act.

OIG receives, reviews, and where appropriate, investigates allegations of whistleblower reprisal.

Whistleblower complaints may be submitted to the OIG via the hotline:
<https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline>

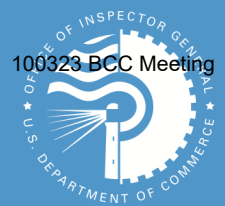
Whistleblower complaints may also be submitted to the Office of Special Counsel via their website: <https://osc.gov/pages/file-complaint.aspx>

DOC-OIG Whistleblower Protection Coordinator contact information:

Email: wpo@oig.doc.gov

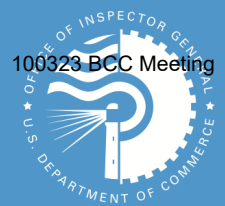
Phone: 202-482-1099

FRAUD IN EDA ASSISTANCE PROGRAMS



- **Fraud Defined**
- **Compliance Requirements**
 - **Eligibility**
 - **Duplicate Funding**
 - **Matching Funds**
 - **Mandatory Reporting of Fraud**
- **Consequences of Fraud**
- **Recommendations/Best Practices**

FRAUD IN EDA ASSISTANCE PROGRAMS



Although it can take many forms, fraud, at its core, is **deception** through the **misrepresentation** or **omission of material facts** for the purpose of **illegitimate gain**.

FRAUD IN EDA ASSISTANCE PROGRAMS



Examples of fraud within EDA Assistance Programs include, but are not limited to:

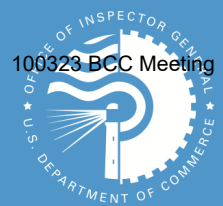
- Accepting federal funding in multiple assistance awards for the same work
- Misrepresentations regarding the eligibility of the project or recipient
- Misrepresentations or omissions about the recipient's facilities, ownership/control, or the work to be performed by the recipient
- Providing falsified letters of support
- Misrepresentations concerning the use of funds expended, work performed, results achieved, or compliance with program requirements under the award
- Inflated labor costs

FRAUD IN EDA ASSISTANCE PROGRAMS (CONTINUED)



- Misuse or conversion of assistance award funds (e.g. using funds for personal expenses)
- Theft of government owned property (18 U.S.C. § 666)
- Embezzlement (18 U.S.C. § 666)
- Fabrication or falsification of data, in applying for, carrying out, or reporting results from an assistance award
- Intentional noncompliance with applicable federal cost principles governing grants / cooperative agreements
- Undisclosed self-dealing, such as a sub-award to an entity in which an awardee, executive, or key employee (or family members of the aforementioned individuals) has a financial interest
- “Buying Expenses”, or reporting expenses incurred by another entity for work unrelated to the assistance award

COMPLIANCE REQUIREMENTS



RECIPIENTS MUST COMPLY WITH:

- 2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards
- Department of Commerce Financial Assistance Standard Terms and Conditions
- EDA Standard Award Conditions for Construction Projects **or** EDA Revolving Loan Fund Standard Award Conditions (as applicable)
- Specific Award Conditions (unique to each award)

COMPLIANCE REQUIREMENTS

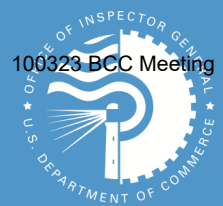


2 CFR § 200.339 – REMEDIES FOR NONCOMPLIANCE

If a non-Federal entity fails to comply with **the U.S. Constitution, Federal statutes, regulations or the terms and conditions of a Federal award**, the Federal awarding agency or pass-through entity may impose additional conditions; or, in certain circumstances, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:

- Temporary withholding of cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity
- Disallowance of (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance
- Whole or partial suspension or termination of the Federal award
- Initiation of suspension or debarment proceedings (or in the case of a pass-through entity, recommend such a proceeding be initiated by a Federal awarding agency)
- Withholding of further Federal awards for the project or program
- Other remedies that may be legally available

COMPLIANCE REQUIREMENTS



Eligibility

Within their EDA Assistance Award Proposal, applicants make numerous certifications or recertifications as to their eligibility to receive a federal award, among other certifications.

Falsely certifying to any material fact or representation contained in a certification is fraud.

CASE EXAMPLE



Eligibility

Double-click
below for more
information

Allegations Included:

- Nonprofit organization made false and misleading statements to obtain federal grant funding
- Failure to disclose conflicts of interest that were required to be disclosed

Outcome:

- Nonprofit agreed to pay \$528,575.82 to resolve allegations they violated the False Claims Act

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Department of Justice
U.S. Attorney's Office
Eastern District of Kentucky

FOR IMMEDIATE RELEASE | Wednesday, September 19, 2018

Nonprofit Organization and Its Management Company Agree to Pay Over \$500,000 to Resolve Allegations of Grant Fraud

LEXINGTON, Ky. — The National Association of State Chief Information Officers, Inc. (NASCIO) and American Management Resources, Inc. (AMR) have agreed to pay the United States \$528,575.82 to resolve allegations that they violated the False Claims Act by making false and misleading statements in connection with obtaining grants from the Department of Justice's National Justice Information Sharing Initiative.

This civil settlement resolves allegations that NASCIO failed to disclose conflicts of interest related to its contract with AMR that were required to be disclosed under the grant program's rules. The United States contends that the failure to disclose these conflicts of interest resulted in the DOJ approving grant funding that NASCIO would not have otherwise been awarded.

"This settlement sends a clear message that recipients of federally funded grants must strictly adhere to the regulations applicable to those grants and fully and fairly disclose the information called for under these grants," stated Robert M. Duncan, Jr., United States Attorney for the Eastern District of Kentucky. "Both NASCIO and AMR have responsibly and expeditiously addressed the concerns raised by the United States, and we expect other grant recipients who do not follow the applicable regulations will do the same."

"This investigation demonstrates the DOJ-OIG's commitment to ensure that tax payer dollars are used appropriately, and that only authorized grant recipients who follow regulations and provide full disclosure to the government receive DOJ grant funds," stated William J. Hannah, Special Agent in Charge of the U.S. Department of Justice Office of the Inspector General's (DOJ-OIG) Chicago Field Office.

This case was a result of an investigation by the DOJ-OIG Chicago Field Office and the United States Attorney's Office for the Eastern District of Kentucky. Assistant United States Attorney Jennifer A. Williams handled the matter for the United States. The claims settled by this agreement are allegations only, and there has been no determination of liability.

COMPLIANCE REQUIREMENTS



Duplication of Benefits is Prohibited

2 CFR § 200.1 – Improper Payment

Improper payment means any payment that should not have been made or that was made in an incorrect amount under statutory, contractual, administrative, or other legally applicable requirements. This includes overpayments or underpayments to eligible recipients (including inappropriate denials of payment or service, any payment that does not account for credit for applicable discounts, payments that are for an incorrect amount, and **duplicate payments**). It also includes any payment that was made to an ineligible recipient or for an ineligible good or service, or payments for goods or services not received (except for such payments authorized by law).

Other Federal Awards with Similar Programmatic Activities

“The recipient must immediately provide written notification to the DOC Program Officer and the DOC Grants Officer if, subsequent to receipt of the DOC Award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the DOC Award. DOC will not pay for costs that are funded by other sources.” *EDA Standard Terms and Conditions for Construction Projects, March 22, 2021*

CASE EXAMPLE



Duplication of Benefits

Double-click
below for more
information

Allegations Included:

- Not-for-profit owner applied for funding for similar services
- Owner converted the duplicate funding for his personal and business use

Outcome:

- Owner pleaded guilty to mail fraud and money laundering
- Sentenced to 24 months in prison
- Ordered to pay \$480,901 in restitution

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Department of Justice
U.S. Attorney's Office
Central District of Illinois

FOR IMMEDIATE RELEASE Friday, September 23, 2016

Chicago Businessman Sentenced to Two Years in Prison for Grant Fraud Scheme

Springfield, Ill. – A Chicago businessman has been ordered to serve 24 months in prison for a fraud scheme that resulted in two state agencies awarding separate, but nearly identical, grants to his not-for-profit entity in September 2008. U.S. District Court Judge Sae E. Myerscough sentenced George E. Smith, 66, and ordered that Smith pay restitution of nearly \$500,000 to the state. Judge Myerscough allowed Smith to self-report as directed by the federal Bureau of Prisons to begin serving his prison sentence. Smith waived indictment and pled guilty in March 2016, to two counts of mail fraud and one count of money laundering.

In rendering today's sentence, Judge Myerscough noted that Smith exploited his personal relationship with a former director of the Illinois Department of Children and Family Services related to a grant in the amount of \$450,000 awarded by the agency on Sept. 2, 2008, under the Students at Risk Program. On Sept. 8, 2008, the Illinois Board of Education awarded Smith's not-for-profit a similar grant in the amount of \$342,000. According to the terms of the grants, both provided for similar services to be provided to the same at-risk population in the Chicago area during fiscal year 2009. The populations served, sources of referral, services to be provided, and the goals for each grant were essentially identical. Neither DCFS nor ISBE were aware of the issuance of an identical grant by the other state agency. Smith then converted the duplicate funding to his personal and business use.

Both grants were awarded to Diversified Behavioral Comprehensive Care, a not-for-profit entity owned and operated by Smith. In addition, Smith owned and operated three for-profit entities: Diversified Behavioral Services, Inc., Management Planning Institute, Inc., and the Institute for Positive Child and Family Development. From 2005 through 2011, Smith, through both his not-for-profit and for-profit entities, received millions of dollars in funding from agencies of the state of Illinois, including DCFS, ISBE, and the Illinois Department of Human Services.

Matching Funds

- The non-Federal share of the approved project budget (aka the “matching share” or “local share”) must be borne by the recipient or provided to the recipient by a third party as a contribution for the purposes of and subject to the terms of the award.
- The applicant must document that the matching share **will**:
 - Be committed to the project for the period of performance
 - Be available as needed
 - Not be conditioned or encumbered in any way that may preclude its use consistent with the requirements of EDA investment assistance
- Applicants must submit, for each source of matching share, a commitment letter or equivalent document signed by an authorized representative of the organization providing the matching funds. *Additional documentation may be requested by EDA in order to substantiate the availability of the matching funds.*

CASE EXAMPLE



Matching Funds

Double-click
below for more
information

Allegations Included:

- Small business owner made several false statements and misrepresentations to obtain federal grant funding
- Owner misrepresented that he obtained a \$100,000 investment from a third party in order to qualify for federal matching funds
- Owner converted grant funds to personal use

Outcome:

- Owner convicted at trial for wire fraud, mail fraud, falsification of records, and theft of government property
- Sentenced to 36 months in prison
- Ordered to pay \$105,726 in restitution
- Owner debarred for 5 years

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FOR IMMEDIATE RELEASE Friday, August 29, 2014

Morgan State University Professor Sentenced To 3 Years In Prison In Scheme To Defraud The National Science Foundation And For Obtaining Kickbacks From Student Stipends

Fraudulently Obtained \$200,000 and Attempted to Obtain Another \$500,000 through a National Science Foundation Small Business Program

Baltimore, Maryland - U.S. District Judge Ellen L. Hollander sentenced Manoj Kumar Jha, age 47, of Severn, Maryland, today to three years in prison followed by three years of supervised release for wire fraud, mail fraud, falsification of records, and theft of government property in connection with a scheme to fraudulently obtain research grants from the National Science Foundation (NSF) and kickbacks from students' stipends. Judge Hollander also entered an order requiring Jha to pay \$105,726 in restitution.

The sentence was announced by United States Attorney for the District of Maryland Rod J. Rosenstein and Allison Lerner, Inspector General at the National Science Foundation.

According to trial testimony, from January 2008 through July 2009, Jha fraudulently obtained \$200,000 in grant funds from the National Science Foundation's (NSF) Small Business Technology Transfer (STTR) program to fund a highway project, and attempted to obtain another \$500,000 through the same program. Jha converted the funds to his personal use. For example, Jha made payments on his mortgage and personal credit card and authorized approximately \$11,000 in salary payments to his wife, who performed no NSF-related work.

Jha, a full time professor at Morgan State University, incorporated Anar Transportation Research and Consulting, Inc. (ATRC), and was its president and only director. Trial evidence showed that Jha submitted funding proposals on behalf of ATRC to the STTR. The stated purpose of Jha's proposed

COMPLIANCE REQUIREMENTS



Mandatory Disclosure of Fraud

2 CFR § 200.113 - Mandatory disclosures

The non-Federal entity or applicant for a Federal award **must disclose**, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award.

Failure to disclose could result in the remedies detailed in 2 CFR § 200.339 (slide 16 of this presentation).

Criminal Prosecution

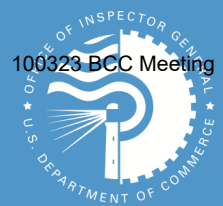
Lying to obtain a grant, or lying about the work performed may violate several criminal laws:

- 18 U.S.C. § 1001, False Statements (up to 5 years in prison, forfeiture and \$250K fine)
- 18 U.S.C. § 641, Theft of Federal Property (up to 10 years in prison, forfeiture and \$250K fine)
- 18 U.S.C. § 1343, Wire Fraud (up to 20 years in prison, forfeiture and \$250K fine)
- 18 U.S.C. § 666, Theft or bribery concerning programs receiving Federal funds (up to 10 years in prison, forfeiture and \$250K fine)

Fines for organizations may be as high as \$500K

Criminal forfeiture = full amount of the grant; personal assets can be seized to satisfy forfeiture or fine

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)



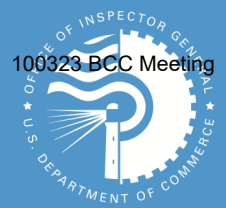
Civil Prosecution

In addition to or in lieu of criminal prosecution

Civil False Claims Act, 31 U.S.C. §§ 3729-3733

- Liability includes up to treble damages (3x actual damages) and a civil penalty of up to \$23,607 for each false claim
- False claims liability may include payments received when the government relied upon false information in the award proposal, in a certification of current cost or pricing data, in a request for payment, or in progress reports
- Although the statute requires knowledge that the claim was false, knowledge includes “deliberate ignorance” or “reckless disregard of the truth”
- Whistleblowers can receive up to 30% of the recovery amount for reporting fraud via *qui tam* provisions of the False Claims Act

CONSEQUENCES OF COMMITTING FRAUD (CONTINUED)



Administrative Remedies

- Government can terminate contracts/grants tainted by fraud
- Government can suspend/debar the entity, owner, and/or employees
 - Results in prohibition from receiving any federal grants or contracts, or working as a sub-grantee on federal grants or a sub-contractor on federal contracts
 - Debarment is typically for three years, but can be for a longer period
- Administrative remedies are in addition to or in lieu of criminal and civil liability

RECOMMENDATIONS



The government retains the right to examine the status of an EDA Assistance award at any time.

Status checks include:

- Site visits
- Requests for records including financial documents and timesheets

Good recordkeeping will help ensure successful status checks and eliminate potential issues.

Good Records: Key to Protecting Yourself

Documentation

- Timesheets for hours worked by ALL involved employees
- All financial receipts, invoices and statements for expenses related to the project

Updates on the project status, including successes/failures

- Keep regular records at the business-level so you have all facts on hand if needed/requested by the government
- Documentation to support performance metrics

Records Retention Time Frames and other Requirements

- See 2 CFR § 200.334

IMPORTANT TO REMEMBER!



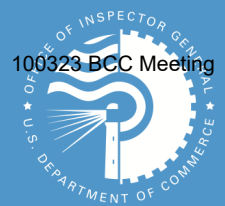
Record Retention and Access

§ 200.334 Retention requirements for records.

Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:

- (a) If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
- (b) When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
- (c) Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
- (d) When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
- (e) Records for program income transactions after the period of performance. In some cases recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
- (f) Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: Indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
 - (1) **If submitted for negotiation.** If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
 - (2) **If not submitted for negotiation.** If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

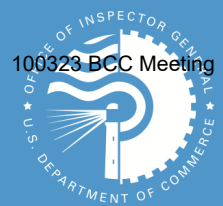
IMPORTANT TO REMEMBER!



If you are unsure about any of the requirements relating to the award of an EDA Assistance grant/cooperative agreement:

- Contact the appropriate EDA POC and provide all relevant facts
- Request written guidance from the EDA POC, and
- **Follow it!**

ADDITIONAL RESOURCES



100323 BCC Meeting

13 CFR Chapter III – Economic Development Administration (Parts 300-315)

<https://www.ecfr.gov/current/title-13/chapter-III>

2 CFR Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

<https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II>

Grant Fraud & Scams – Grants.gov

<https://www.grants.gov/learn-grants/grant-fraud.html>

Department of Commerce – Grants and Cooperative Agreement Manual

<https://www.commerce.gov/oam/files/grants-and-cooperative-agreements-grants-manual-april-20-2021>

REPORT FRAUD, WASTE, AND ABUSE



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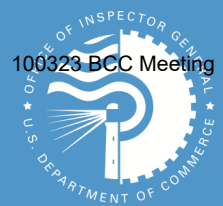
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Phone: (800) 424-5197**

Online Complaint Form:
<https://www.oig.doc.gov/Pages/Hotline.aspx#complainthotline>



**For more information
please visit our website
www.oig.doc.gov**

CERTIFICATE OF TRAINING COMPLETION



- All EDA grantees **must** successfully complete this training and **submit the signed completion certificate(s)** to the EDA Project Officer listed in the Specific Award Conditions or via the EDGE website within 60 days of grant award.

Failure to comply with this requirement may result in a finding of non-compliance with the terms and conditions of your award.

CERTIFICATE OF TRAINING COMPLETION



The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

Signature

Date

Deron Geougue
Name

Watauga County
Entity Name

County Manager
Position Title

EDA Award Number 04-79-07905

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

Certificate One

CERTIFICATE OF TRAINING COMPLETION



The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the **Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions** applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

Signature

Date

Name

Entity Name

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number 04-79-07905

Certificate Two

CERTIFICATE OF TRAINING COMPLETION



The undersigned has fully and completely reviewed this training on behalf of the applicant/awardee, understands the information presented in this training, and has the authority to make this certification as the awardee. The undersigned has also read and understood the Notice of Funding Opportunity, Specific Award Conditions, and Standard Terms and Conditions applicable to this Award. The undersigned understands providing false or misleading information during any part of the proposal, award, or performance phase of an EDA assistance award may result in criminal, civil or administrative sanctions, including but not limited to: fines, restitution, and/or imprisonment under 18 U.S.C. § 1001; treble damages and civil penalties under the False Claims Act, 31 U.S.C. § 3729 et seq.; civil recovery of award funds; suspension and/or debarment from all federal procurement and non-procurement transactions, FAR Part 9.4 or 2 CFR Part 180; and other administrative remedies including termination of active EDA assistance awards.

Signature

Date

Name

Entity Name

Position Title

Per the training instructions, return signed either to the relevant EDA Project Officer or via the EDGE website, as applicable, within 60 days of grant award. A separate Certification is required for each Authorized Signer on the Award. This Certification must be signed by the same Individual(s) executing the Notice of Award.

EDA Award Number 04-79-07905

Certificate Three

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AGENDA ITEM 8:

KILL/CHILL MATTERS

B. Project Update and Proposed Request for Proposals

MANAGER'S COMMENTS:

Mr. Hamilton will update the Board on the progress of the Kill/Chill Project and request Board authorization to release a Request for Proposals (RFP). The RFP would be for the management and operation of the facility.

Board action is requested to authorize the approval and advertisement of the RFP.

Request for Proposal

High Country Kill and Chill Slaughter Plant Management and Operation

Overview

Watauga County is seeking proposals from qualified individuals or organizations to manage and operate a new slaughter plant that will be built and owned by the county, to be leased to a third party operator to manage. The slaughter plant is to be used for slaughter of cattle, hogs, sheep, and goats under USDA inspection, for further processing offsite. The ideal candidate will have experience and expertise in processing meat under USDA inspection, will have been operating in meat processing and production for at least two years prior, and demonstrate capability to produce the following outcomes:

- Ensure small and local farmers always have opportunity to use the services
- Have capacity to process up to 100 beef equivalent per week offsite
- Be familiar with compliance to USDA regulatory standards for commercial meat production
- Have experience selling and marketing locally produced beef products as well as meat from other species
- Be able to create a local market to purchase cull animals from farmers at the point of slaughter, to give them a market for their animals
- Have equipment and capability to safely handle, transport, and manage raw perishable food product under temperature control

Submission Requirements*

Proposals should be submitted in writing and should include the following information:

- A cover letter that provides an overview of the applicant's qualifications and experience
- A narrative of the applicant's proposed management and operation plan for the slaughter plant (see instructions for narrative below)
- A list of the applicant's key personnel and their qualifications
- A financial proposal that includes a detailed budget and revenue projections
- Reference or support letters from customers, producers, and others in the community that evidence the applicant's qualifications and community commitment.

- Copy of applicant's HACCP plan

**Note: submission of project plans, budgets, and/or support letters in any format may be submitted, so long as the completed application addresses all relevant questions and required information.*

Instructions for Narrative

Narrative should answer, at a minimum, the following questions:

1. Applicant Information
 - a. Business name, address, legal structure, state of incorporation, and tax ID
 - b. USDA establishment number
 - c. Schedule of owners with percentage ownership
 - d. Number of years in business
2. Facility Plan
 - a. What resources does the applicant offer in aiding with the design, development, engineering, and construction of the facility?
 - b. What has the applicant done, and/or what does the applicant plan to do, to assist in providing or sourcing funding and/or support for the facility?
 - c. Describe the applicant's plans for adopting and implementing renewable and other energy efficient technologies.
3. Operations and Services
 - a. Does the applicant propose to assume full and exclusive management and operation of the facility, or partial or shared access? If partial or shared access is proposed, what measures does the applicant propose to facilitate shared management and with whom/what entities would management be shared?
 - b. How will the applicant ensure humane and low stress livestock handling practices are in place?
 - c. How will the applicant ensure that Watauga area farmers will not be excluded from slaughter and processing services?
 - d. How will the applicant price services, and can the applicant demonstrate sustainable profitability at the intended price points?
 - e. How does the applicant propose to handle waste from the facility? Are there any plans to process or repurpose byproduct?
4. Capacity
 - a. Recognizing that the planned facility is intended to have space for slaughter only, and not further processing - describe applicant's capacity for further processing, packaging, and labeling offsite

- b. Include a description of total capacity in pounds processed, and in beef equivalent number of head processed per year
 - c. What capacity does the applicant have for safely handling and transporting fresh meat to other facilities under temperature control?
5. USDA and Regulatory Compliance
 - a. Describe the applicant's experience operating in meat processing under USDA inspection?
6. Product Sales
 - a. What experience does the applicant have in selling, marketing, and distributing locally produced meat and/or other products?
 - b. How does the applicant plan to create a market for beef and other products produced from cull and locally purchased animals from other farmers?
7. Leadership and Staffing
 - a. Provide profile of management and key leadership
 - b. How will the applicant recruit and staff the facility? Describe proposed pay scale and benefits.

Evaluation Criteria

Proposals will be evaluated based on the following criteria:

- Experience and expertise in processing meat under USDA inspection
- Proposed management and operation plan for the slaughter plant
- Qualifications of key personnel
- Financial proposal
- References

Timeline

Proposals must be submitted to Watauga County by **[date]**. The county government will review the proposals and select a candidate (or candidates) to manage and operate the slaughter plant.

Contact Information

If you have any questions about this RFP or the slaughter plant project, please contact [name] at [email address] or [phone number].

Additional Information

In addition to the requirements listed above, the county government is also interested in proposals that include the following:

- A plan to promote sustainable and humane animal husbandry practices
- A plan to reduce food waste
- A plan to create jobs in the community
- A plan to support local businesses and organizations

The county government is committed to building a slaughter plant that will serve the needs of local farmers and the community. We look forward to receiving your proposals.

Kill-Chill Project Q & A (for Town Council Packets/Public Information)

What is the current demand for the facility? Why was it proposed?

The idea for this project stemmed from capacity restrictions that directly & immediately impacted our local meat producers/farmers during 2020. Since March 2020, bottlenecks at meat slaughter & processing plants (state and regionwide) have reduced capacity and caused delays for area cattle producers. Many processors where local producers take their animals for processing had lag time/backlogs of over 1 year. Watauga Butchery is the High Country's only USDA-certified facility which opened and received its first carcasses for processing in July 2020. While the facility has a current processing capacity of over 100 animals per month, there is extremely limited USDA-certified *slaughter* capacity and therefore the current facility is limited to processing only 24 animals per month. While capacity restrictions have eased somewhat since COVID, animals from our local producers still have to be transported to existing plants up to 2 hours away for USDA inspected slaughter. However, limited kill-capacity at these plants limits the number of animals that can be serviced across the region. Additionally, there is expense (and risk) when transporting animals and carcasses this distance. In Watauga County alone, there are between 100-150+ cattlemen and small-scale producers who rely on slaughter/processing capacity to feed their families, produce income for their farms, and to provide local meat to restaurants and for direct-sale to consumers. There are over 67 licensed meat handlers (commercial producers) in the core area and 166 licensed meat handlers in the other counties in NC that the facility would serve. From Sept 2020 through July 2023, from just the High Country Food Hub, local meat producers sold over \$424,000 in meat products. This does not include private commercial beef sales from individual farms, farmers market sales, direct-to-restaurant sales, etc.

The 'bigger picture' for this need for this plant is based on data from The American Farmland Trust, which recently ranked Watauga County as 39th nationally out of 3,144 counties in the US with the highest projected % of agricultural land loss by 2040. Our meat producers grow their beef on open pasture & farmland which contributes to the overall aesthetic of our county. Farmland preservation is an overarching goal of the project.

How large will the plant be?

The total footprint/design includes a 3,900 sq foot facility (plus 630 sq feet of pen space). Phase one includes capacity for slaughter and primary carcass breakdown and cooler storage. Phase 2 (pending future growth/funding) is the addition of an additional carcass cooler and a fabrication area. Phase three would include the addition of a grinding and further processing area. The layout of the plant has been designed to include these phases without having to change any of the proposed Phase 1 building.

What is current traffic situation and how will presence of a slaughter facility impact traffic?

Per NCDOT's traffic mapping studies (see [AADT website](#)), DOT reported an average of 30,500 cars per day in 2021, the most recent study, at Location 0950000058, the nearest applicable traffic measurement, which is on Highway 421 East between Bamboo Road and Landfill Road. To the East, at location 0950000185 between Innovation Drive and Mountain Bike Way, DOT reported 24,000 cars per day.

The Institute of Transportation Engineers' (ITE) Trip Generation Manual (2021 edition) specifies 4.5 vehicle trips per day per employee for Meat Packing Plants (Land Use Code 112). At a projected 5 FTE employees at full capacity, we would be adding an average of 23 trips per day to the traffic on 421, an increase of 0.15% over current average traffic at the nearest measured location. This exceeds our internal estimate of an average of 5 employee trips, 2 company truck visits, 1 inspector visit, 1 vendor trip, and 4 to 6 customer trips for animal deliveries, for a total of 13 to 15 trips per day. Rex Buck, Sanitation Operations Services Director, reports an average of 165 vpd to landfill/transfer station.

How much water is needed to process animals & how many animals will be processed at the facility?

300 gallons of water per animal (per research from University of Nebraska Lincoln, confirmed by Dunlavy Contracting). Projecting a maximum of 100 animals per week. The facility design can accommodate up to 200 but our model is not projected to reach that level. Water usage estimated to be a maximum of 30,000 gallons per week at full capacity, with an average of 27,000 gallons per week, projecting operating at 90% capacity.

Current Town of Boone Water Capacity: 4.5 million gallons per day (mgpd) (31.5 million per week)

Current draw: 1.8 mgpd

Treatment capacity: 4.5 mgpd

Current treatment: 2.5 mgpd

(from TOB Public Works)

We are projecting around 100 animals per week

Ziara, Rami. 2015. Water and Energy Use and Wastewater Production in a Beef Packing Plant. University of Nebraska Lincoln <https://digitalcommons.unl.edu/cgi/viewcontent.cgi?article=1084&context=civilengdiss>

Who will build and manage the plant?

The plant needs to be built by people who have experience in this industry. Dunlavy Contracting, with over 30 years of experience, will build this facility and also assist in the USDA program development and training. They will also assist in the startup and operations of the plant until the plant management team is in place and successful. Local contractors will be used where practical and matches the skillset required to perform the tasks at hand.

The county has an obligation to ensure the project serves all farmers and other stakeholders, and is open to considering proposals from any qualified parties who wish to have access to use or operate the facility. At the same time, we are intent on seeing the facility is operated by a capable and responsible management team, as we do not have county resources with the bandwidth nor the expertise to manage or oversee such a facility.

There are very few parties in the area who have the expertise, reputation, and track record necessary to manage a food production facility to the necessary standards. The county has an agreement in principle to lease the plant to Watauga Meats and Butchery, LLC, a local business established by a local farm family in 2020 to serve local farmers who had been displaced and left unserved by other processors in the midst of COVID shutdowns - including their own farm. The business currently operates in Vilas, using inspected slaughter services up to 3 hours away, and serves any farmers needing inspected or exempt processing for beef, pork, lamb, or goat.

The business is 100% family and employee owned, and the owners' own animals generally occupy between 10 and 20% of total capacity. The business has a membership program available to all farmers of any size which provides priority on booking reservations and waitlists and other preferential pricing and services. Any customer can participate or not participate in the membership program, and discounted memberships are offered to Watauga County residents as well as small scale farmers. The model for the program was built with small and local farmers in mind and will continue to operate with serving local farmers as a priority.

The facility is being designed for a process flow to provide for single animal batches. Contrasted with larger plants built to serve large volume producers, this plant can track each animal processed separately. This model of workflow is somewhat slower and more costly than high volume packing houses but is necessary to serve individual farmers with custom processing requests.

The business does have a plan to bring on outside minority owners as investor partners in 2024. Those investors are private individuals and families who are local to this community or from neighboring states, and each have a personal interest in the mission and purpose of the business, and desire to serve the community and sustain local agriculture. No venture capital, private equity, or large industry players are included or being considered for participation in the investor group.

Any other parties who have capabilities and expertise in operating USDA-inspected meat slaughter and/or processing, who wish to provide input or feedback, and who wish to make a proposal to be considered for management of or access to part or all of the planned facility or otherwise offer input or assistance to advance the success of the project for the benefit of the community, should contact the County Manager's office.

Who are current and future beneficiaries of slaughter facility?

Total numbers of customers served at Watauga Butchery (for processing):

430 producers have been served since 2020, with customers concentrated in and around Watauga County but stretching across Western North Carolina and as far East as Sampson County. A 'membership program' offered by the butchery allows for priority services and discounted rates for Watauga County producers, but the facility is open to ANY commercial or exempt (processing for home use) producers. The program is built to ensure that local farmers who want to have priority on bookings will not be shut out from processing the next time there is a capacity crunch across the industry. Currently there are 67 meat handlers licenses (commercial) within a 25 mile radius of Boone.

The local jobs market and local economy will also benefit, as the project will directly create at least 5 full-time positions, and further enable an additional 10+ jobs within the business. Local customers, groceries, farmers markets, restaurants, schools, and others will have increased access to locally raised farm products, with that revenue remaining here in the High Country.

What are cost-savings ?

Most local processors do not publish their pricing, however other processors are known to be at or above the retail rates offered by Watauga Butchery. One that does, Piedmont Custom Meats, charges \$89/head for slaughter and \$1.25 per pound for processing, with additional added fees for other services. Combined, their fees total \$964 to process a 700 pound carcass, compared to \$885 for Watauga Butchery retail customers, or \$850 for customers participating in the Membership Program.

Mays Meats in Taylorsville is probably the plant with the nearest available capacity, located approximately 50 miles from Boone. Assuming a truck pulling a loaded trailer gets 10 miles per gallon, that round trip costs \$42.80 at the current price of diesel, plus 2 hours of travel time for the farmer and the mileage on his/her truck and trailer, translates to a value saved of over \$100 per trip. For transport to other plants, costs exceed \$300 based on mileage & labor (Eddy Labus, Watauga County Livestock Agent). This does not consider emissions reductions due to shorter travel time/distance, which would be significant.

Growers who choose to have animals processed off the mountain is a choice. There WILL be capacity at the proposed plant.

How much opportunity will there be for home/exempt slaughter?

Exempt slaughter (slaughter for home consumption—beef that is slaughtered/processed but not sold commercially) will be accommodated the same way as inspected slaughter - the only difference being that exempt slaughter may occur on days when the USDA inspector is not required to be present, but would occur in exactly the same way. With possible exceptions, our intention is to operate the plant with all animals harvested under inspection, as there would be

little or no additional cost for farmers, and coordination, storage, and handling of carcasses is made easier if everything in the plant is USDA inspected, even if being processed for exempt purposes.

The NCDA is currently implementing new restrictions and regulations that will significantly limit, though not totally eliminate, on-farm exempt slaughter. For farmers who want to bring on-farm exempt slaughtered animals to us for processing, those animals will need to meet certain standards for cleanliness and food safety, and would generally be received directly at the Vilas or Zionville processing facility, with no need to enter the slaughter plant, but we will be positioned to accommodate all local farmers who can be processed to the extent permitted by NCDA and USDA regulations and restrictions. We do not foresee any circumstance where a local farmer would be turned away for processing due to capacity constraints. Of course, as with all processing plants, scheduling and booking in advance is a factor, as most independent slaughterhouses are still holding appointments up to a year out.

How many employees will the plant employ? Full time vs part time

A crew of 3 to 5 required to slaughter up to 25 head per day. At full capacity, we expect to operate two beef slaughter days per week, with one additional day to be used for pork, lamb, and goat. Total of 5 to 6 full-time equivalent employees working at the plant with wages from \$15-17 per hour and up. Staffing will include a combination of full-time and part-time, depending on labor availability and employee interests, as well as labor demands at other facility(ies). The plant will receive applications and hire the most qualified applicants that are diverse in nature and can do a variety of jobs as this will be a very small plant and employees will need to perform a variety of jobs.

How is the plant regulated?

Daily oversight and inspection by USDA's Meat & Poultry Inspection Division, operating within all USDA regulations, as well as according to Watauga Butchery's Hazard Analysis and Critical Control Points (HACCP) Plan.

Will the facility produce smoke or steam? What are the actual emissions if any?

Very few pieces of equipment in a slaughterhouse are be capable of producing smoke or steam - some plants may use incinerators, but ours will not. Refrigeration equipment will run on 3-phase power from the electrical grid, and we've invited the town to collaborate on implementing solar and other renewable and energy efficient technology - currently, there are no plans for onsite power generation. Hogs will typically be scalded for hair removal, with water temperatures at 150 degrees. High temp wash down water for clean-up and sanitation is typically maintained at 180 degrees, which will produce some moist air, but not steam. The plant will use Freon, which when released by accident to the environment has not been found to be a risk, unlike ammonia refrigerant which is dangerous.

Will there be odor from the animals and the rendering products?

The pens will be made to accommodate smaller loads of cattle and or lots from smaller producers. There should not be more than 15 to 20 head on the site at any one time with proper scheduling of arrival of the animals. The pen area will have an easy air access design and yet animals will not be visible from outside of the plant. Animals will be moved and held in compliance with the USDA Humane Handling Regulations.

The animals stored and handled on site will not be exposed to the outside environment or be on site long enough to produce enough waste to become a smell issue, the barn will be washed down between uses each day and be kept fresh. The rendered material will also be fresh and hauled off daily. This will eliminate the risk of smell as nothing smells in this process unless it starts to decay or rot. This will not be the case as it will maintain in a fresh state of condition and hauled off daily. The nearest residential property to the plant is 2,050 feet away and the nearest commercial businesses are over 600 feet away.

What materials go into sewer system and what type of mitigation exists in the water/sewer infrastructure to mitigate?

Wastewater will be received from the production areas; water will be sent through a rotor screen that will remove heavy solids and any particles of meat and fat. From there the water will go through a small equalization tank with an air infusion to keep all particles mixed with the water along with any chemical addition at this phase. From there the water will be sent through a daff that will have air injected into it with the application of chemicals to bind the solids together and use a skimming method to remove the solids from the top of the tank with the cleaned water being released at the bottom of this daff equipment, this water released will then be sent to the city wastewater stream.

The blood will be captured and added to the rendering product for shipment off site at this time.

What are other materials produced/disposed of via transfer station?

Byproducts from processing include bones, blood, hides, fat, paunch, viscera, and manure. We are working to implement as many processes for repurposing byproduct as possible, as doing so increases value-added products and reduces the cost of waste (see details below). Any waste that isn't repurposed into bone meal, blood meal, animal feed, or related byproducts, and that doesn't go into the county's compostable program, will be disposed of as is currently happening, into the waste stream at the landfill transfer station.

Our capacity for repurposing byproduct will be determined in part by availability of funding and the success of ongoing grant requests and research projects. We are also working with the county on a program for making our byproduct available as nitrogenous waste inputs into the county's planned composting program to reduce the volume of wood and plant debris being

hauled away. When other outlets are not available, there is one rendering company in the Southeast, Valley Protein (now owned by Texas-based Darling Ingredients (DAR)), that will collect bone, fat, and viscera for a fee from the slaughter plant (which they currently will not do from Watauga Butchery because of location and scale), to be rendered and further processed for pet food, grease, oil, and other purposes. We are also exploring collaboration with other NC processors for post-processing of some materials as an alternative to having to work with the rendering firm. Finally, remaining byproducts are disposed of at the landfill, as is currently being done.

- Outlets for specific byproducts:
 - Bones - Some bones are packaged and sold for bone marrow, bone broth, and dog bones (or to zoos for large animal consumption). There is an ongoing research project being led in ASU's Sustainable Development program to investigate methods of processing bones into bone meal on a small to medium scale. Bones can also be collected by Valley Protein.
 - Hides - The facility design includes a hide room where hides can be salted and preserved, and collected for bulk sale by truck load to brokers, concentrated in Boston, who export hides to tanneries, many of them located in Italy, China, or Mexico. Years ago hides were once a key source of revenue for slaughterhouses, but ironically the trend toward replacing leather with synthetic fabrics have reduced the market for animal hides in favor of plastic and petroleum-based materials, to the detriment of farmers and environmental concerns.
 - Fat - Animal fats are useful and valuable - nutrient dense and preferable for cooking and frying oils over highly processed vegetable seed oils. Most of our animal fat is processed into sausage, ground meats, and other primary food products. We also have existing demand for suet (the higher quality fat surrounding some internal organs) being used by local artisans who produce balms, lotions, candles, soaps, and other products from our fats. Other fats will be rendered into lard and tallow in our Zionville processing facility to serve restaurant customers and food distribution companies who have inquired about these products to use for cooking. Valley Protein will collect any fat that goes unused.
 - Viscera - Organs including heart, kidney, and liver are packaged and sold, and some other organs (spleen, pancreas) are requested on occasion by customers for pet feed. Other organs, referred to as "viscera", are usable for animal feed and other applications and can be hauled away by Valley Proteins, but are also suitable for composting, so our first preference will be to direct these items to the county composting system once operational.
 - Blood - Blood that can be captured in a food-safe method is marketable to ethnic food markets. Otherwise, blood can be dried and powdered to create blood meal, a valuable organic fertilizer rich in nitrogen that can be very useful to gardeners and farmers. Feasibility of processing blood into blood meal is an ongoing conversation we are working on with Cooperative Extension, and could be funded by further grant requests and/or done in collaboration with other NC

slaughterhouses. Valley Protein is also an immediate outlet for blood. A minority of blood that cannot be captured will make its way into the discharged wastewater as part of the daily cleanup and washdown process.

- Paunch and manure - “paunch” is partially digested forage, grain and feed from the animal’s digestive system. Paunch and manure are both highly valuable materials for compost - either added to the county composting system, or allowed to dry and cure on its own for spreading on pasture. Manure can also be bagged and sold to home gardeners, although we do not anticipate having sufficient volume for commercial manure distribution.

Is there a composting facility associated with the project?

While the project has not launched, the county remains highly interested in creating a composting facility adjacent to this project, which would facilitate a reduction in the volume of woody waste the county has to haul away, and create nutrient rich compost for local farmers and gardeners. With pending changes in leadership in Sanitation services, the county is continuing to evaluate feasibility and plans, possibly including a pilot project using existing technology in a prefab modular composting system as a proof of concept. This project is in the process of requesting partial funding for the composting project from a pending USDA grant program for processing projects.

Watauga County Meat Slaughter Facility 100323 BCC Meeting

Goal: provide a local solution to meet needs of livestock producers to enhance ag economy & food security.

\$4.1 million in committed funding from:

Golden LEAF Foundation

NC Tobacco Trust Fund

Appalachian Regional Commission

NC Ag Development Trust Fund

American Rescue Plan

Economic Development Administration

Opportunity Appalachia

Appropriation from state legislature

(\$500k pending from Appalachian Regional Commission)

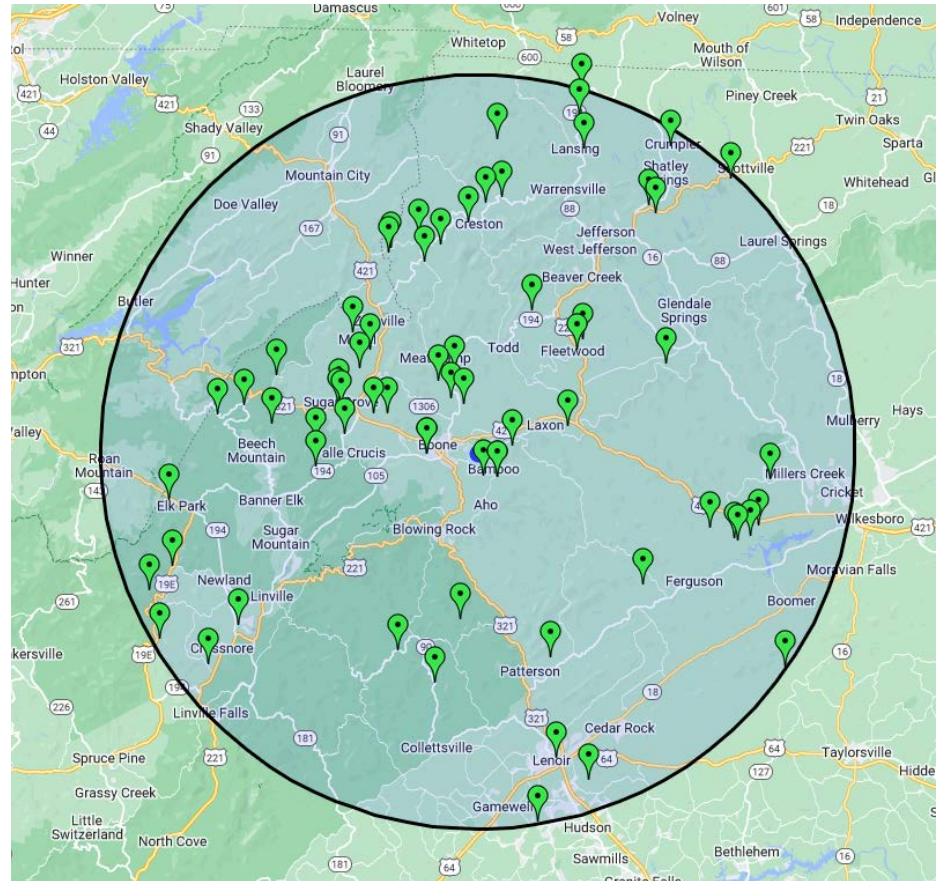
Who will it serve?

100323 BCC Meeting

67 Commercial Meat Handlers in 25 mile radius of Boone & beyond

Over 49,000 acres are currently utilized for beef cattle production, with over 24,000 head across Watauga, Ashe, Alleghany, Caldwell, Avery, and Mitchell counties. (USDA Farm Service Agency)

85-90% of farms in the High Country by value of sales make less than \$25,000/year; 70% of those sales are livestock, poultry and livestock products; Each steer retained for local meat sales can net \$500-\$1000/hd over market prices for feeders (cattle that are auction-sold); 90% of farms are less than 180 acres. (NC Choices)



Plus non-commercial meat producers. Home/family meat production

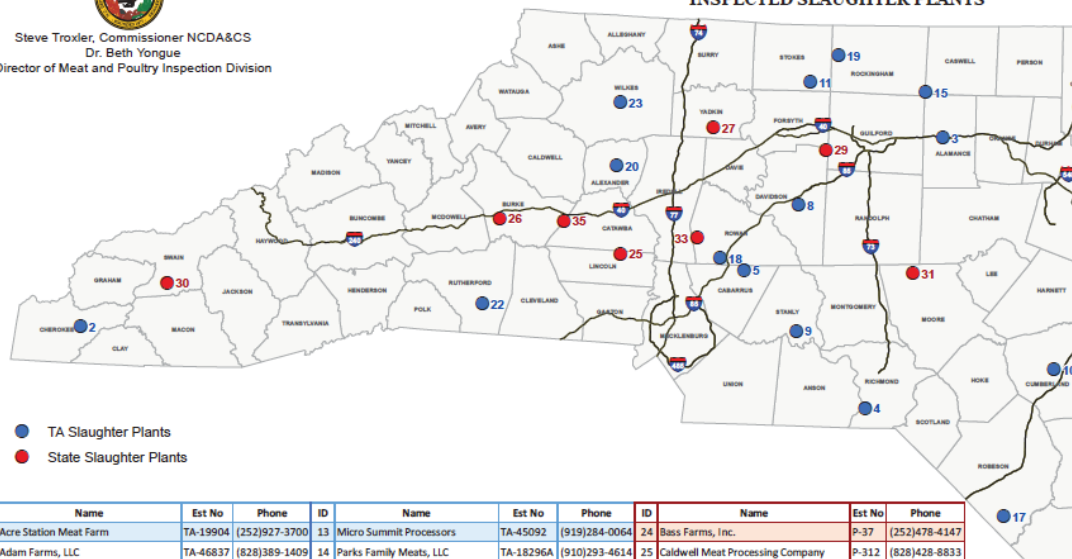
Who will it serve?

To date, Watauga Butchery has processed animals from ~430 customers from multiple counties, transporting animals up to 3 hours away for slaughter.



Steve Troxler, Commissioner NCDA&CS
Dr. Beth Yongue
Director of Meat and Poultry Inspection Division

MEAT & POULTRY INSPECTION DIVISION INSPECTED SLAUGHTER PLANTS



ID	Name	Est No	Phone	ID	Name	Est No	Phone	ID	Name	Est No	Phone
1	Acre Station Meat Farm	TA-19904	(252)927-3700	13	Micro Summit Processors	TA-45092	(919)284-0064	24	Bass Farms, Inc.	P-37	(252)478-4147
2	Adam Farms, LLC	TA-46837	(828)389-1409	14	Parks Family Meats, LLC	TA-18296A	(910)293-4614	25	Caldwell Meat Processing Company	P-312	(828)428-8833
3	City Packing Company	TA-08341	(336)227-0211	15	Piedmont Custom Meats, Inc.	TA-07975	(336)584-8247	26	Crawley's Abattoir	P-101	(828)584-6356
4	Country Slaughter & Meat Processing	TA-32012	(910)895-0838	16	Riverside Meats	TA-20981	(252)448-4047	27	Disher's Packing Company	P-152	(336)463-5548
5	Cruse Meat Processing	TA-46354	(704)786-8616	17	SCR International Corp.	TA-09199	(910)628-8267	28	Gale McLamb Meats	P-221	(910)892-7279
6	Custom Quality Packers, LLC	TA-20129	(252)235-3558	18	Select Meats, Inc.	TA-10757	(704)933-7550	29	High Point Halal Meats	P-318	(336)802-0620
7	Flowers Slaughter House	TA-21747	(252)237-2982	19	Stevens Abattoir, Inc	TA-46085	(336)949-9696	30	K & B Meat Processing	P-55	(828)488-2533
8	Fresh Halal Meat, Inc.	TA-46824	(336)259-0742	20	Wayne Mays Meat Processing #1	TA-21848	(828)632-2034	31	Key Packing Company, Inc.	P-48	(910)464-3507
9	Halal Meat Slaughter House	TA-31795	(704)474-4420	21	Wells Pork & Beef Slaughter	TA-39876	(910)259-2523	32	McLamb's Abattoir and Meats, Inc.	P-247	(919)894-2587
10	Larry's Sausage Company, Inc.	TA-08305	(910)483-5148	22	Wells, Jenkins & Wells Abattoir	TA-00881	(828)245-5544	33	McLaughlin's	P-85	(704)677-5147
11	M. L. Mitchell & Son	TA-46822	(336)591-7420	23	Wilkes Abattoir, LLC	TA-19511	(336)667-1346	34	Nahunta Slaughter House, Inc.	P-80A	(919)242-4735
12	Martin's Pork Products	TA-06720	(910)980-1501					35	Price's Custom Meat Cutting & Abattoir	P-307	(828)397-5150

Non-commercial meat producers. Home/family meat production

Meat Sales Snapshot: High Country Food Hub

30 livestock producers sold their red meat products through the Food Hub online market from 9/2020 thru 9/2023

The average sales per producer is \$14,142.77 and the median is \$9,374.90 during the 3 year period.

39,565 total pounds. Total sales = \$424,283

Sales by Category

Monday, September 11, 2023

Filter: Distribution Start: 2020-09-01 Distribution End: 2023-08-31 - Product Categories: Beef, Lamb, Pork, Specialty Meats

Meats

Sub-Category	Qty		Total Sales
Beef	21,829		\$233,917.87
Lamb	803		\$15,839.40
Pork	15,781		\$162,042.91
Specialty Meats	1,152		\$12,483.02
Meats Sub Totals:			\$424,283.20
Total			\$424,283.20

Who will operate it?

Currently, Watauga Butchery: local business (Vilas) established by a local farm family in 2020 to serve local farmers who had been displaced and left unserved by other processors in the midst of COVID shutdowns - including their own farm. Serves any farmers needing inspected or exempt processing for beef, pork, lamb, or goat.

Business is 100% family and employee owned, and the owners' own animals generally occupy between 10 and 20% of total capacity.

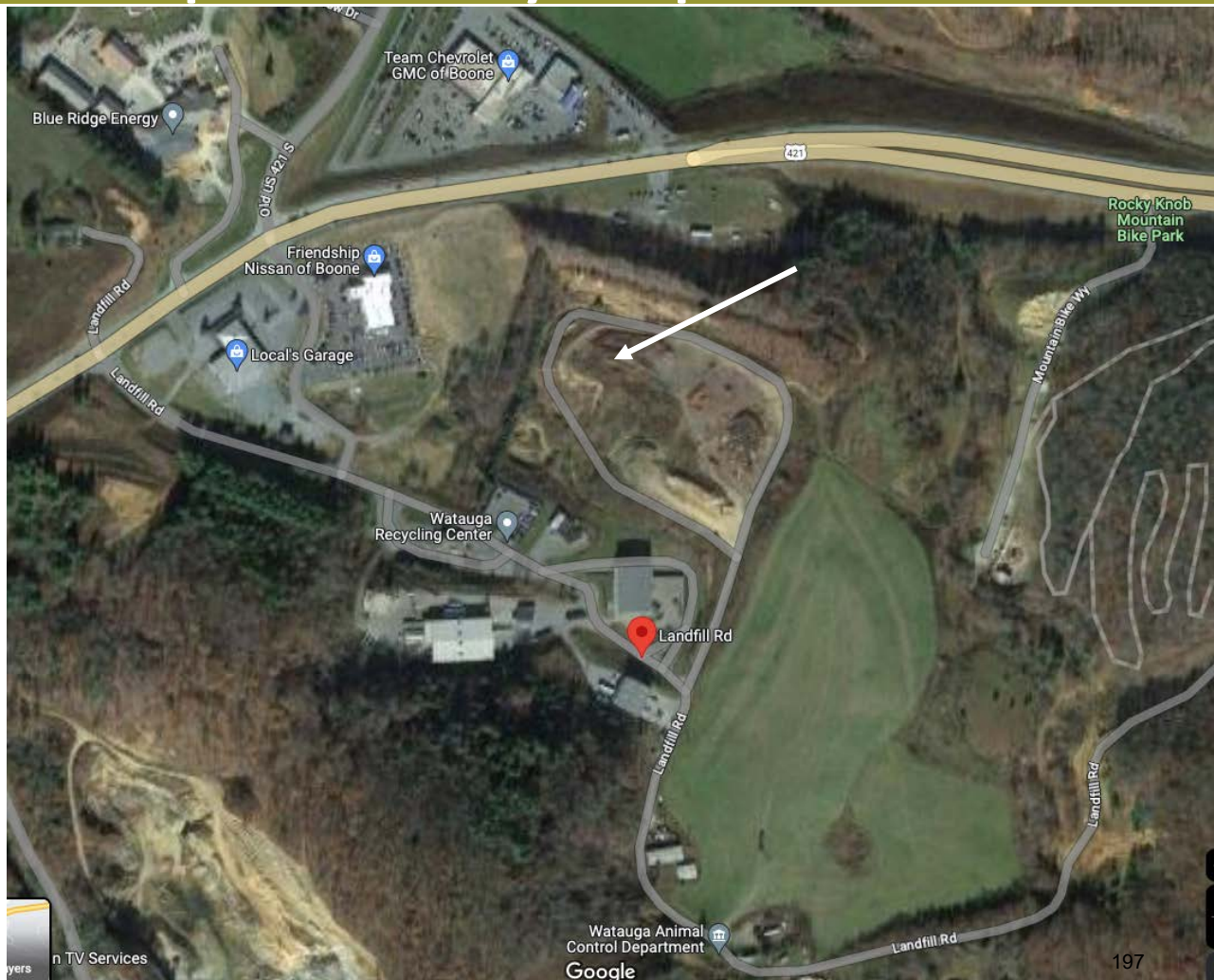
Other parties with capabilities and expertise in operating USDA-inspected meat slaughter and/or processing who are interested in a competing bid may be considered.



Watauga County Meat Slaughter Facility

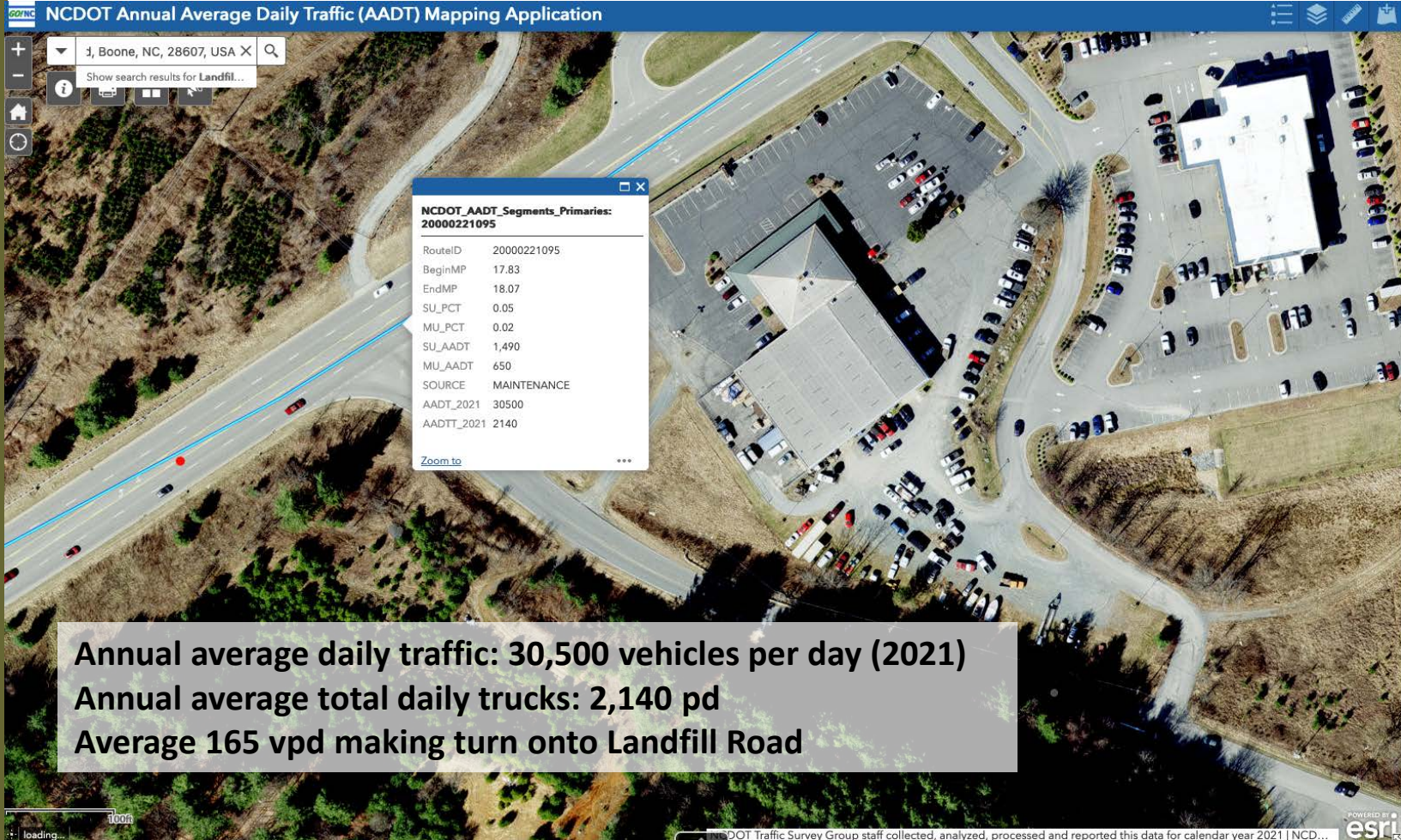
Public/Private partnership: property & facility owned by county and leased to private entity to operate

- Located at the Watauga County Landfill/Transfer Station Property
- Capacity for up to 50 animals per day max—USDA Inspected and Exempt ('home use')



What are the Traffic Considerations?

100323 BCC Meeting

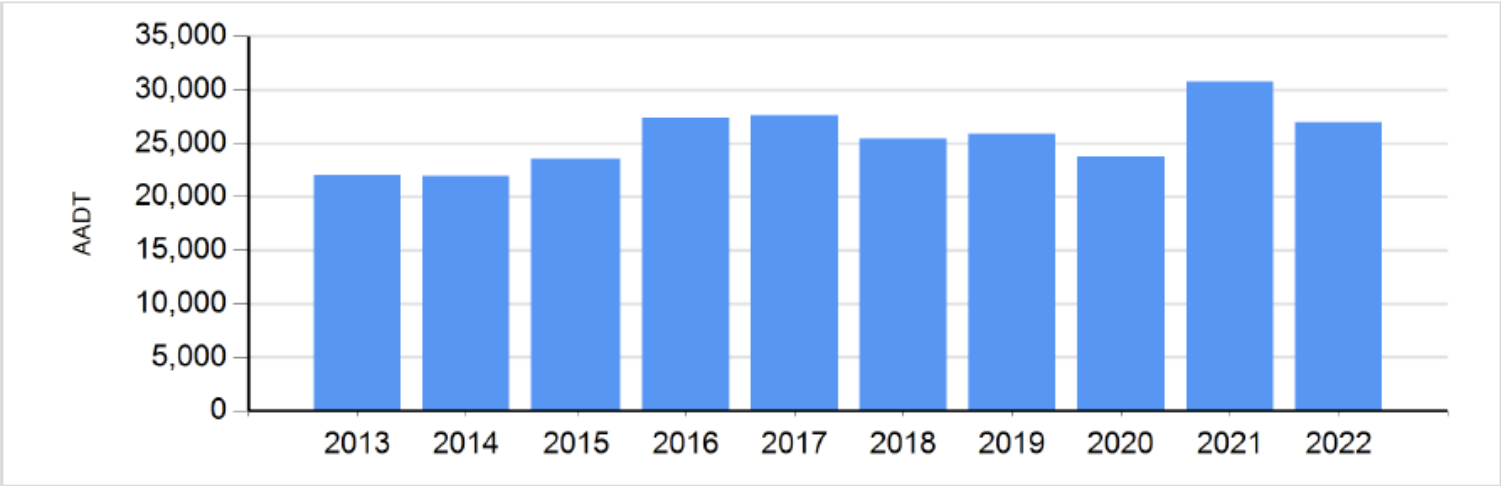


Annual average daily traffic: 30,500 vehicles per day (2021)
Annual average total daily trucks: 2,140 pd
Average 165 vpd making turn onto Landfill Road

Data provided by: Steve Piotrowski
spiotrowski@ncdot.gov
Data Management Engineer
NC DOT Traffic Survey Group

AADT by Year Comparison for 1/1/2013 - 12/31/2022
Criteria: Location ID = 0950000058, From 1/1/1900 To 12/30/2032 12:00:00 AM

District: 11 **Location ID:** 0950000058
County: Watauga **Located On:** US 221 **LRS ID:** 20000221095
Community: - **At:** SR 1655 (Landfill Rd) **LRS Point:** 17.9097300



Year	AADT	% Change YOY
2013	21,998	18.3%
2014	21,897	-0.5%
2015	23,567	7.6%
2016	27,335	16.0%
2017	27,613	1.0%
2018	25,477	-7.7%
2019	25,863	1.5%
2020	23,764	-8.1%
2021	30,732	29.3%
2022	26,959	-12.3%

**Max of 20-24 new vehicle
turns per day into
Landfill Road**

NOTE: Red text means percent change is >20%

What are water/sewer needs?

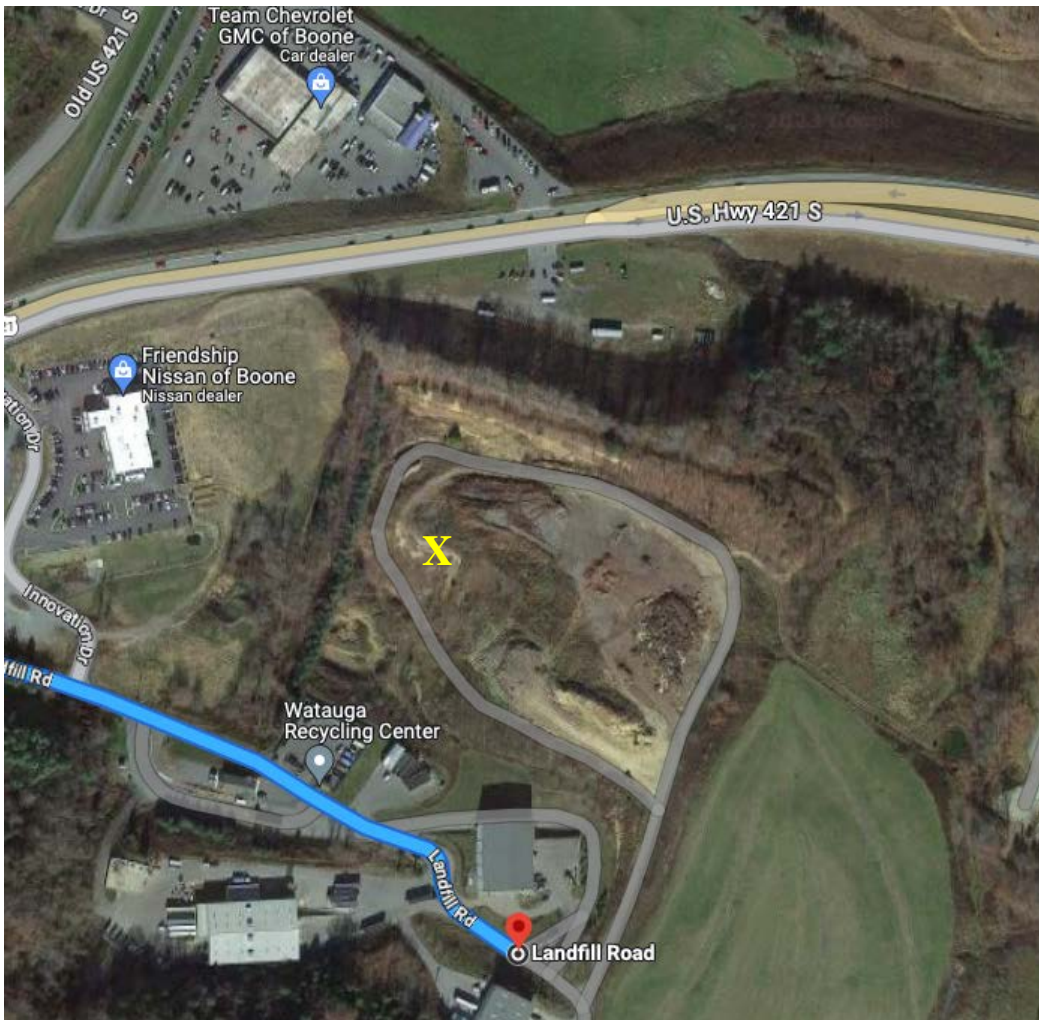
- **Average 300 gallons of water per animal (Iowa St) = ~7,500 gpd at capacity (25 animals per day max)**
- **Current Town of Boone Water Capacity: 4.5 million gallons per day (mgpd)**
Current draw: 1.8 mgpd
Treatment capacity: 4.5 mgpd
Current treatment: 2.5 mgpd
(TOB Public Works)

For comparison, apartment complexes in Boone:

- 15 unit apartment complex 23,000 gallons per month.**
- 15 unit apartment complex 38,000 gallons per month**
- 10 unit apartment complex 16,000 gallons per month**
- 11 unit apartment complex 14,000 gallons per month**
(TOB Public Works)

For Comparison...

Proposed High Country Facility



**Nearest residence:
2,049 feet way**

**Nearest Commercial:
600 feet**

For Comparison...

Apple Brandy Prime Cuts, Wilkesboro.



**200-300 feet
from public
park/recreation
areas**

For Comparison...

Mays Meats, Taylorsville



**200 feet
from S & S
Family
Restaurant**

Additional Questions & Discussion...

100323 BCC Meeting

Allen Dunlavy, Dunlavy Consulting

Bob & Gray Shipley, Shipley Farms Beef & Watauga Butchery

Additional Q & A provided in handout for council and public.

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AGENDA ITEM 9:

MISCELLANEOUS ADMINISTRATIVE MATTERS

A. Proposed Contract Amendment with The Car Park

MANAGER'S COMMENTS:

The Car Park, the current parking enforcement for the County, is requesting an increase in their contract. The current rate is \$700 per month. They are requesting an incremental increase over a minimum three-year commitment, with the first year at \$3,000/month; the second year at \$4,000/month; and \$4,250/month in the third year.

Staff has been reviewing other options such as a different provider, hiring a Sheriff's Deputy, and continued negotiations with The Car Park.

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AGENDA ITEM 9:

MISCELLANEOUS ADMINISTRATIVE MATTERS

B. Proposed Resolution Establishing the Register of Deeds Salary

MANAGER'S COMMENTS:

Per Statute, prior to the filing period for the fall elections, the Board must establish the salary for the Register of Deeds in order for filing fees to be determined as listed in the draft resolution. The entry level salary on the County's current pay plan is \$69,417.

Board action is required to set the salary by adopting the proposed resolution.

STATE OF NORTH CAROLINA

COUNTY OF WATAUGA

DRAFT

**A RESOLUTION ESTABLISHING
THE REGISTER OF DEEDS SALARY**

WHEREAS, the present Watauga County Register of Deeds salary is \$76,838; and

WHEREAS, Watauga County Commissioners desire to adopt a new salary for the office of Register of Deeds pursuant to North Carolina Statutes 153A-92 at a rate of \$69,417 for the next term of office of the then Register of Deeds; and

WHEREAS, this resolution is made more than fourteen (14) days before the last day of filing notice of candidacy for this office.

NOW THEREFORE, BE IT RESOLVED, that \$69,417 shall be the annual salary for the office of the Register of Deeds when such person elected to the office in the next general election takes said office.

ADOPTED this the 3rd day of October, 2023.

Larry Turnbow, Chairman
Watauga County Board of Commissioners

ATTEST:

(SEAL)

Anita J. Fogle
Clerk to the Board

AGENDA ITEM 9:**MISCELLANEOUS ADMINISTRATIVE MATTERS*****C. November Meeting Schedule*****MANAGER'S COMMENTS:**

The Commissioners Board Room will be used as a polling site for Election Day on November 7, 2023. Staff recommends cancelling the November 7, 2023 meeting. The second meeting is scheduled for Tuesday, November 21, 2023. Since the meeting is scheduled during Thanksgiving week, staff would recommend rescheduling the meeting to Tuesday, November 14, 2023.

Board action is required to cancel the November 7, 2023 meeting and select the date for the November meeting.

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AGENDA ITEM 9:**MISCELLANEOUS ADMINISTRATIVE MATTERS***D. Boards and Commissions***MANAGER'S COMMENTS:***Board of Adjustment*

The terms of Alyson Browett (Valle Crucis Historic District) and Emily Bish (Alternate), are set to expire in November. Neither Ms. Browett nor Ms. Bish wish to be reappointed. A volunteer application was received from Shelton Wilder who has expressed interest in serving on this Board. This is a first reading and, therefore, no action is required at this time.

Valle Crucis Historic Preservation Commission (VCHPC)

The Valle Crucis Historic Preservation Commission terms of Dr. Susan Mast and Ms. Heidi Tester expire in September. Dr. Mast and Ms. Tester are both willing to continue to serve if reappointed. A volunteer application was received from Ms. Alyson Browett who is also interested in serving on the VCHPC. The terms are for three years. These are second readings; however, Mr. Jason Walker, Planning and Inspections Director, stated that there may be more applications to come.



WATAUGA COUNTY

*Department of
Planning & Inspections*

126 Poplar Grove Connector Suite 201 • Boone, North Carolina 28607 (828) 265-8043

TTY 1-800-735-2962

Voice 1-800-735-8262

or 711

FAX (828) 265-8080

Memorandum

Date: September 6, 2023
To: Deron Geouque
From: Jason Walker
Re: Board of Adjustment – Appointment of Members

There are three positions on the Board of Adjustment that need to be reappointed or filled. Currently the positions are held by John Prickett (Howard's Creek Watershed), Alyson Browett (Valle Crucis), and Emily Bish (Alternate). Prickett has indicated that he would like to remain on the board, but Browett and Bish do not want to be reappointed. We will need to find at least 2 new board members. Their terms don't expire until November. This will hopefully give adequate time to find new members.

Volunteer Application
Watauga County Boards And Commissions

100323 BCC Meeting

If you are a Watauga County resident, at least 18 years old, and willing to volunteer your time and expertise to your community, please complete the application below and click on Print Form. Please sign and mail or fax to:

Watauga County Commissioners' Office
814 West King Street, Suite 205
Boone, NC 28607
Phone: (828) 265-8000
Fax: (828) 264-3230

Name: Shelton Wilder
Home Address: 608 Dick Watson Rd.
City: Deep Gap Zip: 28618
Telephone: (H) 828 719 1902 (W) _____ (Fax) _____
Email: esheltonwilder@gmail.com
Place of Employment: Watauga County Board of Education 1975-2013
Job Title: now I am a retired educator

In Order To Assure County wide Representation Please Indicate Your Township Of Residence:

- | | | |
|-------------------------------------|---|------------------------------------|
| <input type="radio"/> Bald Mountain | <input checked="" type="radio"/> Stony Fork | <input type="radio"/> Watauga |
| <input type="radio"/> New River | <input type="radio"/> Brushy Fork | <input type="radio"/> Cove Creek |
| <input type="radio"/> Beaver Dam | <input type="radio"/> Meat Camp | <input type="radio"/> Shawneehaw |
| <input type="radio"/> Blue Ridge | <input type="radio"/> Blowing Rock | <input type="radio"/> Laurel Creek |
| <input type="radio"/> Elk | <input type="radio"/> North Fork | <input type="radio"/> Boone |

In addition, Please Indicate If You Live In One Of The Following Areas:

- | | |
|--|--|
| <input type="radio"/> Foscoe-Grandfather Community | <input type="radio"/> Valle Crucis Historic District |
| <input type="radio"/> Howards Creek Watershed | <input type="radio"/> Winklers Creek Watershed |
| <input type="radio"/> South Fork New River Watershed | <input type="radio"/> Extraterritorial Area |

We Ask Your Help In Assuring Diversity Of Membership By Age, Gender, And Race, By Answering The Following Questions

- | | | |
|---------------------------------------|--|--------------------------------|
| Gender | Ethnic Background | |
| <input checked="" type="radio"/> Male | <input type="radio"/> African American | <input type="radio"/> Hispanic |
| <input type="radio"/> Female | <input checked="" type="radio"/> Caucasian | <input type="radio"/> Other |
| | <input type="radio"/> Native American | |

Please List (In Order Of Preference) The Boards/Commissions On Which You Would Be Willing To Serve.

1. Watauga County Board Of Adjustment
2. Library Board
3. _____

Volunteer Application
Watauga County Boards And Commissions
(Continued)

Please list any work, volunteer, and/or other experience you would like to have considered in the review of your application.

Work
Experience:

I have lived in Watauga County since 1970.
I was a teacher at Watauga High School for 38 years.
Though not a "native" my home is Watauga. I raised my family here. I believe it is one of the finest places to live in the state.

Volunteer
Experience:

I served on the Citizens Plan committee for Watauga County. I attended all of the community forums and co-led some of the sessions. I was involved with the planning and writing of the Citizens Plan for Watauga.
http://www.wataugacounty.org/app_pages/dept/planning/forms/summaryrecommendations.pdf
I was involved in the planning, development, and construction phases of the building of the new Watauga High School. As a volunteer I led community forums and during construction published a blogspot about the process of building our new high school.
WHS2010.blogspot.com

Other
Experience:

I have served as the Watauga Task Force Leader for the Mountains to Sea Trail in Watauga since 2013. I have been involved from the beginning of the trail from routing, to flagging, through construction, and certification. I am responsible for the 16 miles of trail from Blowing Rock to Deep Gap. I lead a team of volunteers who maintain this trail system.

Other
Comments:

My home is Watauga County. I raised my family here. I have lived here since 1970. It is one of the finest places to live in our state. I believe there is much to valued about Watauga. The progress we have seen in the last decade is tremendous, but I do not feel it has "destroyed" Watauga as some folks feel. I see much we can protect, plan for, and balance as we work our way through accepting progress and development as an integral part of our future. You can't stop progress, but you can plan for it.

Signature:

E. Shuster W. I. De

Date:

9-27-2023

Print Form

Reset Form



WATAUGA COUNTY

*Department of
Planning & Inspections*

126 Poplar Grove Connector Suite 201 • Boone, North Carolina 28607 (828) 265-8043

TTY 1-800-735-2962

Voice 1-800-735-8262

or 711

FAX (828) 265-8080

Memorandum

Date: September 6, 2023
To: Deron Geouque
From: Jason Walker
Re: Valle Crucis Historic Preservation Commission – Appoint of Members

There are two positions on the Valle Crucis Historic Preservation Commission that need to be reappointed or filled. Currently the positions are held by Heidi Tester and Dr Susan Mast. They both have indicated they are willing to be reappointed. Their current terms expire at the end of this month.

We have received an application from Alyson Browett expressing an interest in serving on the VCHPC.

Volunteer Application
Watauga County Boards And Commissions

100323 BCC Meeting

If you are a Watauga County resident, at least 18 years old, and willing to volunteer your time and expertise to your community, please complete the application below and click on Print Form. Please sign and mail or fax to:

Watauga County Commissioners' Office
814 West King Street, Suite 205
Boone, NC 28607
Phone: (828) 265-8000
Fax: (828) 264-3230

Name: Alyson Browett
Home Address: 4556 NC Hwy 194 S
City: Banner Elk Zip: 28604
Telephone: (H) 8289632696 (W) 5407640711 (Fax) _____
Email: abrowett@gmail.com
Place of Employment: Johns Hopkins Center for Health Security
Job Title: Senior Editor/Writer

In Order To Assure County wide Representation Please Indicate Your Township Of Residence:

- | | | |
|-------------------------------------|------------------------------------|--|
| <input type="radio"/> Bald Mountain | <input type="radio"/> Stony Fork | <input checked="" type="radio"/> Watauga |
| <input type="radio"/> New River | <input type="radio"/> Brushy Fork | <input type="radio"/> Cove Creek |
| <input type="radio"/> Beaver Dam | <input type="radio"/> Meat Camp | <input type="radio"/> Shawneehaw |
| <input type="radio"/> Blue Ridge | <input type="radio"/> Blowing Rock | <input type="radio"/> Laurel Creek |
| <input type="radio"/> Elk | <input type="radio"/> North Fork | <input type="radio"/> Boone |

In addition, Please Indicate If You Live In One Of The Following Areas:

- | | |
|--|---|
| <input type="radio"/> Foscoe-Grandfather Community | <input checked="" type="radio"/> Valle Crucis Historic District |
| <input type="radio"/> Howards Creek Watershed | <input type="radio"/> Winklers Creek Watershed |
| <input type="radio"/> South Fork New River Watershed | <input type="radio"/> Extraterritorial Area |

We Ask Your Help In Assuring Diversity Of Membership By Age, Gender, And Race, By Answering The Following Questions

- | | | |
|---|--|--------------------------------|
| Gender | Ethnic Background | |
| <input type="radio"/> Male | <input type="radio"/> African American | <input type="radio"/> Hispanic |
| <input checked="" type="radio"/> Female | <input checked="" type="radio"/> Caucasian | <input type="radio"/> Other |
| | <input type="radio"/> Native American | |

Please List (In Order Of Preference) The Boards/Commissions On Which You Would Be Willing To Serve.

1. Valle Crucis Historic Preservation Commission
2. _____
3. _____

Volunteer Application
Watauga County Boards And Commissions
(Continued)

Please list any work, volunteer, and/or other experience you would like to have considered in the review of your application.

Work
Experience:

Senior Editor/Writer, Johns Hopkins Center for Health Security, 2022-present

Adjunct Faculty, Lees-McRae College, 2022

Managing Editor (contract), Kaiser Family Foundation, 2010-2021

Owner/Manager, Edible Complex (personal health consultant/chef), 2008-2010

Chef/Catering Manager, various establishments, 2005-2010

Editor, Advisory Board Company, 2000-2005

Volunteer
Experience:

Elected Member, Valle Crucis Community Council, 2022-present

Chair, Watauga County Board of Adjustments, 2018-2021~~3~~ (stepping down)

Secretary, Valle Crucis Community Park Board of Directors, 2017-2018

Regional Coordinator/Volunteer, Appalachian Trail Conservancy, AT Community Program, 2010-2022

Program Manager/Board Secretary, Warrior Expeditions, 2013-2014

Other
Experience:

Other
Comments:

I am lucky to call Valle Crucis my home. My partner, Chris, and our dog, PandaBear Boots, and I moved here at the end of 2015 and were quickly welcomed into this fantastic community. I have been an active volunteer in the Valle Crucis and Watauga County since then and hope to continue engaging in activities that help preserve our beloved way of life and community spirit.

Signature:



Date:

9.12.23

Print Form

Reset Form

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AGENDA ITEM 9:

MISCELLANEOUS ADMINISTRATIVE MATTERS

E. Announcements

MANAGER’S COMMENTS:

The High Country Council of Governments’ 48th Annual Banquet is scheduled for Friday, October 6, 2023, from 6:00 to 9:00 P.M. in the Grandview Ballroom at The Northwest End Zone, Appalachian State University.



You are cordially invited to the
48th Annual Banquet
and meeting of High Country
Council of Governments

Event Details

Cost

\$50.00 Per Person

Date and Location

Friday, October 6, 2023

Grandview Ballroom
The Northwest Endzone
Appalachian State University
135 Jack Branch Drive
Boone, NC 28607

Schedule of Events

Reception (Cash Bar)
6:00 - 7:00pm

Presentation of Awards
7:00 - 7:30pm

Buffet Dinner
7:30 - 8:30pm

Networking
8:30 - 9:00pm

RSVP Deadline

September 22, 2023

Important Information

- ◆ Refunds can be given if cancellations are provided prior to RSVP deadline of September 22, 2023.
- ◆ If your guest is not being paid for by your local government entity or organization, please remit payment with RSVP.
- ◆ We are unable to accept payments of any kind at the door.
- ◆ Cash bar during reception accepts Mastercard & Visa only.
- ◆ Parking attendant will direct you to a handicap accessible parking area, the drop-off lane, or the general parking.
- ◆ Directions: From Rivers Street, turn onto Stadium Drive, then turn right onto Jack Branch Drive, go straight until you see the parking attendant.
- ◆ Questions? Please contact Victoria at 828-265-5434 x.101 or voxentine@hccog.org.



AGENDA ITEM 10:

BREAK

AGENDA ITEM 11:

CLOSED SESSION

Attorney/Client Matters – G. S. 143-318.11(a)(3)

AGENDA ITEM 12:

POSSIBLE ACTION AFTER CLOSED SESSION