Board of Finance

Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor

Please click the link below to join the webinar:
https://zoom.us/j/91081797319
Or Telephone: +1 305 224 1968 US
Webinar ID: 910 8179 7319

****CCTV link: https://www.youtube.com/playlist?list=PLljLFn4BZd2PwCge7lNoKug676jIf_iUA ****

1. Agenda

Subject	**1.1. Motion to amend/adopt agenda**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	1. Agenda
Department	Council and Board
Type	Action Procedural
Recommended Action	Motion to amend/adopt agenda

2. Public Forum

Subject	**2.1. Verbal Comments**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	2. Public Forum
Department	Council and Board

Type	Action Procedural
Recommended Action	open Public Forum close Public Forum

3. Consent Agenda

Subject	**3.1. Motion to adopt the consent agenda and take the actions indicated**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	3. Consent Agenda
Department	Council and Board
Type	Action (Consent) Procedural
Recommended Action	Motion to adopt the consent agenda and take the actions indicated

Subject	**3.2. November 18, 2024 Board of Finance Meeting Minutes, Draft**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	3. Consent Agenda
Department	Clerk/Treasurer's Office
Type	Action (Consent) Communication Information Minutes
Recommended Action	approve the minutes

Subject	**3.3. Authorization to Accept Grant Funds from the Patrick Leahy Lake Champlain Basin program and acquire the 0 North Avenue property - BPRW**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	3. Consent Agenda
Department	Parks, Recreation, & Waterfront
Type	Action (Consent)
Recommended Action	to approve and recommend to the City Council that it approve and authorize: 1. Acceptance of $1,228,592 in grant funds from Patrick Leahy Lake Champlain Basin Program in furtherance of acquisition, improvement, and maintenance of certain property located at 0 North Avenue; and 2. Execution of a grant agreement and all documents necessary to accept the funding by the Director of Parks, Recreation, and Waterfront , subject to the final review and approval of the City Attorney’s Office and Chief Administrative Officer; and

3. Acquisition of the 0 North Ave property for a cost not to exceed $80,000, with the understanding that the land will be conserved in perpetuity, including mayoral execution of a purchase and sale agreement and any other documents necessary to affect the transaction, subject to final review and approval of the City Attorney's Office

Subject	**3.4. Reassignment of lease for kiosk at the corner of Church St. & College St. - BWD**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	3. Consent Agenda
Department	Business and Workforce Development
Type	Action (Consent)
Recommended Action	to approve and recommend that the City Council authorize the Mayor to execute a lease agreement with a term concluding on July 31, 2026 with Taste of France, LLC for food and beverage operations in the College Street Kiosk, subject to final review and approval by the City Attorney's Office

Subject	**3.5. Sponsorship Agreements for REIB Enmpowerment Fund Awardees FY25 - REIB**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	3. Consent Agenda
Department	Racial Equity, Inclusion, & Belonging (REIB)
Type	Action (Consent)
Recommended Action	The Office of Racial Equity, Inclusion, and Belonging requests the Board of Finance approve the following motion: To approve and authorize the Interim Director of the Racial Equity, Inclusion, and Belonging Office and the Chief Administrative Officer to issue grants of City funds from the Empower Fund GL, and to execute grant agreements memorializing the same, subject to review by the City Attorney's Office, as follows:

1. to Asian General Market for a total authorized grant amount of $800;
2. to Black Bamboo Wellbeing for a total authorized grant amount of $700;
3. to Burlington School District for a total authorized grant amount of $7,250;
4. to Champlain Valley Office of Economic Opportunity for a total authorized grant amount of $2,067;
5. to Connecting Cultures for a total authorized grant amount of $750;
6. to Conscious Homestead for a total authorized grant amount of $1,500;
7. to Empress Levi Soul Food for a total authorized grant amount of $1,000;
8. to the Greater Burlington YMCA for a total authorized grant amount of $1,500;
9. to Harmony's Kitchen for a total authorized grant amount of $500;
10. to Hip-Hop For Flood Relief for a total authorized grant amount of $800;
11. to Ishmael Ahmed for a total authorized grant amount of $1,500;
12. to the Islamic Society of Vermont for a total authorized grant amount of $1,000;
13. to King Street Center for a total authorized grant amount of $1,500;
14. to Martha Kemp for a total authorized grant amount of $1,500;
15. to Mawuhi African Market for a total authorized grant amount of $1,500;

16. to Migrant Justice for a total authorized grant amount of $1,500;
17. to Mulu's Kitchen and Catering for a total authorized grant amount of $750;
18. to New American Youth on the Rise for a total authorized grant amount of $500;
19. to New American Public Health Initiative for a total authorized grant amount of $1,000;
20. to Pam's Moda for a total authorized grant amount of $900;
21. to the People's Kitchen Project for a total authorized grant amount of $1,500;
22. to Rajnii Eddins for a total authorized grant amount of $750;
23. to Raphaella Brice for a total authorized grant amount of $1,500;
24. Salome Oforiwaa for a total authorized grant amount of $800;
25. to the Somali Bantu Association of Vermont for a total authorized grant amount of $1,000;
26. to the South End Arts and Business Association for a total authorized grant amount of $2,000
27. to Spectrum Youth and Family Services for a total authorized grant amount of $1,000;
28. to the Creative Discourse Group for a total authorized grant amount of $1,000;
29. Thingz from Yaad for a total authorized grant amount of $500;
30. to Urmila Chhetri for a total authorized grant amount of $1,500;
31. to the Vermont Asylum Assistance Project for a total authorized grant amount of $500;
32. to the Vermont Language Justice Project for a total authorized grant amount of $1,000;
33. to Vermont Community Wash and Learn for a total authorized grant amount of $1,350;

For a total authorized grant expenditure in the amount of $42,917.

Subject	**3.6. Request for approval to execute a Military Air National Guard Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA) with National Guard Bureau (NGB) for reimbursement of design, administration, engineering, and construction work costs associated with the Vermont National Air Guard Aircraft System Drainage improvements - Airport**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	3. Consent Agenda
Department	Airport
Type	Action (Consent)
Recommended Action	to approve and recommend the City Council approve and authorize the Director of Aviation to execute a Military ANG Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA) with National Guard Bureau (NGB) for reimbursement of design, administration, engineering, and construction work costs associated with the VTANG Aircraft System Drainage Improvements, upon approval by the Office of the City Attorney

4. Deliberative Agenda

Subject	**4.1. Addition of a new position: Airport Maintenance Worker II at the Patrick Leahy Burlington International Airport - Airport/HR**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	4. Deliberative Agenda
Department	Airport

Type	Action
Recommended Action	to approve and recommend that the City Council approve the addition of an additional full time Grade 14 AFSCME position in the existing "Airport Maintenance Worker II" job category within the Landslide Division at the Leahy Burlington International Airport
Subject	**4.2. BED U.S. Department of Transportation Charging & Fueling Infrastructure grant - BED**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	4. Deliberative Agenda
Department	Burlington Electric Department
Type	Action
Recommended Action	to approve and recommend the City Council approve and authorize the BED General Manager or their designee, subject to final review and approval by the City Attorney's Office, to accept and execute the grant agreement for a U.S. Department of Transportation Federal Highway Administration Charging & Fueling Infrastructure award
Subject	**4.3. Wastewater Plant Operator Reclassification Grievance Agreement - DPW**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	4. Deliberative Agenda
Department	Public Works Department
Type	Action
Recommended Action	to approve and recommend City Council approve the attached "Memorandum of Agreement Between AFSCME Local #1343 and the City of Burlington Re: Grievance Regarding Main Plant Wastewater Operators and Retroactive Pay" authorizing the pay of $17,750 in total wages to identified, eligible employees presently holding the positions of Wastewater Operator II and Senior Wastewater Operator and employed with the City as of May 5, 2023, and further authorize the Director of Public Works to execute said agreement on behalf of the City
Subject	**4.4. Resolution: Authorization For <u>$18,330,720</u> Amended Step III Loan From Vermont Clean Water State Revolving Fund And For Construction Contract With PC Construction For Up To <u>$15,540,800</u> For Headworks Improvements (Stage 0) At The City's Three Wastewater Plants - DPW/Water Resources**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	4. Deliberative Agenda
Department	Public Works Department - Water Resources
Type	Action Resolution
Recommended Action	tp recommend that the City Council approve the attached resolution

Subject	**4.5. FY2025 Budget to Actuals Review through October 31, 2024 - C/T**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	4. Deliberative Agenda
Department	Clerk/Treasurer's Office
Type	Discussion Information

5. Adjournment

Subject	**5.1. Motion to adjourn**
Meeting	December 9, 2024 - Board of Finance Meeting - Monday, December 9, 2024, 5:00 PM, Bushor Conference Room, 149 Church Street, 1st Floor
Category	5. Adjournment
Department	Council and Board
Type	Action Procedural
Recommended Action	Motion to adjourn

BURLINGTON BOARD OF FINANCE
BUSHOR CONF. ROOM, FIRST FLOOR, CITY HALL *OR*
REMOTE MEETING WITH CALL-IN NUMBER
BURLINGTON, VERMONT
MINUTES OF MEETING
DRAFT
November 18, 2024

MEMBERS PRESENT:	Ben Traverse (at 5:33 PM) Mark Barlow Sarah E Carpenter Joe Kane Emma Mulvaney-Stanak
OTHERS PRESENT:	Katherine Schad Sophie Sauve Cindi Wight Kara Alnasrawi Alex Bacheller Brian Pine Todd Rawlings

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1.0 CALL TO ORDER and AGENDA

1.1 Motion to amend/adopt the agenda
Mayor Mulvaney-Stanak called the Board of Finance meeting to order at 5:30 PM

MOTION by Councilor Barlow, SECOND by Councilor Carpenter, to amend and adopt the agenda as follows:

- **Remove from the consent agenda item 3.6 and place it on the deliberative agenda as item 4.1 (per CAO Schad)**

VOTING: unanimous; motion carries (City Council President Traverse absent for vote).

2.0 PUBLIC FORUM

2.1 Verbal Comments
None.

3.0 CONSENT AGENDA

3.1 Motion to adopt the consent agenda (as amended) and take the actions indicated.
3.2 Board of Finance November 4, 2024 Draft Minutes – approve the minutes.

3.3 Contois Auditorium HVAC Rehabilitation Work – BPRW - approve and authorize the execution of a contract with Vermont Mechanical Inc., for a price not to exceed $69,977.88, to provide services related to the replacement of boilers in City Hall, plus a project contingency of $3,500.00 (for a total approved project expenditure including contingency not to exceed $73,477.88), and to authorize Cindi Wight, Director of Parks, Recreation & Waterfront, to execute the contract, any related documents needed to carry out the project, and any contract amendment necessary to utilize the project contingency, subject to review by the City Attorney’s Office.
3.4 City Hall Boiler Replacement – BPRW - approve and recommend that the City Council approve and authorize the execution of a contract with Vermont Mechanical Inc., for a price not to exceed $105,998, to provide services related to the replacement of boilers in City Hall, plus a project contingency of $5,300 (for a total authorized project expenditure including contingency not to exceed $111,298), and to authorize Cindi Wight, Director of Parks, Recreation & Waterfront, to execute the contract, any related documents needed to carry out the project, and any contract amendments necessary to utilize the project contingency, subject to review by the City Attorney’s Office.
3.5 Engineering Services for Harbor Dredging Contract – BPRW - approve and authorize the execution of a contract with VHB, Inc. for a price not to exceed $74,579 for the Waterfront Harbor Dredging project, plus a project contingency of $9,728, for a total authorized project expenditure not to exceed $74,579 and to authorize Cindi Wight, Director of Parks and Recreation, to execute the contract and any related documents needed to carry out the project, subject to the review of the City Attorney’s Office.
3.6 Authorization to Accept Grant Funds for Oakledge Universally Accessible Playground Project – BPRW **NOW AGENDA ITEM 4.1**

MOTION by Councilor Carpenter, SECOND by Councilor Barlow, to adopt the consent agenda and take the actions indicated for items 3.1-3.5.

VOTING: unanimous; motion carries (City Council President Traverse absent for vote).

4.0 DELIBERATIVE AGENDA

4.1 Authorization to Accept Grant Funds for Oakledge Universally Accessible Playground Project – BPRW **WAS CONSENT AGENDA ITEM 3.6**
Parks Comprehensive Planner Sauve said that this award was originally requested and approved in 2020 but that due to a delay in receiving funds and a subsequent inflation-driven cost increase from the original estimate, the City requested more funding from the State of Vermont to cover the remainder of the project. She said that this item relates to accepting the additional funding that was requested of the State.

MOTION by Councilor Carpenter, SECOND by Councilor Barlow, to retroactively approve and recommend that the City Council authorize the acceptance of grant funds in the amount of $724,979 from the State of Vermont Land and Water Conservation Fund for the Oakledge Universally Accessible Playground Project and authorize the Director of Parks, Recreation and Waterfront to execute the grant agreement and to take such further actions and execute such further instruments as may be necessary or convenient to effectuate the transactions contemplated hereby, subject to the final review and approval of the City Attorney’s Office.

VOTING: unanimous; motion carries.

4.2 Burlington’s Construction and Weatherization Workforce Training Program under Rebuilding American Infrastructure with Sustainability and Equity (RAISE) – Business and Workforce Development
Director Alnasrawi began by noting that DPW received a RAISE grant to reconnect the street grid and conduct public infrastructure improvements on Bank and Cherry Street in relation to the mall project, and that with this federal funding came a mandated requirement that a portion of it be spent on workforce development. She said that the City posted an RFP to run these workforce development projects and

selected ReSOURCE, which is proposing to run these projects in coordination with Vermont Works for Women and Vermont Adult Learning. She said the goal of the projects is to graduate 54 individuals in Construction 101, 99 individuals in weatherization, HVAC, and heat pump, and 36 individuals in heavy equipment operation. She noted that this would be run in cohorts and that there are stipends for things like childcare, and that it includes on-the-job training.

MOTION by City Council President Traverse, SECOND by Councilor Barlow, to approve and recommend that the City Council authorize the Director of Business & Workforce Development to execute a three-year contract and any other related documents necessary to carry out the agreement with ReSOURCE in an amount up to $995,704.00 for the workforce development training of Burlington's Construction and Weatherization Training Program, subject to the review and approval of the City Attorney.

VOTING: unanimous; motion carries.

4.3 Resolution: Authorization to Accept U.S. Department of Housing And Urban Development Lead Hazard Control And Healthy Homes Grant – CEDO
Director Pine began by speaking about the origins of the lead/healthy homes grant work and who these programs serve. He said that this item is related to accepting a lead hazard control and healthy homes grant from the federal government in the amount of $4,830,890, and that the City will have 4 years to spend down the full amount of the grant. Assistant Director Rawlings also noted that the local match rate for this funding is extremely low and this is a grant for a very high-value program.

MOTION by Councilor Carpenter, SECOND by Councilor Barlow, to recommend that the City Council approve the attached resolution.

VOTING: unanimous; motion carries.

4.4 Position Updates – BED/HR
BED General Manager Springer began by noting that this item relates to updates for 9 positions within the Burlington Electric Department. He said that 8 of them are in the generation portion of the business and one is within the innovation center, and would convert a vacant position into a different category for recruiting. He noted that the changes result in a net decrease of over $70,000 because BED is holding some positions vacant for savings purposes. Mayor Mulvaney-Stanak noted that most of these positions are part of a larger multi-year process around a tiered staffing structure, which allows for more career ladders and career development within the City.

MOTION by Councilor Barlow, SECOND by Councilor Carpenter, to approve and recommend approval to the City Council for the following: • Update the minimum of the pay range for the Director of Generation Operations, a Regular, Full-time, Exempt, Non-Union, Grade M30 position, from ($122,335.62-$189,728.45) to ($138,501.77-$189,728.45); • Update the minimum of the pay range for the Director of Generation Engineering & Maintenance, a Regular, Full-time, Exempt, Non-Union, Grade M30 position, from ($122,335.62-$189,728.45) to ($138,501.77- $189,728.45); • Convert the existing Supervisor of Plant Maintenance, a Regular, Full-time, Exempt, Non-Union, Grade NS7 ($73,082.26 -$119,805.30) position, to a Working Crew Leader Generation Maintenance position, a Regular, Full-time, Non-Exempt, Union, Grade F22 ($68,681.97-$112,593.55) position. The Working Crew Leader Generation Maintenance position will report to the Director of Generation Engineering & Maintenance; •Update the tiering levels, titles, classifications, and job descriptions for the Electrician Production , a Regular, Full-time, Non-Exempt, Union position, to: Electrician Lead Worker Generation, Grade F20 ($64,916.80-$106,421.12); Electrician I – Generation, Grade 13 ($61,280.34-$100,459.4240); Electrician II – Generation, Grade 11 ($55,282.66-

$90,627.26); and Electrician III – Generation, Grade 9 ($52,440.54-$85,499.23); • Update the tiering levels, titles, classifications, and job descriptions for the Engineering Production Technician, a Regular, Full-time, Non-Exempt, Union position, to: Generation Technician I, Grade F20 ($64,916.80-$106,421.12); Generation Technician II, Grade 13 ($61,280.34-$100,459.42); and Generation Technician III, Grade 10 ($53,423.34-$87,579.23); • Update the tiering levels, titles, classifications, and job descriptions for the Power Production Technician, a Regular, Full-time, Non-Exempt, Union position, to: Hydro Generation Technician I, Grade F20 ($64,916.80-$106,421.12); Hydro Generation Technician II, Grade 13 ($61,280.34-$100,459.42); and Hydro Generation Technician III, Grade 10 ($53,423.34-$87,579.23); • Update the tiering levels, titles, classifications, and job descriptions for the Mechanic 1st Class, a Regular, Full-time, Non-Exempt, Union position, to: Mechanic I, Grade 12 ($58,719.65-$96,261.78); Mechanic II, Grade 11 ($55,282.66-$90,627.26); and Mechanic III, Grade 9 ($52,440.54-$85,499.23); • Create tiered job descriptions for the Generation Generalist, a Regular, Full- time, Non-Exempt, Union position, to allow employees to progress from Generation Generalist II, Grade 5 ($46,196.59-$75,732.18) to Generation Generalist I, Grade 7 ($48,546.58-$79,584.54); • Convert the existing Sr. Innovation Project Specialist/Customer Care Representative, a Regular, Full-Time, Non-Exempt, Union, Grade 9 or 11 (depending on tiered level) position, to a Resource Planner position, a Regular, Full-time, Non-Exempt or Exempt (depending on tiered level), Union, Grade 8, A4, or A6 (depending on tiered level) position reporting to the Director of Policy & Planning.

VOTING: unanimous; motion carries.

4.5 Authorizing Expanded Downtown Security Services
City Council President Traverse began by noting that Councilors and others continue to hear downtown businesses, shoppers, and local residents express concern for community safety, and that the business community continues to complain of suffering from rampant retail theft and concerns around public safety resources being available to respond to those issues. He said they also know that the upcoming holiday season is vital to the success of the downtown business community, and the City has an obligation to support its business community and local residents and visitors to feel safe and secure downtown. He said that though they have an expanded market campaign for the winter holiday, they haven't offered expanded security services for this winter season like they have in the past, and he is hoping to explore an arrangement to secure security services. He spoke about offering this to the Burlington Police Department at a premium rate, and said that officers are excited about the prospect of this. He said that with the $60,000 currently earmarked for this from the police salary line item in the FY25 budget, that would buy about 40 days worth of coverage at $80-87 per hour if every shift were staffed over the course of the holiday season. He suggested that instead of looking directly at the salaries line item in the Police Department budget, they should authorize the Chief Administrative Officer to look at the entirety of BPD's budget to fund this initiative.

Mayor Mulvaney-Stanak said that while she supports the spirit of this, she isn't confident that the funding can come just from the City alone, given where certain parts of the Police Department budget (such as overtime) are trending. Chief Administrative Officer Schad noted that the City is 37% of the way through the year and the Police Department is coming in at 34% of expenses, and are very close to on-budget. She said that if the City looks to some of the other lines, they may be able to find funds in the administrative or community support lines. She said the police budget doesn't currently have a large surplus and has large attrition assumptions baked into it. Mayor Mulvaney-Stanak said that given that in the past, where the City has partnered with philanthropists and donors to share in the security costs, she would be more willing to support a motion that includes more cost-sharing between private entities and the City.

Councilor Kane said he is supportive of having more officers downtown, but said he would need to see more data around overtime pickup rates, and said a better approach may be to work this into the next police union contract. He also noted that there is an interest in utilizing funds through the Church Street Marketplace to write grants for private security services. He said he is open to a broader conversation about overtime in the Police Department, but said the City doesn't have enough data or context to make an informed decision on this at this juncture.

Councilor Barlow noted that he and City Council President Traverse met with several retailers downtown and said they expressed concern about their ability to survive with the rampant retail theft occurring in their businesses. He said many of them talked about the lack of a uniformed officer presence downtown. He said that he considers this a crisis and an emergency, and said he would very much support spending $60,000 on it.

City Council President Traverse said that whatever action the Council takes does not force the Administration's hand, but authorizes the Administration to take action should they elect to do so. He said the language also authorizes the Administration to spend up to $60,000, but could spend less if they secure funding elsewhere.

Councilor Kane asked why the City can't use other officers than its own for this work, given that the uptake in overtime shifts for BPD isn't high and this could further depress them. City Council President Traverse replied that he isn't sure there are other outside officers available to do this work, given that other communities are also clamoring for police resources right now, too. He said that offering a rate higher than overtime is also an incentive for officers in BPD to engage in this work.

Councilor Carpenter said that this same situation occurred last year and that the City should be more proactive in anticipating these types of security needs for the holiday season, given that Thanksgiving is next week. Mayor Mulvaney-Stanak agreed, saying that it would be prudent to be more proactive about this in future years. She said she would also like to see this security support effort be a joint activity between the City and private sector, in terms of cost-sharing.

MOTION by City Councilor President Traverse, SECOND by Councilor Barlow to recommend that the City Council approve and authorize the Chief Administrative Officer to make a FY25 budget adjustment that transfers up to $60,000 to the CSM from the BPD FY25 budget, and to authorize the Director of Business & Workforce Development to enter into a contract between the CSM and BPOA for security services to be provided under the terms and conditions set forth in this memorandum.
DISCUSSION:

- **Councilor Kane said he would be supportive of language amending the motion that doesn't assume that an agreement would be entered into between the Church Street Marketplace and BPOA, given that private security services or other public law enforcement entities could also fill some gaps. Mayor Mulvaney-Stanak echoed this support.**
- **Councilor Barlow pointed out that Chief Murad noted that there needs to be a law enforcement agency present in order to have jurisdiction on the Marketplace, even though private security could provide services within private businesses (but would ultimately need to connect with the Police Department to enforce any penalties).**

VOTING: 4-1; motion carries (Councilor Kane dissenting).

5.0 ADJOURNMENT
5.1 Motion to Adjourn

With no further business and without objection the meeting was adjourned at 6:23 PM.

RScty: AACoonradt

MEMO

Date: **December 9, 2024**
To: **Board of Finance and City Council**
From: **Cindi Wight, Director, Department of Parks, Recreation & Waterfront,**
Re: **Authorization to Accept Grant Funds from the Patrick Leahy Lake Champlain Basin program and acquire the 0 North Avenue property**

I. Purpose

The Department of Parks, Recreation and Waterfront (BPRW) seeks approval to:

- Accept $1,228,592 in grant funds from the Patrick Leahy Lake Champlain Basin Program (LCBP).
- Use the funds for:
  1) Acquiring the 0 North Ave property
  2) Conducting a three-year intensive stewardship of the land
  3) Providing educational opportunities for the Burlington School District
  4) Evaluating the feasibility of constructing a boardwalk and viewing platform, and proceeding if permitted by state wetland regulations
  5) Replacing the existing staircase if necessary
  6) Installing interpretive displays and a kiosk
  7) Gathering community input on proposed improvements.

II. Background

The 0 North Ave property, owned by the Larkin Family, is a high-priority acquisition for the City due to its unique environmental and recreational value. The parcel contains a Class 1 wetland and is contiguous with the city-owned Northshore Natural Area.

In the spring of 2024, LCBP launched a zero-match grant program with a pool of $6,000,000. This was a timely opportunity to pursue the acquisition. To support the acquisition process, the City received $6,000 from the Vermont Housing and Conservation Board for survey and appraisal expenses.

The Larkin property serves as a critical wildlife corridor connecting Lake Champlain to upland areas such as Derway Cover (managed by the Winooski Valley Park District). Currently access to the lake from the northern end of the property is restricted by fencing and “No Trespassing” signs limit public use.

Planned improvements include interpretive displays, a potential accessible boardwalk leading to a viewing platform and other measures to enhance public enjoyment and education while preserving the wetland’s integrity.

The City will partner with the Winooski Valley Park District, through the Wildways program to provide educational opportunities for students, assist with grant management and support stewardship efforts along with our Conservation team. The acquisition has also received unanimous support from the PACC members at their July 10, 2024 meeting.

III. Land Restriction

Under the grant agreement, the land must be conserved in perpetuity to:

- Protect or enhance water quality and aquatic habitats
- Mitigate climate change impacts and improve climate resilience

IV. Current Tax Rate

The property currently generates $6,498.76 annually in property taxes, including $2,240.19 for the municipality. Upon acquisition, these revenues will cease as the property will become a City park.

Attached: Parcel map & support letter from John Larkin, LLC

DEPARTMENT RECOMMENDATION

Board of Finance Motion:

To approve and recommend to the City Council that it approve and authorize:

1. Acceptance of $1,228,592 in grant funds from Patrick Leahy Lake Champlain Basin Program in furtherance of acquisition, improvement, and maintenance of certain property located at 0 North Avenue; and
2. Execution of a grant agreement and all documents necessary to accept the funding by the Director of Parks, Recreation, and Waterfront , subject to the final review and approval of the City Attorney's Office and Chief Administrative Officer; and
3. Acquisition of the 0 North Ave property for a cost not to exceed $80,000, with the understanding that the land will be conserved in perpetuity, including mayoral execution of a purchase and sale agreement and any other documents necessary to affect the transaction, subject to final review and approval of the City Attorney's Office.

City Council Motion:

To approve and authorize:

1. Acceptance of $1,228,592 in grant funds from Patrick Leahy Lake Champlain Basin Program in furtherance of acquisition, improvement, and maintenance of certain property located at 0 North Avenue; and
2. Execution of a grant agreement and all documents necessary to accept the funding by the Director of Parks, Recreation, and Waterfront, subject to the final review and approval of the City Attorney's Office and Chief Administrative Officer; and
3. Acquisition of the 0 North Ave property for a cost not to exceed $80,000, with the understanding that the land will be conserved in perpetuity, including mayoral execution of a purchase and sale agreement and any other documents necessary to affect the transaction, subject to final review and approval of the City Attorney's Office.

Vermont Parcel Program

2/26/2024, 9:27:41 PM

VT Parcels

VCGI Color Imagery Service

Red: Band_1

Green: Band_2

Blue: Band_3

1:4,514

0 0.04 0.08 0.16 mi

0 0.05 0.1 0.2 km

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Web AppBuilder for ArcGIS

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Dear Members of the City Council:

John Larkin, LLC is writing to express our intent to sell a 7-acre parcel of land along Lake Champlain to the City of Burlington for a price not exceeding $80,000. We will secure an appraisal of the property and If our appraisal comes in over $80,000, we will gift the difference through a bargain sale.

Our family has owned the land for nearly thirty years. The parcel is home to one of Vermont's few Class 1 wetlands, making its conservation and protection an important priority for us and the broader community.

It has been a privilege for our family to steward this unique land, and we firmly believe that transferring ownership to the City will best support the long-term conservation of its unique ecosystem. We are confident that the land will be preserved and protected through public ownership, ensuring that future generations can appreciate its natural beauty and ecological significance.

We are thrilled that the City has received a substantial grant that will allow for the acquisition of the property and the development of infrastructure, including a unique, accessible boardwalk through the wetland forest leading to views of Lake Champlain. We understand the City will spend the first two years of the grant providing intensive stewardship to ensure wetland protection before improving access.

We trust that this sale will fulfill our shared goal of preserving this land as a natural sanctuary along Lake Champlain, safeguarding it for generations.

Joe Larkin

Joseph Larkin

12/05/2024

Board of Finance and City Council Submission Checklist

Department: BPRW Submitter: Cindi Wight

Title/Subject: Lake Champlain Basin Program grant and acquisition

	Approval:	Meeting Date:
☐	Board of Finance	Click or tap to enter a date.
☐	City Council	Click or tap to enter a date.
☒	Concurrent	12/9/2024

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	12/2/2024	Click or tap here to enter text.
Mayor's Office informed and approved memo	Yes	12/3/2024	Joe Magee
Board/Commission, if required	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Yes	12/5/2023	Hayley McClenahan
CAO has reviewed budget, financing, and memo	Yes	12/2/24	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	N/A	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	No	Click or tap here to enter text.
Additional Materials, if necessary	No	Click or tap here to enter text.
Draft Resolution or Motion?	Yes	Click or tap here to enter text.
If for submission to Council, are sponsors identified?	N/A	Click or tap here to enter text.

To: Board of Finance
City Council
From: Kara Alnasrawi, Director, Business & Workforce Development
Samantha McGinnis, Assistant Director, Business & Workforce Development
CC: Mayor Mulvaney-Stanak
CAO Katherine Schad
Date: December 5, 2024

Re: Reassignment of lease for kiosk at the corner of Church St. & College St.

Background:
The City of Burlington owns the property located at 108 Church Street, known as the College Street Kiosk. This property is managed by the Church Street Marketplace Department. Following an RFP process run by the Church Street Marketplace Department in 2016, Leunig's Petit Bijou was selected to be the operator of the College Street Kiosk. In September of 2016, the City of Burlington, through its Church Street Marketplace Department, entered into an agreement with Panache of Paris, Inc. (dba Leunig's Petit Bijou) to lease the City-owned property located at the corner of College and Church Street for a term of three years, terminating on July 31, 2019. This lease included two three-year renewal options. The first executed in 2019 and ending July 31, 2023 and the second executed in 2023 and ending July 31, 2026.

Request for Change of Lessee:
The Church Street Marketplace Department was abruptly informed of the sale of Leunig's and the Petit Bijou business to Taste of France LLC. The new owner, Taste of France LLC, wishes to continue operations of Leunig's Petit Bijou from the Kiosk and take over the remainder of the lease.

Since the unexpected sale of the business, the City has been working with the City Attorney's office to execute the transfer of the College Street Kiosk lease agreement to the new business owner. In the interim, the City, so as to not disturb the business operations of the new Owner, granted the new Owner a time-limited license, in the term of 60-days, with the limited purpose of carrying on café business operations out of the Kiosk.

This new lease replicates the previous lease which was in its second and final renewal. The College Street Kiosk will need to be put out to an RFP process in early 2026 to identify an operator following the end of this lease agreement. The current operator is allowed to reapply but will not be given another renewal option per the original lease agreement.

Commission Approval:
On November 30, 2024, the Church Street Marketplace Commission unanimously approved the transfer of lease to the new owner.

Attachments:
Lease agreement

Motions:

The Church Street Marketplace Department respectfully requests that the Board of Finance and City Council approve the following motions:

Board of Finance:
To approve and recommend that the City Council authorize the Mayor to execute a lease agreement with a term concluding on July 31, 2026 with Taste of France, LLC for food and beverage operations in the College Street Kiosk, subject to final review and approval by the City Attorney's Office.

City Council:
To authorize the Mayor to execute a lease agreement with a term concluding on July 31, 2026 with Taste of France, LLC for food and beverage operations in the College Street Kiosk, subject to final review and approval by the City Attorney's Office.

CITY OF BURLINGTON
LEASE AGREEMENT
WITH
TASTE OF FRANCE, LLC

This Lease Agreement ("Lease") is entered into by and between the City of Burlington, acting by and through the Church Street Marketplace Department ("City"), and Lessee, Taste of France, LLC, d/b/a Leunig's Petit Bijou ("Lessee"), a Vermont corporation authorized to do business in the State of Vermont with a principal place of business at 115 Church Street, Burlington, VT 05401. The City and Lessee agree to the terms and conditions of this Lease.

1. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Lease shall not be valid or enforceable until the Effective Date. The City shall not be bound by any provision of this Lease before the Effective Date and unless otherwise agreed to in writing, shall have no obligations for performance or expenses incurred before the Effective Date or after the expiration or termination of this Lease.

2. RECITALS

A. **Authority.** Authority to enter into this Lease exists in the City Charter. Required approvals, clearance, and coordination have been accomplished from and within each Party.

B. **Consideration.** The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Lease.

C. **Purpose.** The City owns and operates a kiosk building located at 180 College Street in Burlington, Vermont. The City and Lessee wish to enter into an agreement leasing certain portions of the Marketplace's premises to Lessee to further and carry out the purposes of the operation of the Petit Bijou coffee and food service. This Lease establishes the conditions and terms of Lessee's use of the Leased Premises.

D. **References.** All references in this Lease to sections (whether spelled out or using the § symbol), subsections, exhibits, or other attachments, are references to sections subsections, exhibits, or other attachments contained herein or incorporated as part of this Lease, unless otherwise noted.

3. DEFINITIONS

A. **"Leased Premises"** means the City-owned building and ground space known and numbered as 180 College Street in Burlington, Vermont, which consists of approximately 126 square feet of building space. A description and map of the Leased Premises are included as Attachment A.

B. **"Effective Date"** means the date on which this Lease is approved and signed by the City, as shown on the signature page of this Lease.

C. **"Hazardous Substance"** means and includes, but shall not be limited to, any element, substance, compound or mixture, including disease-causing agents, which after release into the environment or work place and upon exposure, ingestion, inhalation or assimilation into any organism, either directly or indirectly, will or may reasonably be anticipated to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions, including malfunctions in reproduction or physical deformations in such organisms or their offspring, and all hazardous and toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, asbestos and raw materials which include hazardous constituents), or any other similar substances, or materials which are included under or regulated by any local, state or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, CERCLA, and regulations adopted pursuant to such Acts, the Toxic Substances Control Act of 1976, as heretofore or currently in effect ("TSCA") and the Resource Conservation and Recovery Act of 1976, as heretofore or currently in effect ("RCRA").

D. **"Lease"** means this Lease Agreement, its terms and conditions, attachments, and documents incorporated by reference under the terms of this Lease.

E. **"Party"** means the City or Lessee and "Parties" means the City and Lessee.

F. **"Termination Event"** means any event described in Section 16.B.i. (Termination by the City – Breach)

4. TERM AND RENEWAL TERM(S)

A. **Initial Term.** This Lease and the Parties' respective performance shall commence on the Effective Date and expire on July 31, 2026.

B. **Prior Agreements.** The Parties acknowledge that the prior lease for the Leased Premises between the City and Panache of Paris, Inc., the former owner and operator of Leunig's Petit Bijou, contained an option to renew through 2026. Because Lessee intends to carry on the same business operations the Parties agree to honor and apply that time period to this present Agreement between the Parties. Notwithstanding, the Parties agree that the Initial Term of this Agreement shall be the only available term under this Agreement without further written agreement of the Parties.

5. LEASE—USES AND PURPOSES

The City hereby leases to Lessee for its exclusive use the right to access and occupy the Leased Premises, subject to the terms of this Lease and the following conditions:

A. **Use.** Unless otherwise approved in writing by the City, Lessee shall use and occupy the Leased Premises for its food and coffee service operations.

B. **Upkeep and Utilities.** Lessee shall furnish to the Leased Premises and pay all charges for telephone service, sewage service, stormwater, trash and/or hazardous waste removal, janitorial service, water, electric power, heat, gas, air conditioning and other utilities of every kind.

C. **Condition.** Lessee shall keep and maintain all parts of the Leased Premises—including related and associated appurtenances—in good condition, order and repair during the term of this Lease. Such actions include but are not limited to: painting, lighting, removal of ground side snow and garbage, landscaping, replacement of broken glass with glass the same size and quality of that broken, and utility services.

D. **Sublease.** Lessee shall not sublease any portion of the Leased Premises without the express prior written approval of the City

E. **Compliance with Law.** Lessee shall observe and comply with any and all present and future requirements of the constituted public authority and with all federal, state, or local statutes, ordinances, regulations, standards, conditions, and agreements applicable to Lessee for its use of the Leased Premises, including, but not limited to, ordinances, rules and regulations promulgated from time to time by or at the direction of the City for the administration of the Church Street Marketplace. Further, Lessee shall—at its own expense—submit to and comply with the requirements of all state and federal regulatory agencies or municipal boards having jurisdiction over the construction of any fixed improvements on the Leased Premises, including, but not limited to, any Environmental Board or Board of Health.

F. **ADA.** Lessee shall—at its own expense—comply with the standards for accessible design known as the Americans with Disabilities Act ("ADA") Accessibility Guidelines in connection with any new construction or alteration of the Leased Premises. Lessee shall bear the burden of this obligation regardless of whether any such Agency or Board shall require that the City be the applicant of record.

G. **Waste and Nuisance.** Lessee shall not make any actionable waste or nuisance upon the Leased Premises and shall not do or permit to be done anything which may result in the creation, commission, or maintenance of any such waste or nuisance on said premises or the Church Street Marketplace. Lessee shall properly handle, remove, and dispose of any and all lubricants and/or hazardous waste and maintain the Leased Premises in a clean and safe condition.

H. **Improvements.** Should Lessee desire to make infrastructure and Lessee-specific modifications or improvements to the Leased Premises, Lessee shall obtain advanced written approval by the City. Lessee shall be solely responsible for all costs associated with improvements without reimbursement or further consideration from the City. All approved additions or improvements must comply with the standards for accessible design known as the Americans with Disabilities Act Accessibility Guidelines and shall, on expiration or termination of this Lease, belong to the City without compensation to Lessee.

I. **Supervision.** Lessee shall ensure that the management, maintenance, and operation of the Leased Premises shall at all times be under the supervision and direction of an active, qualified, competent representative of Lessee, and Lessee shall identify its representative, and any successor, in writing to the City.

6. MAINTENANCE AND CONDITIONS OF USE OF PREMISES

A. LESSEE shall maintain the KIOSK in a manner which, in the sole discretion of the CITY, befits the appearance of the Church Street Marketplace. LESSEE is responsible for the maintenance of the inside and exterior of the KIOSK; the CITY is responsible for maintenance at ground level around the KIOSK and the sculpture in the upper portion of the KIOSK.

B. If failure to perform maintenance in the manner deemed appropriate by the CITY shall continue for thirty (30) days after written notice thereof, the CITY may contract with others for maintenance of the KIOSK. In such event, LESSEE shall be responsible for all such costs.

C. LESSEE shall repair any damage to the KIOSK

D. caused by or arising from operation of its business. If LESSEE fails to make such repairs or replacements promptly, the CITY may, at its option, make such repairs or replacements, and LESSEE shall repay the cost(s) thereof. In case of damage by fire or other elements, or other causes beyond the control of LESSEE, such as to make the

KIOSK untenable or substantially unfit for use by LESSEE, if the cost of repair or reconstruction exceeds the extent of insurance proceeds, then LESSEE may terminate this Lease Agreement upon reasonable notice to the CITY. The CITY shall not be liable to LESSEE for losses due to theft, burglary, or other casualty, or for damages done by persons on the KIOSK.

E. LESSEE shall be responsible for cleaning the KIOSK including but not limited to window washing. Window washing shall occur bi- weekly.
F. LESSEE shall be responsible for all graffiti removal on the exterior of the KIOSK.
G. LESSEE shall be responsible for all trash removal and will not use Church Street Marketplace litter receptacles for disposal.
H. LESSEE shall recycle all appropriate materials.
I.
J. LESSEE understands and agrees that CCTA bus patrons may use the eastern-most portion of the KIOSK being that portion presently covered by an awning, and as shown in Attachment A. LESSEE understands and agrees that it will not block or interfere in any way with such use. The CITY understands and agrees that if seating in or about the entire KIOSK area for use by bus patrons or other members of the public is provided, such furniture shall not be more than four (4) feet in length.
K. LESSEE understands and agrees that the Neon Art Sculpture in the upper portion of the KIOSK will not be touched, used, or interfered with in
L. any manner.
M. LESSEE will, within its control, maintain a barrier-free walkway 9 ft. or more in width along the northernmost and eastern portion of the KIOSK at all times; i.e. no inventory, stock, supplies, or signs, etc. will be allowed in such walkway.
N. LESSEE at all times shall operate the business in an orderly manner. LESSEE shall not, with intent to cause public inconvenience or annoyance, engage in fighting or in violent, tumultuous behavior, make unreasonable noise, use abusive or obscene language, make an obscene gesture, obstruct vehicular or pedestrian traffic, or engage in any conduct which is proscribed by Chapter 19 of Title 13 of Vermont Statutes Annotated.

7. RENT

Lessee shall, in accordance with the provisions of this section, pay the City rent and other amounts due hereunder in the amounts and using the methods set forth below:

A. Leased Space Rent. Lessee shall pay the City rent for access and use of the Leased Premises at a rate of one-thousand six-hundred two dollars ($1,602.00) per month, which represents approximately $[12.71] per square foot per month for the 126 square feet of first floor rental space at 180 College Street.

B. Time for Payment. Lessee shall make the rental payment due under this **§6** on or before the first day of each calendar month during the term of this Lease. Payment shall be made to:

Church Street Marketplace Office, 131 Church Street, Suite 209, Burlington, Vermont 05401.

C. Electronic Payment. The City shall have the right, on not less than thirty (30) days prior written notice to Lessee (the "Electronic Payment Notice"), to require Lessee to make subsequent payments of monthly rent, any additional back rent, and other monies due pursuant to the terms of this Lease by means of electronic funds transfer determined by the City in its sole and absolute discretion (the "Electronic Payment"). The Electronic Payment Notice shall set forth the proper bank ABA number, account number and designation of the account to which such Electronic Payment shall be made. Lessee shall promptly notify the City in writing of any additional information that will be required to establish and maintain Electronic Payment from Lessee's bank or financial institution. The City shall have the right, after at least ten (10) days prior written notice to Lessee, to change the name of the depository for receipt of any Electronic Payment and to discontinue payment of any sum by Electronic Payment."

D. Late Payment. Any required payment which has not been paid when due shall incur interest at the rate of 1.5% per month, in addition to a 5% penalty. Any amounts owed with penalty thereon for a period in excess of one year shall be increased by additional eighteen (18%) applied annually to the total amount owed.

8. CITY OBLIGATIONS

A. Access. The City shall ensure reasonable ingress and egress to and from the Leased Premises.

B. Snow Removal. The City shall provide for snow removal from access roads.

C. Water discharge. The City will ensure that there is an even surface on the northern side of the KIOSK so that water does not run into the KIOSK from adjacent areas.

9. ENTRY OF LEASED PREMISES

The City and its authorized officers, employees, agents, contractors, sub-contractors and other representatives shall have the right to enter upon the Leased Premises for the following purposes:

A. Inspection. To inspect the Leased Premises at reasonable intervals during regular business hours (or at any time in case of emergency) to determine whether Lessee has complied and is complying with the terms and conditions of this Lease. Lessee shall provide the Director of the Church Street Marketplace with serviceable keys to to the Kiosk permit the exercise of the City's rights hereunder; or

B. Facilities. To perform essential maintenance, repair, relocation or removal of existing underground or overhead wires, pipes, drains, cables and conduits now located on or across the Leased Premises, and to construct, maintain, repair, relocate and remove such facilities in the future if necessary to carry out the master plan of development of the City provided, however, that said work shall in no event disrupt or unduly interfere with the operations of Lessee. Nothing herein shall be construed to impose upon the City any obligations to construct or maintain or to make repairs, replacements, alterations or additions, or shall create any liability for any failure to do so. Lessee is and shall be in exclusive possession of the Leased Premises and the City shall not, in any event, be liable for any damage to the premises or any property of Lessee or any other persons located in or thereupon, other than to repair or remedy such damage as may be occasioned by negligence of the City, its employees or agents.

10. TAXES AND ASSESSMENTS

A. Direct Tax. Lessee shall pay directly to the taxing authority any and all personal property inventory taxes or assessments which may be assessed against the Leased Premises and its contents during the term hereof or any renewal term.

Lessee shall be responsible for paying all applicable property taxes for the Kiosk during the term of this Lease Agreement. For the entire term of this lease agreement, all the appropriate fiscal year property taxes for the KIOSK, as listed on the Property Tax Payment Schedule set by the City Council and located at 149 Church Street, shall be paid by Lessee to the CITY when a bill for said taxes is presented.

B. Common Area Fees
Lessee shall be responsible for paying all applicable common area fees to the City. The computation for common area fees shall include all elements applied by the Church Street Marketplace Commission in the setting of Common Area fees for Marketplace properties on Church Street. For the term of this Lease Agreement the appropriate fiscal year common area fee for the Lease Premises that is set forth on the common area fee payment schedule set by the City Charter shall be due and payable by Lessee the CITY.

C. Common Area Fee Formula Negotiation
In the event that the formula used to determine the common area fees for Church Street property owners for any fiscal year during the term of this Lease Agreement is changed such that a simple mathematical calculation of the amounts due CITY from Lessee for the rights granted hereby cannot be made, the parties agree to negotiate the amounts owed CITY for such year or years which amount(s) shall not be less than the amount(s) paid for the preceding fiscal year.

11. INSURANCE

Lessee shall provide insurance in accordance with Attachment B hereto.

12. INDEMNIFICATION & LIABILITY

A. ***Indemnification. Lessee shall indemnify, defend, and hold harmless the City, its officers, agents and employees, including the City of BurlingtonChurch Street Marketplace Commission their successors and assigns, individually or collectively, from and against all liability and any claims, suits, expenses, losses, judgments, proceedings, damages, expenses, demands, suits, costs (including costs of defense, reasonable attorney fees, and reasonable professional fees incurred in defense or incurred in enforcement of this indemnity), and causes of action, including but not limited to, claims arising out of or in connection to the following:***

1. ***This Lease;***
2. ***The Leased Premises;***
3. ***Actions on the Leased Premises;***
4. ***Lessee's possession, use, occupation, or control of the Leased Premises ;***
5. ***Actions or omissions of the Lessee, its agents, employees, licensees, visitors, or contractors;***
6. ***Breach or default of this Lease by Lessee, its agents, employees, licensees, or contractors.***

Lessee shall give prompt and timely notice to the City (and copying the Burlington City Attorney's Office) of any claim made or suit instituted which, in any way, directly or indirectly, contingently or otherwise, affects or may affect the City, the Leased Premises, or the Church Street Marketplace

Lessee shall reimburse the City for costs associated with violations issued by state and federal regulatory authorities resulting from Lessee's misconduct, incompetence, or negligence as determined by the City.

B. ***Liability. The City shall not be liable to the Lessee, any assignees claiming by, through, or under Lessee, any subtenants claiming, by, through, or under Lessee, and any of their respective agents, contractors, employees, and invitees, for any injury to or death of any person or persons or the damage to or theft, destruction, loss, or loss of use of any property or inconvenience (collectively and individually a "loss") caused by casualty, theft, fire, third parties, repair, or failure to repair, or alteration of any part of this building, or any other cause, unless due to the negligence or willful misconduct of any indemnified party, in whole or in part.***

13. HAZARDOUS WASTES

A. Disposal. Lessee shall properly handle, remove, and dispose of any and all lubricants, grease, and/or hazardous waste and shall maintain the Leased Premises in a clean and safe condition.

B. Hold Harmless. Without any limitation to Lessee's indemnification and defense obligations hereunder, Lessee shall indemnify, defend, and hold harmless the City, its officers, and employees from and against all loss, cost and expense (including, without limitation, attorney fees) of whatever nature suffered or incurred by the City on account of the existence, release, or discharge of Hazardous Substances on or from the Leased Premises including, without limitation, any claims, costs, losses, liabilities, and expenses arising from the violation (or claimed violation) of any environmental laws or the institution of any action by any party against the City or the Leased Premises based upon nuisance, negligence or other tort theory alleging liability due to the improper generation, storage, disposal, removal, transportation or treatment of Hazardous Substances or the imposition of a lien on any part of the Leased Premises under the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended ("CERCLA"), or any other laws pursuant to which a lien may be imposed due to the existence of Hazardous Substances. Lessee further unconditionally, absolutely, and irrevocably guarantees the payment of any fees and expenses incurred by the City in enforcing or seeking enforcement of the liability of Lessee under this indemnification.

14. WARRANTIES AND REPRESENTATIONS

A. Regarding the Leased Premises. The City represents that it is the owner of the Leased Premises or the authorized representative or agent of said owner. During the terms of this Lease, the City represents and warrants that the Lessee may have, hold, and enjoy peaceful and uninterrupted possession of the Leased Premises and rights herein leased and granted, subject to performance by Lessee of its obligations herein.

B. Regarding Legal Authority. Lessee warrants that it possesses the legal authority to enter into this Lease and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Lease and to bind Lessee to its terms. The person signing and executing this Lease on behalf of Lessee hereby represents, warrants, and, guarantees that they have full authorization to do so. If requested by the City, Lessee shall provide the City with proof of Lessee's authority to enter into this Lease within 15 days of receiving such a request.

15. CASUALTY

If the Leased Premises are damaged by fire, flood, or another casualty, either Party may terminate this Lease within 30 days of the date the terminating Party becomes aware of such occurrence if, in the opinion of the terminating Party, the Leased Premises have been so damaged as to render them wholly or partially untenantable or unfit for the Lessee's purposes. If so elected, the terminating Party shall give the other Party written notice to the City and termination shall be effective 30 days from the date of mailing of the notice of termination.

If the Parties elect not to terminate this Lease, the City shall reasonably estimate the time, restoration work, and commencement date that the City reasonably anticipates is required for the performance of restoration work. Lessee's obligation to pay rent shall equitably and proportionately abate with respect to the damaged portion of the Leased Premises from the date of damage until restoration is sufficiently complete to enable Lessee to recommence its use and occupancy of the Leased Premises for the purposes set forth in this Lease.

16. TITLE TO IMPROVEMENTS

Upon the expiration or termination of this Lease, all permanently fixed improvements made upon the Leased Premises by Lessee shall become a part of the realty and remain on the Leased Premises as the property of the City. Lessee shall not be entitled to compensation of any kind for such improvements nor shall the City be required to provide Lessee with any consideration of any kind for such improvements.

17. TERMINATION

In addition to the termination rights granted in other sections of this Lease, the Parties may terminate this Lease in accordance with this **§16**.

A. Breach. The failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B. Termination by the City.

(i) Breach. The City may terminate this Lease, if Lessee fails to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner, including, but not limited to, the following conditions:

a. Past Due. If Lessee fails to pay required rental charges or money payments more than thirty (30) days after a due date.

b. Abandonment. If Lessee or any approved sub-lessee voluntarily abandons or discontinues the conduct and operation of its service at the Kiosk for a continuous period of sixty (60) days.

c. **Bankruptcy.** The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Lessee, or the appointment of a receiver or similar officer for Lessee or any of its property, which is not vacated or fully stayed within twenty (20) days after the institution or occurrence thereof, shall constitute a breach.

d. **Public safety.** If terminating the lease is reasonably necessary to preserve public safety or to prevent an immediate public crisis.

(ii) **Notice and Cure Period.** In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within thirty (30) days, or if a cure of the breach has not begun within 30 days and pursued with due diligence, the non-breaching Party may terminate this Lease by sending a notice of termination, which shall be effective thirty (30) days after the notice of termination is sent. Notwithstanding anything to the contrary herein, the City, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Lease in whole or in part if reasonably necessary to preserve public safety or to prevent an immediate public crisis.

(iii) **Repeated Breaches.** If the same Termination Event has occurred on four separate occasions during any rolling 12-month period (having been duly remedied or waived on each occasion), a cure period for remedying the next occurrence of such Termination Event occurring within the relevant 12-month rolling period will only be available if City so permits in its sole discretion.

(iv) **Rights and Remedies Not Exclusive.** The rights and remedies of the City provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

C. **Termination by Lessee.** Lessee may terminate this Lease upon thirty (30) days' advance written notice to the City under the following conditions:

(i) **Injunction.** The issuance by any court of competent jurisdiction of an injunction, order, or decree preventing or restraining the use by Lessee of all or any substantial part of the Leased Premises or preventing or restraining the use of the Kiosk for usual Church Street Marketplace purposes in its entirety, or the use of any part thereof which may be used by Lessee and which is necessary for Lessee's operations on the Kiosk which remains in force, unvacated or unstayed for a period of at least sixty (60) days.

D. **Damage to Improvements.** Either Party may terminate this Lease upon providing thirty (30) days' written notice to the other Party if the fixed improvements upon the Leased Premises are so totally destroyed or so extensively damaged that it would be impracticable or uneconomical to restore the same to their previous condition.

18. CONDITION ON TERMINATION

At the termination or expiration of this Lease, Lessee shall surrender and deliver the Leased Premises in as substantially good order and condition as exists at the inception hereof; excepting, however, loss by fire, inevitable accident, act of God, and ordinary wear and tear.

19. LIENS

Lessee shall cause to be removed any and all mechanic's or materialman's liens of any nature arising out of or because of any construction performed by Lessee upon the Leased Premises or arising out of or because of the performance of any work or labor upon or the furnishing of any materials for use at the Leased Premises, by or at the direction of Lessee within a reasonable time not to exceed six (6) months from the completion of any such construction.

20. HOLDING OVER

In the event Lessee shall hold over and remain in possession of the Leased Premises after cancellation or termination of this Lease, such holding over shall not be deemed to operate as a renewal or extension of this Lease, but rather shall only create a tenancy from month-to-month which the City may terminate at any time upon thirty (30) days' advance written notice.

21. FORCE MAJEURE

Neither Party shall be deemed to have breached this Lease if it is prevented from performing any of its obligations hereunder by reason of acts of God, acts of the public enemy, acts of superior governmental authority, weather conditions, riots, rebellion, sabotage, or any other circumstances for which it is not responsible or which is not under its control, and the Party experiencing force majeure gives written notice to the other party identifying the nature of such force majeure, and when it began. The Party experiencing force majeure shall take immediate action to attempt to remove such causes of force majeure as may occur from time to time and its operations under this Lease shall be resumed immediately after such cause has been removed, provided that neither Party shall be required to settle any labor dispute except upon terms that the Party deems acceptable. The suspension of any obligations under this section shall not cause the term of this Lease to be extended and shall not affect any rights accrued under this Lease prior to the occurrence of the force majeure. The Party giving notice of the force majeure shall also give notice of its cessation.

22. PUBLIC EMERGENCIES

Lessee must comply with all local, state, federal orders, directives, regulations, guidance, advisories during public emergencies. Public emergencies include, but are not limited to, national, state and local security emergencies; public health emergencies and pandemics; evacuations; chemical spills; shelter-in-place alerts; severe weather advisories; boil water advisories; and roadway interruptions. A Lessee's failure to comply with any local, state, federal orders, directives, regulations, guidance, or advisories during a public emergency shall constitute a breach of the Lease pursuant to Section 17 (Termination). The City shall have sole discretion in determining if Lessee is compliant with the above. If a public emergency is declared, the City will not be responsible for any expenses or losses incurred as a result of any public emergency.

23. DISPUTE RESOLUTION

The Parties shall make their designation representative available to meet within a reasonable time to discuss issues relating to the Lease or the Leased Premises. Each Party shall take such actions as reasonably necessary to address any issues within a reasonable time.

Either Party may enforce this Lease and/or seek appropriate remedies in Chittenden Superior Court under the laws of the State of Vermont.

24. NOTICES AND REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to, but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

For the City: Kara Alnasrawi
131 Church Street, Suite 209 Burlington, VT 05401
802.238.1910
Kara@burlingtonvt.gov

For Lessee: Amy Bernhardt
115 Church Street, Burlington, VT 05401
events@leunigsbistro.com

25. GENERAL CIVIL RIGHTS PROVISIONS

Lessee agrees to comply with pertinent statutes, Executive Orders and such rules as are promulgated to ensure that no person shall, on the grounds of race, creed, color, national origin, sex, age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance. If the Lessee transfers its obligation to another, the transferee is obligated in the same manner as the Lessee.

This provision obligates the Lessee for the period during which the property is owned, used, or possessed by the Lessee. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

26. COMPLIANCE WITH NONDISCRIMINATION REQUIREMENTS

During the performance of this Lease, the Lessee, for itself, its assignees, and successors in interest, agrees as follows:

1. **Compliance with Regulations:** The Lessee will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

2. **Nondiscrimination:** The Lessee, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Lessee will not participate directly or indirectly in the discrimination prohibited by the

Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

3. **Solicitations for Subcontracts, including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding or negotiation made by the Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Lessee of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

27. FEDERAL CIVIL RIGHTS PROVISION

No person on the grounds of race, color, or national origin shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of property and facilities made available or leased to Lessee; the construction of any improvements on, over, or under said property and facilities; or the furnishing of services thereon. Lessee shall comply with the Nondiscrimination Acts and Authorities as set out below and as they may be amended from time to time.

A. The Lessee shall maintain and operate such facilities and services in compliance with all requirements imposed by the Nondiscrimination Acts and Authorities such that no person on the grounds of race, color, or national origin, shall be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. In all solicitations, either by competitive bidding, or negotiation made by Lessee for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier shall be notified by Lessee of Lessee's obligations under this Agreement and the Nondiscrimination Acts and Authorities.

C. In the event of breach of any of the above non-discrimination covenants, the City shall have the right to terminate the Agreement and re-enter and repossess the underlying property and facilities and hold the same as if the Agreement had never been made or issued.

D. During the performance of this Lease, Lessee, for itself, its assignees, and successors in interest (hereinafter referred to as the "Lessee") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq*., 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
- 49 CFR part 21 (Non-discrimination in Federally-assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);

- Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq*.), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27;

- The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq*.) (prohibits discrimination on the basis of age);

    i. The Civil Rights Restoration Act of 1987 (PL 100-209) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);

    ii. Titles II and III of the Americans with Disabilities Act of 1990, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131 – 12189) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;

- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;

- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

    iii. Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC 1681 et seq).

28. LIVABLE WAGE

The City has in effect a livable wage ordinance. This livable wage ordinance is applicable to service contracts with the City (as opposed to the purchasing of goods) where the total amount of the contract or contracts with the same person or entity exceeds $15,000 for any twelve-month period.

Lessee shall comply with the livable wage ordinance to the extent that it is a covered employer under the ordinance and the ordinance is otherwise applicable. Lessee shall also require any contractors or agents performing work at the Leased Premises to comply with the livable wage ordinance.

29. MORTGAGES

At the option of the City, this Lease shall be subordinate to any mortgage or other security interest by the City which from time to time may encumber all or part of Leased Premises so long as the City's lender shall agree in writing in a form reasonably acceptable to Lessee that such lender will not disturb Lessee's possession and rights under Lease so long as Lessee remains in compliance with Lease.

30. ESTOPPEL CERTIFICATE

Each Party shall—within thirty (30) business days after request by the other Party—execute and deliver to the requesting Party, or the party designated by the requesting Party, a statement certifying: (i) that Lease is unmodified and in full force and effect (or, if there have been modifications, stating the modifications, and that the modified Lease is in full force and effect); (ii) whether, to the responding Party's knowledge, either Party is in default in performance of any of its obligations under Lease, and, if so, specifying each default; and (iii) any other information reasonably requested concerning Lease.

31. BROKER COMMISSIONS

The City shall have no obligation to pay any real estate commissions to any agents or brokers claiming by or through Lessee, and without prejudice to Lessee's general indemnification and defense obligation hereunder, Lessee agrees to indemnify and hold harmless the City for all claims or demands of any other real estate agent or broker claiming by, through, or under Lessee. This indemnification shall also include payment of costs and attorney fees incurred by the City in defense of a claim for such real estate commissions or fees.

32. GENERAL PROVISIONS

A. **Assignment.** Lessee shall not assign this Lease or sublet any part of the Leased Premises without the expressed written consent of the City.

B. **Binding Effect.** All provisions of this Lease, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. **Captions.** The captions and headings in this Lease are for convenience of reference only and shall not be used to interpret, define, or limit its provisions.

D. **Counterparts.** This Lease may be executed in multiple identical counterparts, all of which shall constitute one agreement.

E. **Entire Understanding.** This Lease represents the complete integration of all understandings between the Parties and all prior representations and understandings—oral or written—are merged herein. Prior or contemporaneous additions, deletions, or other changes hereto shall not have any force or effect whatsoever, unless embodied herein. By and through execution of this Lease, the prior temporary license agreement executed between the Parties as of Fall 2024 is extinguished and supplanted hereby.

F. **Extinguishment and Replacement.** This Lease extinguishes and replaces any prior leases between the Parties related to the Leased Premises upon the Effective Date hereof.

G. **Modification.** Modifications of this Lease shall not be effective unless agreed to in writing by both Parties in a formal written amendment to this Lease, properly executed and approved by both Parties.

H. **Interpretation.** The language in all parts of this Lease shall in all cases be construed simply according to its fair meaning and not strictly construed against the City. This Lease shall be construed and performance thereof shall be determined in accordance with the laws of the State of Vermont.

I. **Severability.** Provided this Lease can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable, and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

J. **Survival of Certain Lease Terms.** Notwithstanding anything herein to the contrary, provisions of this Lease requiring continued performance, compliance, or effect after expiration or termination shall survive such expiration or termination and shall be enforceable by the City if Lessee fails to perform or comply as required.

K. **Third Party Beneficiaries.** Enforcement of this Lease and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Lease are incidental to the Lease and do not create any rights for such third parties.

L. **Waiver.** No acceptance by the City of rentals, fees, charges or other payments in whole or in part, for any period or periods after a default of any of the terms, covenants, and conditions hereof, to be performed, kept or observed by Lessee, shall be deemed a waiver of any right on the part of the City to terminate this Lease. A waiver by the City of any breach of a term, provision, or requirement of this Lease or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

M. **Public Records.** All records submitted to the City, whether electronic, paper, or otherwise recorded, are subject to the Vermont Public Records Act. The determination of how those records must be handled is solely within the purview of the City. All records considered to be trade secrets, as that term is defined by subsection 317(c)(9) of the Vermont Public Records Act, shall be identified by Lessee, as shall all other records considered to be exempt under the Act. It is not sufficient to merely state generally that a document or record is proprietary, a trade secret, or otherwise exempt. Particular records, pages, or sections that are believed to be exempt must be specifically identified as such and must be separated from other records with a convincing explanation and rationale sufficient to justify each exemption from release consistent with Section 317 of Title 1 of the Vermont Statutes Annotated.

N. **Illegal Substance.** Lessee, Lessee's employees, and Lessee's patrons are prohibited from possessing, using, transporting, cultivating, selling, growing, or donating any substance prohibited under local, state, or federal law, including but not limited to marijuana.

O. Attorneys' Fees. In case of any dispute arising from this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and costs.

P. Municipal Rights. Nothing herein shall be deemed a waiver of Landlord's regulatory authority as a city.

Q. Rules: The Rules and Regulations in Attachment C are incorporated herein by this reference as though fully set forth.

33. ATTACHMENTS

The following attachments are adopted, made part of, and incorporated by reference into this Agreement:

A. Attachment A: Leased Premises Description and Map

B. Attachment B: Insurance Requirements

C. Attachment C: Certificate of Insurance

— *Signature Pages to Follow* —

34. SIGNATURE PAGE 1.

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect. This Lease may be executed electronically, and an electronic copy or other facsimile shall be treated as an original. This Lease may be executed in counterparts, each of which shall be deemed an original.

The Parties hereto have executed this Lease Agreement

LESSEE
TASTE OF FRANCE, LLC
115 Church Street, Burlington, VT 05401

By: ____

Name: _Amy Bernhardt___________________________

Title: _Owner__ _________________________________

Date: _______________________________________

State of Vermont, County of ___________. This record was acknowledged before me on _________(date) by ____________________________ (authorized signatory's name).

Signature of Notary Public: ________________

Stamp or certificate number: ________________

Title of office: ___________________________

My commission expires: ___________________

35. SIGNATURE PAGE 2.

Persons signing for the Parties hereby swear and affirm that they are authorized to act on behalf of their respective Party and acknowledge that the other Party is relying on their representations to that effect.

The Parties hereto have executed this Lease Agreement

City of Burlington
149 Church Street, Burlington, Vermont 05401

By: ____

Name: Mayor Emma Mulvaney-Stanak____________________

Title: Mayor of the City of Burlington, Vermont______

Date: ____

State of Vermont, County of ___________. This record was acknowledged before me on _________(date) by ______________________________ (authorized signatory's name).

Signature of Notary Public: ________________

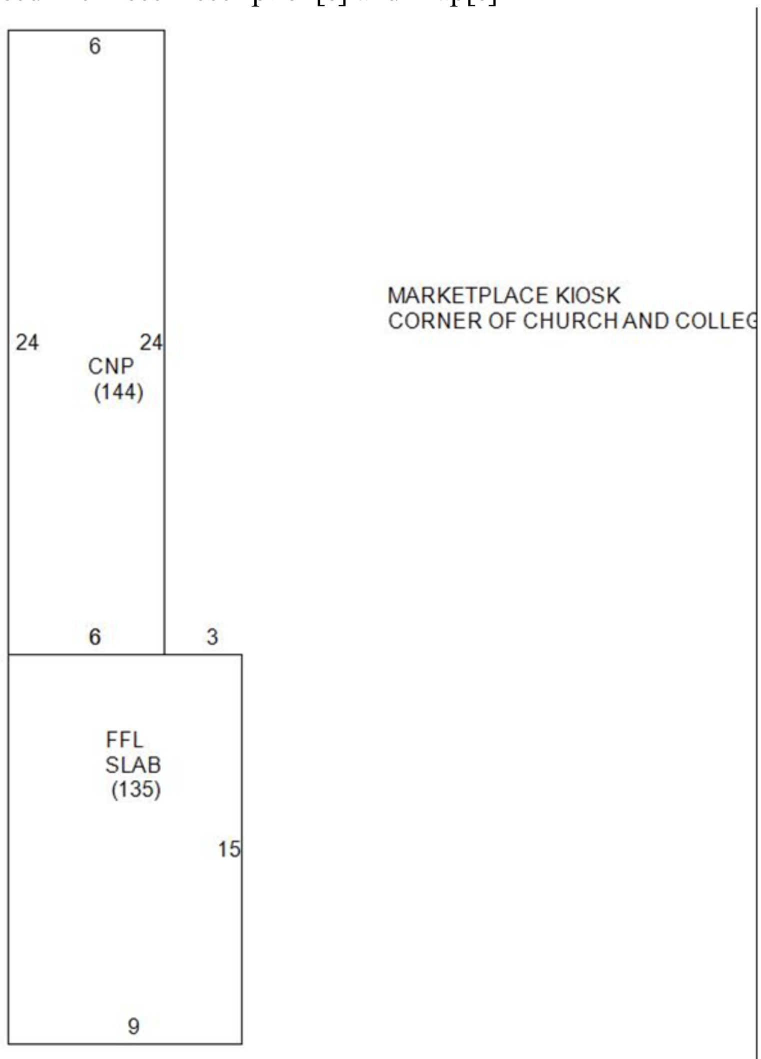
Stamp or certificate number: _______________

Title of office: ____________________________

My commission expires: ____________________

ATTACHMENT A

Leased Premises Description[s] and Map[s]



ATTACHMENT B

INSURANCE REQUIREMENTS

As used in this form, "Contractor" shall mean the lessee/tenant. Insurance shall be maintained throughout the term, and the lessee/tenant shall provide certificates of insurance and endorsements reasonably acceptable to the City prior to the Effective Date of the lease and annually during the term. These requirements shall also be satisfied by any subtenant authorized by the City and by any contractors, subcontractors, consultants, or subconsultants doing work of any kind or nature in the premises that could create liability for the City of any kind or nature.

The Contractor shall obtain the following insurance coverage from an insurance company registered and licensed to do business in the State of Vermont and having an A.M. Best insurance rating of at least A-, financial size category VII or greater (www.ambest.com). The certificate of insurance coverage shall be documented on forms acceptable to the City. Compliance with minimum limits and coverage, evidenced by a certificate of insurance showing policies and carriers that are acceptable to the City, must be received prior to the Effective Date of the Contract. If this Contract extends to more than one year, evidence of continuing coverage must be submitted to the City on an annual basis. Copies of any insurance policies may be required.

The Contractor is responsible to verify and confirm in writing to the City that: (i) all subcontractors must comply with the same insurance requirements as the Contractor; (ii) all work activities related to the Contract shall meet minimum coverage and limits; and (iii) all coverage shall include adequate protection for activities involving hazardous materials.

No warranty is made that the coverage and limits listed herein are adequate to cover and protect the interests of the Contractor for the Contractor's operations. These are solely minimums that have been developed and must be met to protect the interests of the City.

A. Commercial General Liability: With respect to all operations performed by the Contractor, subcontractors, agents or workers, it is the Contractor's responsibility to ensure that commercial general liability insurance coverage, covering bodily injury and property damage, on an occurrence form, provides all major divisions of coverage including, but not limited to:

1. Premises Operations

2. Independent Contractors' Protective

3. Products and Completed Operations

4. Personal Injury Liability

5. Medical Expenses

Coverage limits shall not be less than:

1. General Aggregate $2,000,000

2. Products-Completed/Operations $2,000,000

3. Personal & Advertising Injury $1,000,000

4. Each Occurrence $1,000,000

5. Damage to Rented Premises $ 250,000

6. Med. Expense (Any one person) $ 5,000

B. Workers' Compensation/Employer Liability: With respect to all operations performed, the Contractor shall carry workers' compensation insurance in accordance with the laws of the State of Vermont and ensure that all subcontractors carry the same workers' compensation insurance for all work performed by them under this contract. Minimum limits for Employer's Liability:

1. Bodily Injury by Accident: $500,000 each accident

2. Bodily Injury by Disease: $500,000 policy limit, $500,000 each employee

For contracts involving work of any kind or nature on Lake Champlain, Workers' Compensation/Employer's Liability policy shall include a Maritime Endorsement (USL&H).

C. Automobile Liability: The Contractor shall carry commercial automobile liability insurance covering all motor vehicles, including owned, non-owned and hired, used in connection with the Contract. Each policy shall provide coverage with a limit not less than: $1,000,000 - Combined Single Limit for each occurrence.

3. Umbrella/Excess Liability is excess above Commercial General Liability, Automobile Liability, and Workers' Compensation/Employer Liability.

All policies shall be endorsed to provide the City thirty (30) days' notice of cancellation. Each policy (except workers compensation/employers' liability) shall be endorsed to name the City and its officers, employees, agents, successors, and assigns as additional insureds on a primary, non-contributory basis. Each policy shall be endorsed to waive subrogation against the City.

ATTACHMENT C

Certificate of Insurance

MEMORANDUM OF LEASE

THIS MEMORANDUM OF LEASE, provides notice of Tenant's interest in the leased premises and of the existence of the lease. In accordance with 27 V.S.A. § 341, the lease entered into by the parties is described as follows:

1. **Names of the parties**.

   A. Landlord's Name: The City of Burlington, Vermont

   B. Tenant's Name: Taste of France, LLC

2. **Statement of the rights of a party to extend or renew the lease.** Upon mutual agreement of the Parties, this lease may be extended for a one (1) year renewal term. The renewal term shall automatically commence upon the expiration of the initial term under the same terms contained herein, except that either Party may decline the extension by providing 60 days written notice to the other Party.

3. **Parties' addresses set forth in the lease.**

   A. Landlord's Address: Burlington City Hall, 149 Church Street, Burlington, Vermont, 05401.

   B. Tenant's Address: 115 Church Street, Burlington, VT 05401

4. **Date of the execution of the lease.** [Date]

5. **Term of the lease, the date of commencement, and the date of termination**.

   A. Term of the lease: 18-months

   B. Date of commencement: [Date]

   C. Date of termination: July 31, 2026

6. **Description of the real property as set forth in the lease**. The City-owned building and ground space known and numbered as 180 Church St, Burlington, Vermont, which consists of approximately 126 square feet of building space ("Leased Premises").

7. **Statement of the rights of a party to purchase the real property or exercise a right of first refusal with respect thereto**. Tenant has *no* rights to purchase the real property. Tenant has *no* rights to exercise a right of first refusal with respect thereto.

8. **Statement of any restrictions on assignment of the lease.** Tenant shall not assign the lease or sublet any part of the Leased Premises without the expressed written consent of the City.

9. The location of an original lease.
Business & Workforce Development
131 Church Street, Suite 209
Burlington, VT 05401

IN WITNESS WHEREOF, the parties have executed or have caused this instrument to be executed by their proper officers duly authorized to do so.

THE CITY OF BURLINGTON

By: ________________________________
Name: Mayor Emma Mulvaney-Stanak_________
Title: Mayor of the City of Burlington, Vermont
Address: 149 Church St, Burlington, VT 05401___

State of Vermont, County of Chittenden. This record was acknowledged before me on _________ (date) by Miro Weinberger as the Mayor of the City of Burlington, Vermont.

Signature of Notary Public: _______________
Stamp or certificate number: _______________
Title of office: _________________________
My commission expires: __________________

TASTE OF FRANCE, LLC

By: ______________________________
Name: Amy Bernhardt__________________
Title: Owner__________________________
Address: 115 Church Street, Burlington VT 05401

State of Vermont, County of ___________. This record was acknowledged before me on _________ (date) by ____________________________ (authorized signatory's name).

Signature of Notary Public: _______________
Stamp or certificate number: _______________
Title of office: _________________________
My commission expires: __________________

Board of Finance and City Council Submission Checklist

Department: Business & Workforce Development   Submitter: Kara Alnasrawi

Title/Subject: Transfer of Lease for College St. Kiosk to Taste of France, LLC

	Approval:	Meeting Date:
☐	Board of Finance	Click or tap to enter a date.
☐	City Council	Click or tap to enter a date.
☒	Concurrent	12/9/2024

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	12/2/2024	Kara Alnasrawi
Mayor's Office informed and approved memo	Yes	12/3/2024	Joe Magee
Board/Commission, if required	Yes	11/20/2024	Unanimous approval
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	Yes	12/3/2024	Hayley McClenahan
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Yes	12/3/2024	Hayley McClenahan
CAO has reviewed budget, financing, and memo	Yes	12/4/2024	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	Choose an item.	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	Choose an item.	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	Yes	Click or tap here to enter text.
Additional Materials, if necessary	Choose an item.	Click or tap here to enter text.
Draft Resolution or Motion?	Yes	Click or tap here to enter text.
If for submission to Council, are sponsors identified?	Yes	Board of Finance

MEMORANDUM

Date: December 9, 2024
To: Board of Finance

From: Christian Berry, Interim Director of Racial Equity, Inclusion, and Belonging
CC: Katherine Schad, Chief Administrative Officer

Re: **Sponsorship Agreements for REIB Empowerment Fund Awardees FY25**

Request

The Office of Racial Equity, Inclusion, and Belonging (REIB) requests approval and authorization to execute 39 agreements with 33 organizations, pending review by the City Attorney's Office, to distribute a total of $42,917 from the Empowerment Fund GL.

Background

The Empowerment Fund was first established with ARPA funding to support local disenfranchised communities and respond to the COVID crisis and by the General Fund in FY25. These grants feature a low-barrier application, requirements, and reporting, aiming to empower directly organizations and individuals serving Burlington. The Empowerment Fund grant committee, using a rubric approved as to form by the REIB City Council Committee and the City Attorney's Office, selected the following organizations and individuals for funding in FY25, pending BOF approval:

Asian General Market

Community outreach materials to enhance access to culturally relevant foods through multilingual marketing and assistance initiatives. ($800)

Black Bamboo Wellbeing

Gifted massages as part of the Winter Wellbeing Series, supporting Women of Color with restorative experiences to promote mental health, belonging, and community during the winter months in Burlington. ($700)

Burlington School District

- Bilingual Reading Buddies and Books Alive Project: To purchase bilingual books and resources to support literacy initiatives at Edmunds Middle School. ($750)
- Building a Culturally Responsive Library for Multilingual Learners: Library organization and cataloging tools and books to support the creation of a culturally responsive library for multilingual learners. ($1,000)
- Burlington High School: Welcome Newcomers and Decode 1 book sets to build a diverse and engaging library for BIPOC multilingual learners at Burlington High School. ($1,500)
- Burlington High School: Winter and athletic gear for multi-lingual BIPOC students, promoting physical activity, community engagement, and overall well-being. ($1,000)
- Burlington Technical Center: Student stipends for Digital Media Lab training program in media arts production and community engagement for global majority students and liaisons. ($2,000)
- Racial Justice Academy: For student consultant stipends to support the Racial Justice Academy, where students provide recommendations to advance anti-racism work in the Burlington School District and the community. ($1,000)

Champlain Valley Office of Economic Opportunity (CVOEO)

- Healthy Homes Assessment training: equipping a community member with the skills to identify and address housing-related health and safety issues as part of CVOEO's initiative to improve living conditions and promote equity. ($1,067)
- Lunch with Lenders: Interpretation and translation services to support event, ensuring language accessibility for BIPOC and New American small business owners in Burlington. ($1,000)

Connecting Cultures

Housing costs and utilities as part of the Connecting Cultures Emergency Fund which addresses critical needs such as back rent, security deposits, and utility bills for vulnerable clients, including those facing eviction or utility shutoffs. ($750)

Conscious Homestead

Professional development to support Conscious Homestead's BIPOC-centered programs by equipping staff with skills and training necessary for advancing land-based healing, sustainable farming, and community care practices in Vermont. ($1,500)

Empress Levi Soul Food

Website development to support the growth and promotion of Empress Levi Soul Food. ($1,000)

Greater Burlington YMCA

Community engagement activities in the YMCA Black Youth in Action (BYA) Program. ($1,500)

Harmony's Kitchen

Videographer to document the Soul Food Tour project to promote African diaspora culture in Vermont through authentic soul food. ($500)

Hip-Hop For Flood Relief

Community outreach materials to support the "Hip-Hop For Flood Relief" initiative, enhancing engagement and education on climate resilience, violence prevention, and cultural empowerment for Burlington's BIPOC communities. ($800)

Ishmael Ahmed

Materials and equipment to support poetry and book arts workshops that foster cultural storytelling and connection. ($1,500)

Islamic Society of Vermont

Technology and equipment for Islamic Society of Vermont's youth programing, fostering learning, community engagement, and personal growth. ($1,000)

King Street Center

Care Closet, providing grocery and gas gift cards, essential goods, and other critical resources to support low-income families through King Street Center's Family Support Program. ($1,500)

Martha Kemp

Hiring a videographer to document and produce a project inspired by Richard Kemp, highlighting community stories and promoting equity, cultural representation, and engagement. ($1,500)

Mawuhi African Market

Food and cooking education classes to help local diverse groups create meals using available resources. ($1,500)

Migrant Justice

Transportation costs to support Migrant Justice's work assisting asylum seekers with legal processes, community integration, and access to essential services in Burlington.
($1,500)

Mulu's Kitchen and Catering

To support marketing efforts, including website improvements, to promote Eritrean cuisine and culture through Mulu's Catering while fostering community engagement. ($750)

New American Youth on the Rise

Local Motion bike trip as part of the New American Youth on the Rise Summer Academy, providing marginalized middle school girls with skill-building and community bonding opportunities. ($500)

New American Public Health Initiative

Interpretation services to help ensure multilingual health education and support for immigrant and refugee communities in Vermont to promote health equity and improve access to critical healthcare resources. ($1,000)

Pam's Moda

Marketing to promote Afrifest and the Couture Class, covering print, online, and radio campaigns to increase visibility and community engagement for these cultural and fashion initiatives. ($900)

People's Kitchen Project

Adding an electric hub and battery to a cargo bike used by the People's Kitchen Project to transport donations and deliver meals. ($1,500)

Rajnii Eddins

Program development and project materials for the **Vibrant Lives: Discovering Our Roots of Black Vermont** oral history project, which highlights the experiences, histories, cultures, and contributions of Black residents throughout Burlington and Chittenden County. ($750)

Raphaella Brice

Collaborative artist costs for the Black Madonna project, which combines mural installations, workshops, and storytelling to celebrate resilience, empowerment, and cultural identity in marginalized communities. ($1,500)

Salome Oforiwaa

Gift cards as part of the diaspora documentary project intended to compensate participants for their contributions to the documentary, which highlights the cultural connections, community engagement, and belonging of the African diaspora in Burlington, Vermont. ($800)

Somali Bantu Association of Vermont

Organizing a community forum to engage and support Somali Bantu youth, fostering dialogue, inclusion, and community-driven solutions in Burlington. ($1,000)

South End Arts and Business Association

Designer access to community tools, memberships, and partnerships to support BIPOC designers in advancing their craft and showcasing their work in the STRUT fashion show. ($2,000)

Spectrum Youth and Family Services

One student driving course to support Spectrum's driver's education program for low-income BIPOC youth in Burlington. ($1,000)

The Creative Discourse Group

Student stipends to support the Burlington Youth Coalition's engagement activities, empowering youth leaders to shape strategic priorities and promote equity and safety in the community. ($1,000)

Thingz From Yaad

Community support initiatives aimed at addressing food insecurity and fostering stronger community bonds, particularly for underserved populations. ($500)

Urmila Chhetri

For equipment and traditional dance costumes to support the Bhutanese Nepali Dance Program for New American youth in Burlington.
$1,500

Vermont Asylum Assistance Project

The grant will be used for supplies and equipment to support the Vermont Asylum Assistance Project's immigration legal services and advocacy efforts for Burlington's immigrant and refugee communities. ($500)

Vermont Language Justice Project

Development and maintenance of the **iFY (Information for You)** app, a multilingual resource providing videos in 18 languages to enhance access to critical information for refugee, immigrant, and asylee communities. ($1,000)

Vermont Community Wash and Learn

One-month Workforce Training Program budget, supporting skill-building and job readiness for individuals from marginalized communities, including BIPOC, unhoused, and justice-involved individuals. ($1,350)

Funding for Project

The Empowerment Fund grants total $42,917 and are included in the REIB's FY25 Empowerment Fund GL.

Department Contact

If you have any questions, please contact Christian Berry, Interim Director of Racial Equity, Inclusion, and Belonging, at cberry@burlingtonvt.gov.

Motions

The Office of Racial Equity, Inclusion, and Belonging requests the Board of Finance approve the following motion:

> To approve and authorize the Interim Director of the Racial Equity, Inclusion, and Belonging Office and the Chief Administrative Officer to issue grants of City funds from the Empower Fund GL, and to execute grant agreements memorializing the same, subject to review by the City Attorney's Office, as follows:

a. to Asian General Market for a total authorized grant amount of $800;
b. to Black Bamboo Wellbeing for a total authorized grant amount of $700;
c. to Burlington School District for a total authorized grant amount of $7,250;
d. to Champlain Valley Office of Economic Opportunity for a total authorized grant amount of $2,067;
e. to Connecting Cultures for a total authorized grant amount of $750;
f. to Conscious Homestead for a total authorized grant amount of $1,500;
g. to Empress Levi Soul Food for a total authorized grant amount of $1,000;
h. to the Greater Burlington YMCA for a total authorized grant amount of $1,500;
i. to Harmony's Kitchen for a total authorized grant amount of $500;
j. to Hip-Hop For Flood Relief for a total authorized grant amount of $800;
k. to Ishmael Ahmed for a total authorized grant amount of $1,500;

l. to the Islamic Society of Vermont for a total authorized grant amount of $1,000;
m. to King Street Center for a total authorized grant amount of $1,500;
n. to Martha Kemp for a total authorized grant amount of $1,500;
o. to Mawuhi African Market for a total authorized grant amount of $1,500;
p. to Migrant Justice for a total authorized grant amount of $1,500;
q. to Mulu's Kitchen and Catering for a total authorized grant amount of $750;
r. to New American Youth on the Rise for a total authorized grant amount of $500;
s. to New American Public Health Initiative for a total authorized grant amount of $1,000;
t. to Pam's Moda for a total authorized grant amount of $900;
u. to the People's Kitchen Project for a total authorized grant amount of $1,500;
v. to Rajnii Eddins for a total authorized grant amount of $750;
w. to Raphaella Brice for a total authorized grant amount of $1,500;
x. Salome Oforiwaa for a total authorized grant amount of $800;
y. to the Somali Bantu Association of Vermont for a total authorized grant amount of $1,000;
z. to the South End Arts and Business Association for a total authorized grant amount of $2,000
aa. to Spectrum Youth and Family Services for a total authorized grant amount of $1,000;
bb. to the Creative Discourse Group for a total authorized grant amount of $1,000;
cc. Thingz from Yaad for a total authorized grant amount of $500;
dd. to Urmila Chhetri for a total authorized grant amount of $1,500;
ee. to the Vermont Asylum Assistance Project for a total authorized grant amount of $500;
ff. to the Vermont Language Justice Project for a total authorized grant amount of $1,000;
gg. to Vermont Community Wash and Learn for a total authorized grant amount of $1,350;

For a total authorized grant expenditure in the amount of $42,917.

Board of Finance and City Council Submission Checklist

Department: REIB   Submitter: Katie Greene, Community and Belonging Program Manager

Title/Subject: Empowerment Fund Grants FY25

	Approval:	Meeting Date:
☒	Board of Finance	12/9/24
☐	City Council	
☐	Concurrent	Click or tap to enter a date.

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	12/3/2024	Department Head initiated, Christian Berry
Mayor's Office informed and approved memo	Choose an item.	12.4.24	Erin Jacobsen
Board/Commission, if required	Choose an item.	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	Choose an item.	Click or tap to enter a date.	
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Choose an item.	12/4/2024	Jessica Brown
CAO has reviewed budget, financing, and memo	Choose an item.	12.4.24	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	Choose an item.	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	Choose an item.	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	Choose an item.	Click or tap here to enter text.
Additional Materials, if necessary	N/A	Click or tap here to enter text.
Draft Resolution or Motion?	Choose an item.	Click or tap here to enter text.
If for submission to Council, are sponsors identified?	Choose an item.	Click or tap here to enter text.

PATRICK LEAHY BURLINGTON INTERNATIONAL AIRPORT

TO: Board of Finance and City Council

FROM: Patrick Leahy Burlington International Airport
Nic Longo, Director of Aviation
Larry Lackey, Director of Planning, Engineering and Sustainability

DATE: December 9, 2024

SUBJECT: Request for approval to execute a Military Air National Guard Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA) with National Guard Bureau (NGB) for reimbursement of design, administration, engineering, and construction work costs associated with the Vermont Air National Guard Aircraft System Drainage Improvements.

REQUEST

The Patrick Leahy Burlington International Airport ("Leahy BTV") seeks approval and authorization to: Execute a Military Air National Guard Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA) with National Guard Bureau (NGB) for reimbursement of design, administration, engineering, and construction work costs associated with the VTANG Aircraft System Drainage Improvements

EXECUTIVE SUMMARY

This project involves repairing and modifying the existing Aircraft Arresting Systems (AAS), which are safety mechanisms designed to rapidly decelerate aircraft during landings or takeoffs by catching the aircraft with cables or barriers. The improvements will include upgrading the drainage system by adding infiltration galleries and connecting it to the existing stormwater system, ensuring continued compliance with state and federal stormwater regulations. Enhancements include upgrading the sump pump capabilities to establish redundant drainage functions in each barrier pit, updating the control system for flood-level monitoring, and relocating the Arresting Gear Markers. The AAS at Leahy BTV are the only functioning systems for this installation and are critical to operations. In the event of an emergency, this equipment can prevent aircraft from veering off the runway if going too

A: 1200 Airport Drive, #1 South Burlington, VT 05403
P: 802.863.2874

fast.

BENEFITS ANTICIPATED:

Ensures proper treatment of stormwater, maintaining compliance with state and federal regulations

PROJECT APPROACH

Stantec was selected through the airport's standard selection process for design and construction management services, meeting Federal standards for this type of project. Stantec's appointment also supports project efficiency, as they are the engineer of record for the upcoming Runway 15–33 rehabilitation project, which will overlap with this work, enabling effective coordination.

FUNDING SOURCES

The project finance plan establishes the maximum amount the NGB will reimburse Leahy BTV for project costs under the FSRMCA. Exceeding any line-item cost limitation requires an amendment to the agreement. Either party may propose changes to the finance plan in writing. As the design was not finalized at the time of the FSRMCA signing, modifications to the Maximum Contractual Cost (MCC) and associated construction fees may be needed. Additionally, since construction bids have not yet been secured, further amendments to the agreement may be necessary. This project and agreement will reimburse 100% costs back to Leahy BTV. At this time, the only costs incurred through the end of this Fiscal Year will be associated with design and bidding described below and will not require a budget amendment this fiscal year:

Activity	Estimated ANG Share	Estimated Recipient Share	Estimated Other Share	Estimated Total
Code and Criteria Review	$20,200	0	0	$20,200
Design Fees	$58,560	0	0	$58,560
Design Agent Fee – Recipient	$0	0	0	$0
Totals	$78,760	0	0	$78,760

Starting July 1, 2025, the construction and construction oversight will be completed and will not require a budget amendment as this will be part of our FY2026 budget, this cost is estimated to be approximately $912,000. Further, after we bid the project, we will reapproach the Commission with a request to sign a contract with the winning bidder.

PROPOSED MOTIONS:

Board of Finance:

> "To approve and recommend the City Council approve and authorize the Director of Aviation to execute a Military ANG Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA) with National Guard Bureau (NGB) for reimbursement of design, administration, engineering, and construction work costs associated with the VTANG Aircraft System Drainage Improvements, upon approval by the Office of the City Attorney."

City Council

> "To approve and authorize the Director of Aviation to execute a Military ANG Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA) with National Guard Bureau (NGB) for reimbursement of design, administration, engineering, and construction work costs associated with the VTANG Aircraft System Drainage Improvements, upon approval by the Office of the City Attorney."

DOD COMPONENT (NGB) COOPERATIVE AGEEEMENT GENERAL TERMS AND CONDITIONS
October 2023

SUBDIVISION A- Preamble

Part 1: Table of Contents

Part 2: Scope

Section A. Introduction.

NGB CA awards are subject to the following Department of Defense (DoD) General Terms and Conditions These general terms and conditions implement Office of Management and Budget (OMB) guidance, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,” published in the Code of Federal Regulations (CFR) at 2 CFR part 200 and implemented by the DoD at 2 CFR part 1104, “Interim Grants and Cooperative Agreements Implementation of Guidance in 2 CFR part 200” (79 FR 76047, December 19, 2014, as amended at 85 FR 49506, August 13, 2020).

Section B. Applicability.

1. These general terms and conditions apply to the National Guard Bureau (NGB), a DoD Component, cooperative agreements with institutions of higher education, nonprofit organizations, states, local governments, Indian tribes, and for-profit entities. They also apply when incorporated into NGB cooperative agreements subcontracts and sub awards with foreign organizations or foreign public entities (as defined in 2 CFR 1108). These general terms and conditions do not apply to NGB grants and cooperative agreements made directly to individuals. Certain provisions within these general terms and conditions may indicate that they apply to certain types of recipients only. An example of this is FMS Article V for non-federal audits.

2. Certain provisions within these general terms and conditions may indicate that they apply to certain types of recipients only. An example of this is FMS Article V for non-federal audits.

Organization Type	Applicable Administrative Requirements
Domestic Non-federal entity (including state, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization)	• 2 CFR 200: Subparts A through F • 2 CFR 600 & 601
Foreign Non-Profit Organization	• 2 CFR 200: Subparts A through E • 2 CFR 600 & 601
Domestic & Foreign For-Profit Organization	• 2 CFR 200: Subparts A through D • 2 CFR 600 & 601 • 48 CFR Part 30 & 31
Individuals	• None
Foreign Public Entities (Includes Public International Orgs)	• None

Section C. Order of Precedence.

Any inconsistencies in the requirements of a NGB CA awards will be resolved in the following order:

a. Federal statutes.

b. Federal regulations* not otherwise referenced herein.

c. Cooperative Agreement Award-specific terms and conditions.

d. General Terms and Conditions, which includes the DoD Component (NGB)'s Addendum to this document (Subdivision D).

Section D. Award Acceptance.

If you receive an unsigned award from NGB, that means that you are required to sign the award to indicate acceptance of the award, including the terms and conditions, prior to initiating performance. The grants officer will sign the award upon receipt of your signature.

Part 3: English Language

You must translate any of the award content (including attachments to it and any material incorporated into the award by reference) into another language only to the extent that your compliance with the award's terms and conditions depends upon a significant number of your employees who are not fluent in English being able to read and comprehend that content. If you translate any award content into another language, the original award content in the English language will take precedence in the event of an inconsistency between the award requirements in the English and translated versions.

Part 4: Plain Language

These general terms and conditions use plain language, with use of personal pronouns such as "you" to denote the recipient and "we" to mean the Federal Government (Government). Use of personal pronouns is a recognized means to help a reader understand to whom the language is addressed and assist in determining responsibilities.

Part 5: Reserved Provisions

If the words “RESERVED – Not Applicable” are used at the section or section level of an article without additional explanation, it means that this particular section or section does not apply in any manner to NGB CA awards. If the word “RESERVED” is used with additional explanation (in bold red colored font), it will describe whether the particular provisions either will or may be included in a DoD Component (NGB) addendum (Subdivision D) to these terms and conditions.

Part 6: Feedback on the Terms and Conditions

As you gain operating experience with these general terms and conditions, you may find areas requiring clarification or correction. Alerting us to potential issues will help us improve both these general terms and conditions and NGB’s regulatory implementation of the OMB guidance at 2 CFR part 200.

Part 7: Definitions

Section A. Purpose of this Part.

This part provides definitions of terms used in the DoD Component (NGB) General Terms and Conditions.

Section B. Precedence of Definitions of Terms in National Policy Requirements.

Part 7 of these general terms and conditions may use a term in relation to compliance with a national policy requirement in a statute, Executive order, or other source that defines the term differently than it is defined in Section D of this part. For purposes of that particular national policy requirement, the definition of a term provided by the source of the requirement and any regulation specifically implementing it takes precedence over the definition in this part.

Section C. Definitions of Terms Used in The Federal Governmentwide Cost Principles or Single Audit Requirements.

1. Some award provisions state that you must comply with single audit or cost principles requirements in a governmentwide issuance and include the requirements by reference to the issuance without restating them. For any term defined in one of those issuances, this part includes the definition only if the term is used in these general terms and conditions.

2. Otherwise, this part does not include a definition and a user of these terms and conditions should consult definitions in the pertinent Governmentwide source, as follows:

a. The requirements for audits of recipients and subrecipients that are in Subpart F of OMB guidance in 2 CFR part 200, which implements the Single Audit Act.

b. The governmentwide cost principles for institutions of higher education, nonprofit organizations, states, local governments, and Indian tribes that are contained in Subpart E of OMB guidance in 2 CFR part 200.

c. The cost principles for for-profit entities at Subpart 31.2 of the Federal Acquisition Regulation (48 CFR part 31), as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement at Subpart 231.2 of 48 CFR part 231.

Section D. Definitions.

1. Acquire. See 2 CFR 1108.10.

2. Acquisition. See 2 CFR 1108.15.

3. Acquisition Cost. See 2 CFR 1108.20.

4. Administrative Offset. See 2 CFR 1108.25.

5. Advance Payment. See 2 CFR 1108.30.

6. Advanced Research. RESERVED – Not Applicable.

7. Applied Research. RESERVED – Not Applicable.

8. Approved Budget. See 2 CFR 1108.50.

9. Assistance. See 2 CFR 1108.55.

10. Award. See 2 CFR 1108.60.

11. Award Administration Office. See 2 CFR 1108.65.

12. Basic Research. RESERVED – Not Applicable.

13. Budget Period. See 2 CFR 200.1.

14. Capital Asset.

    a. Tangible or intangible assets used in operations having a useful life of more than one year which are capitalized in accordance with Generally Accepted Accounting Principles (GAAP). Capital assets include. See also 2 CFR 1108.75:

        (1) Land, buildings (facilities), equipment, and intellectual property (including software) whether acquired by purchase, construction, manufacture, exchange, or through a lease accounted for as financed purchase under Government

Accounting Standards Board (GASB) standards or a finance lease under Financial Accounting Standards Board (FASB) standards; and

(2) Additions, improvements, modifications, replacements, rearrangements, reinstallations, renovations, or alterations to capital assets that materially increase their value or useful life (not ordinary repairs and maintenance).

b. For purpose of this Part, capital assets do not include intangible right-to-use assets (per GASB) and right-to-use operating lease assets (per FASB). For example, assets capitalized that recognize a lessee's right to control the use of property and/or equipment for a time under a lease contract. See also §200.465.

15. Claim. See 2 CFR 1108.80.

16. Cognizant Agency for Indirect Costs. - **RESERVED**

17. Contract. See 2 CFR 1108.90.

18. Contractor. See 2 CFR 1108.105.

19. Cooperative Agreement. See 2 CFR 1108.110.

20. Co-Principal Investigator. RESERVED – Not Applicable.

21. Cost Allocation Plan. See 2 CFR 1108.120.

22. Cost Sharing or Matching. See 2 CFR 1108.125.

23. Cost-Type Contract. See 2 CFR 1108.130.

24. Cost-Type Subaward. See 2 CFR 1108.35.

25. Debarment. See 2 CFR 1108.140.

26. Debt. See 2 CFR 1108.145.

27. Delinquent Debt. See 2 CFR 1108.150.

28. Development. RESERVED – Not Applicable.

29. Direct Costs. See 2 CFR 1108.160.

30. DoD Components. See 2 CFR 1108.165.

    The Office of the Secretary of Defense; the Military Departments; the National Guard Bureau; and all Defense Agencies, DoD Field Activities, and other organizational entities within the DoD that are authorized to award or administer grants, cooperative agreements, and other non-procurement instruments.

31. Equipment. See 2 CFR 1108.170, See also 2 CFR 200.313.

32. Exempt Property. See 2 CFR 1108.175.

33. Expenditures. See 2 CFR 1108.180.

34. Federal Interest.

    Federal Interest means, in relation to real property, equipment, or supplies acquired or improved under an award or subaward, the dollar amount that is the product of the:

    (1) Federal share of total project costs.

    (2) The percentage of federal participation in the total cost~~s~~ of the real property, equipment, or supplies.

    (3) Current fair market value of the property, improvements, or both, to the extent the costs of acquiring or improving the property were included as project costs.

35. Federal Share. See 2 CFR 1108.190.

36. Fixed Amount Subaward. See 2 CFR 1108.200.

37. Foreign Organization. See 2 CFR 1108.205.

38. Foreign Public Entity. See 2 CFR 1108.210.

39. Grant. See 2 CFR 1108.215.

40. Grants Officer. See 2 CFR 1108.220.

41. Indian Tribe. See 2 CFR 1108.225.

42. Indirect Costs (also known as “Facilities and Administrative,” or F&A, costs). **RESERVED – Not currently applicable to NGB - See CPP Guidance in Subdivision D of this document.**

43. Institution Of Higher Education. See 2 CFR 1108.235.

44. Intangible Property. See 2 CFR 1108.240.

45. Local Government. See 2 CFR 1108.245.

46. Management Decision. See 2 CFR 1108.250.

47. Nonprocurement Instrument. See 2 CFR 1108.255.

48. Nonprofit Organization. See 2 CFR 1108.260.

49. Obligation. See 2 CFR 1108.265.

50. Office Of Management and Budget. See 2 CFR 1108.270.

51. Outlays. See 2 CFR 1108.275.

52. Participant Support Costs. See 2 CFR 1108.280.

53. Period Of Performance. See 2 CFR 1108.285, See also Subdivision D.

54. Personal Property. See 2 CFR 1108.290.

    Property other than real property. It may be tangible, having physical existence, or intangible, such as copyrights, patents, and securities.

55. Principal Investigator. See 2 CFR 1108.295, Also See Subdivision D.

56. Prior Approval. See 2 CFR 1108.298

57. Procurement Contract. See 2 CFR 1108.300.

    Legal instrument which, consistent with 31 U.S.C. 6303, reflects a relationship between the Federal Government and a state, a local government, or other recipient when the principal purpose of the instrument is to acquire property or services for the direct benefit or use of the Federal Government. A procurement contract is a prime-tier transaction and therefore distinct from a recipient's or subrecipient's "procurement transaction" or "contract" as defined in this part.

58. Procurement Transaction**.** See 2 CFR 1108.2305.

    Legal instrument by which a recipient or subrecipient purchases property or services it needs to carry out the project or program under its award or subaward, respectively. A procurement transaction is distinct both from "subaward" and "procurement contract," as those terms are defined in this part.

59. Program Income. See 2 CFR 1108.310.

60. Project Costs. See 2 CFR 1108.315.

61. Property. See 2 CFR 1108.320.

62. Real Property. See 2 CFR 1108.325.

63. Recipient. See 2 CFR 1108.330.

    An entity that receives an award directly from NGB. The term does not include subrecipients.

64. Research. RESERVED – Not Applicable.

65. Simplified Acquisition Threshold. See 2 CFR 1108.340.

66. State. 2 CFR 1108.350, See also Subdivision D.

State for purposes of applying the administrative requirements in these regulations, means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any agency or instrumentality thereof exclusive of local governments.

67. Subaward. 2 CFR 1108.355.

Legal instrument by which a recipient or subrecipient at any tier, transfers--for performance by an entity at the next lower tier--a portion of the substantive program for which the DoD Component (NGB) made an award.

68. Subrecipient. 2 CFR 1108.360.

An entity that receives a subaward.

69. Supplies. 2 CFR 1108.365.

70. Suspension. 2 CFR 1108.370.

Suspension means either:

(1) When used in the context of a specific award or subaward, the temporary withdrawal of authority for the recipient or subrecipient to obligate funds under the award or subaward, pending it is taking corrective action or a decision to terminate the award or subaward.

(2) When used in the context of an entity, an action by a DoD Component (NGB)'s suspending official under 2 CFR part 1125, DoD (NGB)'s regulation implementing OMB guidance on nonprocurement debarment and suspension in 2 CFR part 180, to immediately exclude the entity from participating in covered Federal Government transactions, pending completion of an investigation and any legal or debarment proceedings that ensue.

71. Termination. 2 CFR 1108.380.

The ending of an award or subaward, in whole or in part, at any time prior to the planned end of the period of performance. A lack of available funds is not a termination.

72. Third-Party In-Kind Contribution. 2 CFR 1108.385.

The value of a non-cash contribution (i.e., property or services) that:

(1) A non-federal third party contributes, without charge, either to a recipient or subrecipient at any tier under NGB's award.

(2) Is identified and included in the approved budget of NGB's award, as a contribution being used toward meeting the award's cost sharing or matching requirement (which includes voluntary committed, but not voluntary uncommitted, contributions).

73. Total Value. 2 CFR 1108.390.

74. Unique Entity Identifier. 2 CFR 1108.395.

The identifier required for System for Award Management registration to uniquely identify entities with which the Federal Government does business (formerly the Dun and Bradstreet Data Universal Numbering System, or DUNS number).

75. Unobligated Balance. 2 CFR 1108.400.

76. Voluntary (Committed or Uncommitted) Cost Sharing. 2 CFR 1108.405.

77. Working Capital Advance. 2 CFR 1108.410.

A payment method under which funds are advanced to a recipient or subrecipient to cover its estimated disbursement needs for a given initial period, after which payment is made by way of reimbursement.

SUBDIVISION B - General Terms and Conditions for Administrative Requirements

Part 1: Financial and Program Management (Articles from this part are designated with “FMS” in the article title)

FMS Article I. Financial Management System Standards.

Section A. System standard for States.

As a State, you must expend and account for funds under NGB CA awards in accordance with:

a. Applicable State laws.

b. To the extent they comply with the requirements of Section B of this article, your procedures for expending and accounting for your own state funds.

Section B. System Standards for all Recipients.

1. Your financial management system must provide for:

   a. Inclusion, in your accounts, of the following information about each NGB grant or cooperative agreement that you receive:

      (1) That you received the award from NGB.

      (2) The number and title listed in the Assistance for NGB program under which the award was made.

      (3) NGB CA award number.

      (4) The year (your fiscal year) in which you received the award.

   b. Accurate, current, and complete disclosure of the financial results of the award needed to comply with financial and programmatic reporting requirements that are specified in REP Articles I and II of these general terms and conditions, as supplemented by any award-specific terms and conditions of an NGB CA award concerning reporting requirements. If you are asked at any time under an award to report financial information on an accrual basis, you:

      (1) Need not establish an accrual accounting system if you maintain your records on a different basis.

(2) May develop the accrual data based on an analysis of the data you have on hand.

2. Records that identify adequately the sources of funds for all activities funded by an NGB CA award, including any required cost sharing or matching, and the application of those funds. This includes funding authorizations; your financial obligations and expenditures of the funds; unobligated balances; property and other assets under the award; program income; and interest.

3. Effective control over, and accountability for, all funds, property, and other assets under NGB CA awards. You must adequately safeguard all assets and assure they are used solely for authorized purposes (see Section C of this article for additional requirements concerning internal controls).

4. Comparison of expenditures under NGB CA awards for project or program purposes with amounts in the approved budget for those purposes.

5. RESERVED – Not Applicable.

6. Written procedures:

    a. To implement requirements specified in FMS Article II, "Payments;"

    b. For determining the allowability of costs, which for an NGB CA award are determined in accordance with FMS Article III, "Allowable costs, period of availability of funds, and fee or profit," of these general terms and conditions, as supplemented by any award-specific terms and conditions of an NGB CA award that relate to allowability of costs.

Section C. Internal Controls.

Your system of internal controls must conform to OMB guidance in 2 CFR 200.303. With respect to paragraph (e) of 2 CFR 200.303, your internal control system must include measures to safeguard any information that federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export-controlled information), whether generated under the award or provided to you and identified as being subject to protection.

FMS Article II. Payments.

Section A. Awards to States.

1. If the award-specific terms and conditions of an NGB CA award do not identify it as an award subject to Subpart A of 31 CFR part 205 (Department of the Treasury regulations implementing the Cash Management Improvement Act), then a NGB CA award is subject to Subpart B of that part. Consistent with Subpart B of 31 CFR part 205.
2. **Payment Method, Timing, and Amounts** (see also Subdivision D). You must:

a. Minimize the time between your receipt of a payment under an NGB CA award and your disbursement of those funds for project or program purposes.

b. Limit the amount of each payment request to the minimum amount you need to meet your actual, immediate cash requirements for carrying out the project or program.

c. Submit each advance payment request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes, so that your receipt of the funds will be as close in time as is administratively feasible to your actual cash outlay for direct project or program costs and the proportionate share of any allowable indirect costs.

3. **Interest.** Unlike awards subject to Subpart A of 31 CFR part 205, neither you nor we will incur any interest liability due to a difference in timing between your receipt of payments under an NGB CA award and your disbursement of those funds for project or program purposes.

Section B. Awards to Institutions of Higher Education, Nonprofit Organizations, Local Governments, Indian Tribes, and For-profit entities.

1. **Payment method**. **RESERVED – Standard payment for NGB grants and cooperative agreements is by reimbursement. Advance allowable as per policy as described in Subdivision D of this document.**

2. **Amounts Requested**. You must:

a. Limit the amount of any advance payment request to the minimum amount needed to meet your actual, immediate cash requirements for carrying out the purpose of the approved project or program, including direct project costs and a proportionate share of any allowable indirect costs.

b. Exclude from any payment request amounts you are withholding from payments to contractors to assure satisfactory completion of the work. You may request those amounts when you make the payments to the contractors or to escrow accounts established to assure satisfactory completion of the work.

c. Exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under an NGB CA award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.

3. **Timing of Requests**. For any advance payment you request, you should submit the request approximately 10 days before you anticipate disbursing the requested amount for project or program purposes. With time for agency processing of the request, that should result in payment as close as is administratively feasible to your actual

disbursements for project or program purposes.

4. **Frequency of Requests**. You may request payments as often as you wish unless you have been granted a waiver from requirements to receive payments by electronic funds transfer (EFT). If you have been granted a waiver from EFT requirements, the award-specific terms and conditions of an NGB CA award specify the frequency with which you may submit payment requests.

5. **Withholding of Payments**. We will withhold payments for allowable costs under the award at any time during the period of performance only if one or more of the following applies:

   a. We suspend either payments or the award, or disallow otherwise allowable costs, as a remedy under OAR Article III due to your failure to comply with federal statutes, regulations, or the terms and conditions of an NGB CA award. If we suspend payments and not the award, we will release withheld payments upon your subsequent compliance. If we suspend the award, then amounts of payments are subject to adjustment in accordance with the terms and conditions of OAR Article B.

   b. You are delinquent in a debt to the United States, in which case we may, after reasonable notice, inform you that we will not make any further payments for costs you incurred after a specified date until you correct the conditions or liquidate the indebtedness to the Federal Government.

   c. The award-specific terms and conditions include additional requirements that provide for withholding of payments based on conditions identified during our pre-award risk evaluation, in which case you should have been notified about the nature of those conditions and the actions needed to remove the additional requirements.

6. **Depository Requirements**.

   a. There are no eligibility requirements for depositories you use for funds you receive under NGB CA awards.

   b. You are not required to deposit funds you receive under NGB CA awards in a depository account separate from accounts in which you deposit other funds. However, FMS Article I requires that you be able to account for the receipt, obligation, and expenditure of all funds under NGB CA awards.

   c. You must deposit any advance payments of funds you receive under NGB CA awards in insured accounts whenever possible and, unless any of the following apply, you must deposit them in interest-bearing accounts:

      (1) You receive a total of less than $250,000 per year under federal grants and cooperative agreements.

      (2) You would not expect the best reasonably available interest-bearing account to earn interest in excess of $500 per year on your cash balances of advance payments under federal grants and cooperative agreements.

(3) The best reasonably available interest-bearing account would require you to maintainan average or minimum balance higher than it would be feasible for you to do within your expected federal and non-Federal cash balances.

(4) A foreign government or banking system precludes your use of interest-bearing accounts.

d. You may retain for administrative expenses up to $500 per year of interest that you earn in the aggregate on advance payments you receive under NGB CA awards and other federal grants and cooperative agreements. You must remit annually the rest of the interest to the Department of Health and Human Services, using the procedures set forth in OMB guidance in 2 CFR 200.305(b)(9).

Section C. Electronic Funds Transfer and other Payment Procedural Instructions or Information.

1. **Electronic Funds Transfer**. Unless the award-specific terms and conditions of NGB CA awards provide otherwise, you will receive payments under NGB CA awards by electronic funds transfer.

2. **RESERVED** – Not Applicable.

FMS Article III. Allowable Costs, Period of Availability of Funds, and Fee or Profit.

Section A. Allowable Costs.

1. This section, with the clarification provided in Section B, specifies which federal cost principles must be used in determining the allowability of costs charged to NGB CA awards, a subrecipient's costs charged to any cost-type subaward that you make under NGB CA awards, and a contractor's costs charged to any cost-type procurement transaction into which you enter under NGB CA awards. These cost principles also govern the allowable costs that you or a subrecipient of a subaward at any tier below NGB CA awards may consider when establishing the amount of any fixed-amount subaward or fixed-price procurement transaction at the next lower tier. The set of cost principles to be used in each case depends on the type of entity incurring the cost under the award, subaward, or contract.

2. **General Case**. If you, your subrecipient, or your contractor is:

   a. **An Institution of Higher Education**, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendix III to that part.

   b. **A Hospital**, the allowability of costs must be determined in accordance with provisions of appendix IX to 2 CFR part 200, which currently specifies the cost principles in appendix IX to 45 CFR part 75 as the applicable cost principles.

c. **A Nonprofit Organization other than a Hospital or Institution of Higher Education**, the allowability of costs must be determined in accordance with provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices IV and VIII to that part. In accordance with guidance in 2 CFR 200.401(c), a nonprofit organization listed in appendix VIII to 2 CFR part 200 is subject to the cost principles for for-profit entities specified in paragraph 1.e of this section.

d. **A State, Local Government, or Indian Tribe**, the allowability of costs must be determined in accordance with applicable provisions of Subpart E of OMB guidance in 2 CFR part 200 other than 2 CFR 200.400(g), supplemented by appendices V through VII to that part.

e. **A for-Profit Entity (Other Than a Hospital) or a Nonprofit Organization Listed in Appendix VIII To 2 CFR Part 200**:

(1) The allowability of costs must be determined in accordance with:

(a) The cost principles for commercial organizations in the Federal Acquisition Regulation (FAR) at Subpart 31.2 of 48 CFR part 31, as supplemented by provisions of the Defense Federal Acquisition Regulation Supplement (DFARS) at Subpart 231.2 of 48 CFR part 231.

(b) For a for-profit entity, the additional provisions on allowability of audit costs, in 32 CFR 34.16(f).

(2) The indirect cost rate to use in that determination is:

(a) The for-profit entity's federally negotiated indirect cost rate if it has one.

(b) Subject to negotiation between you and the for-profit entity if it does not have a federally negotiated indirect cost rate. The rate that you negotiate may provide for reimbursement only of costs that are allowable in accordance with the cost principles specified in paragraph A.1.e.(1) of this article.

3. **Exception.** You may use your own cost principles in determining the allowability of a contractor's costs charged to a cost-type procurement transaction under NGB CA awards—or in pricing for a fixed-price contract based on estimated costs if your cost principles comply with the federal cost principles that paragraph A.1 of this section identifies as applicable to the contractor.

Section B. Clarifications Concerning Charges for Professional Journal Publications. **RESERVED – Not Applicable.**

Section C. Period of Availability of Funds.

1. You may charge to NGB CA awards only:

a. Allowable costs incurred during the period of performance specified in NGB CA awards, including any subsequent modifications to it.

b. Any pre-award costs that you are authorized (by either the terms and conditions of FMS Article IV or NGB awarding official) to incur prior to the start of the period of performance, at your own risk, for purposes of the project or program under NGB CA awards.

2. Costs of publishing in professional journals incurred after the period of performance, as permitted under 2 CFR 200.461(b)(3), if:

   a. We receive the request for payment for such costs no later than the date on which REP Article II requires you to submit the final financial report to us (or, if we grant your request for an extension of the due date, that later date on which the report is due).

   b. Your reported expenditures on the final financial report include the amount you disbursed for those costs.

Section D. Fee or Profit.

1. You may not receive any fee or profit under NGB CA awards.

2. You may not use funds available to you under NGB CA awards to pay fee or profit for an entity of any type to which you make a subaward.

3. You may pay fee or profit to an entity with which you enter into a procurement transaction to purchase goods or general support services for your use in carrying out the project or program under the award.

FMS Article IV. Revision of Budget and Program Plans.

Section A. Approved Budget.

The approved budget of NGB CA awards:

a. Is the most recent version of the budget that you submitted, and we approved (either at the time of the initial award or a more recent modification), to summarize planned expenditures for the project or program.

b. Includes all federal funding that we make available to you under NGB CA awards to use for project or program purposes and any cost sharing or matching that you are required to provide under NGB CA awards for those same purposes.

Section B. Revisions Requiring Prior Approval.

1. **Non-Construction Activities**. You must request prior approval from us for any of the following program or budget revisions in non-construction activities:

    a. A change in the scope or objective of the project or program under NGB CA awards, even if there is no associated budget revision that requires our prior approval.

    b. A change in a key person identified in the award cover pages.

    c. The approved principal investigator's or project director's disengagement from the project for more than three months, or a 25 percent reduction in his or her time devoted to the project.

    d. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

    e. RESERVED – Only applicable if provided in DoD Component addendum to these terms and conditions.

    f. A subaward to another entity under which it will perform a portion of the substantive project or program under the award if it was not included in the approved budget. This does not apply to your contracts for acquisition of supplies, equipment, or general support services you need to carry out the program.

    g. Any change in the cost sharing or matching you provide under the award, as included in the approved budget, for which FMS Article VI requires prior approval.

    h. RESERVED – Not Applicable.

    i. The need arises for additional federal funds to complete the project or program.

2. **Construction Activities**. You must request prior approval from us for any of the following program or budget revisions in construction activities:

    a. A change in the scope or objective of the project or program under NGB CA awards, even if there is no associated budget revision that requires our prior approval.

    b. The need arises for additional federal funds to complete the project.

    c. The inclusion of direct costs that require prior approval in accordance with the applicable cost principles, as identified in FMS Article III.

3. Funding transfers between construction and non-construction activities. Only applicable if provided in DoD Component addendum to these terms and conditions.

Section C. Pre-Award Costs.

1. You are authorized, without requesting prior approval from us, to:

   Charge to NGB CA awards after you receive it, pre-award costs that you incurred, at your own risk, up to 90 calendar days before the start date of the period of performance, if they are costs that would be allowable charges to the project or program under the terms and conditions of FMS Article III if they were incurred during the period of performance. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency.

2. **RESERVED** – **RESERVED - Only applicable if provided in award-specific terms and conditions.**

3. **RESERVED** – **RESERVED - Only applicable if provided in award-specific terms and conditions.**

Section D. Procedures.

1. We will review each request you submit for prior approval for a budget or program change and, within 30 calendar days of our receipt of your request, we will respond to you in writing to either:

   a. Notify you whether your request is approved; or

   b. Inform you that we still are considering the request, in which case we will let you know when you may expect our decision.

2. RESERVED – Not Applicable.

FMS Article V. Non-Federal Audits.

Section A. Requirements for Entities Subject to the Single Audit Act.

You and each subrecipient under NGB CA awards that is an institution of higher education, nonprofit organization, state, local government, or Indian tribe must comply with the audit requirements specified in Subpart F of 2 CFR part 200, which is the OMB implementation of the Single Audit Act, as amended (31 U.S.C. chapter 75).

Section B. Requirements for For-Profit Entities.

Any for-profit entity that receives an award or subaward from you under NGB CA awards is subject to the audit requirements specified in 32 CFR 34.16. In accordance with the Class Deviation for the Single Audit Act for For-Profit Assistance Awards, dated 29 June 2018, the audit requirement threshold has been increased to $750,000. Your subaward terms and conditions will require the subrecipient to provide the reports to you if it is willing to do so, so that you can resolve audit findings that pertain specifically to your subaward (e. g., disallowance of costs). If the for-profit entity is unwilling to agree to provide the auditor's report to you, contact the grants officer for NGB CA award to discuss an alternative approach for carrying out audit oversight of the subaward. If the grants officer does not provide an alternative approach within 30 days of receiving your request, you may determine an approach to ensure the for-profit subrecipient's compliance with the subaward terms and conditions, as described in OMB guidance at 2 CFR 200.501(h).

FMS Article VI. Cost Sharing or Matching.

Section A. Required Cost Sharing or Matching.

1. If any cost sharing or matching is required under NGB CA awards, the total amount or percentage required is shown in the award cover pages and included in the approved budget. That cost sharing or matching includes all:

    a. Cash and third-party in-kind contributions.

    b. Contributions to the project or program made either by or through (if made by a third party) you and any subrecipients.

2. You must obtain our prior approval if you wish to:

    a. Change the amount or percentage of cost sharing or matching required under NGB CA awards.

    b. **RESERVED** –**Only applicable if provided in award-specific terms and conditions.**

Section B. Allowability as Cost Sharing or Matching.

1. Each cash or third-party in-kind contribution toward any cost sharing or matching required under NGB CA awards, whether put forward by you or a subrecipient under a subaward that you make, is allowable as cost sharing or matching if:

    a. You (or the subrecipient, if it is a subrecipient contribution) maintain records from which one may verify that the contribution was made to the project or program and, if it is a third-party in-kind contribution, its value.

    b. The contribution is not counted as cost sharing or matching for any other federal award.

2. The contribution is:

    a. Allowable under the cost principles applicable to you (or the subrecipient, if it is a subrecipient contribution) under FMS Article III of these terms and conditions.

b. Allocable to the project or program and reasonable.

c. The Federal Government does not pay for the contribution through another federal award, unless that award is under a program that has a federal statute authorizing application of that program's federal funds to other federal programs' cost sharing or matching requirements.

d. The value of the contribution is not reimbursed by the federal share of NGB CA awards as either a direct or indirect cost.

e. The contribution conforms to the other terms and conditions of NGB CA awards, including the award specific terms and conditions.

Section C. Allowability of Unrecovered Indirect Costs as Cost Sharing or Matching. Not currently applicable to NGB - See CPP Guidance in Subdivision D of this document.

Section D. Allowability of Program Income as Cost Sharing or Matching.

If FMS Article VII of these general terms and conditions or the award-specific terms and conditions of NGB CA awards specify that you are to use some or all of the program income you earn to meet cost-sharing or matching requirements under the award, then program income is allowable as cost sharing or matching to the extent specified in those award terms and conditions.

Section E. Valuation of Services or Property That You or Subrecipients Contribute or Donate.

1. You must establish values for services or property contributed or donated toward cost sharing or matching by you or subrecipients in accordance with the provisions of this section. These contributions or donations are distinct from third-party contributions or donations to you or subrecipients, which are addressed in Section F of this article.

2. Usual valuation of services or property that you or subrecipients contribute or donate. Values established for contributions of services or property by you or a subrecipient must be the amounts allowable in accordance with the cost principles applicable to the entity making the contribution (i.e., you or the subrecipient), as identified in FMS Article III. For property, that generally is depreciation.

3. Needed approvals for, and valuation of, property that you or subrecipients donate.

   a. **Types of Property That May Be Donated**.

      (1) **Buildings or Land**. If the purposes of NGB CA award includes construction, facilities acquisition, or long-term use of real property, you may donate buildings or land to the project if you obtain our prior approval. Donation of property to the project, as described in PROP Article I, means counting the value of the property toward cost sharing or matching, rather than charging depreciation.

(2) **Other Capital Assets**. If you obtain our prior approval, you may donate to the project other capital assets identified in 2 CFR 200.439(b)(1) through (3).

b. **Usual Valuation of Donated Property**. Unless you obtain our approval as described in section E.2.c of this article, the value for the donated property must be the lesser of:

(1) The value of the remaining life of the property recorded in your accounting records at the time of donation, or

(2) The current fair market value.

c. **Approval Needed for Alternative Valuation of Property**. If you obtain our approval as reflected in the approved budget, you may count as cost sharing or matching the current fair market value of the donated property even if it exceeds the value of the remaining life of the property recorded in your accounting records at the time of donation.

d. **Federal Interest in Donated Property**. Donating buildings, land, or other property to the project, rather than charging depreciation, results in a federal interest in the property in accordance with PROP Article I of these terms and conditions.

Section F. Valuation of Third-Party In-Kind Contributions.

1. **General**. If a third party furnishes goods or services to you or subrecipients that are to be counted toward cost sharing or matching under NGB CA awards, the entity to which the third party furnishes the goods or services (i.e., you or a subrecipient) must document the fair market value of those in-kind contributions and, to the extent feasible, support those values using the same methods the entity uses internally.

2. **Valuation of Third-Party Services**. You must establish values for third-party volunteer services and services of third parties' employees furnished to you or subrecipients as follows:

a. **Volunteer Services.** Volunteer services furnished by third-party professional and technical personnel, consultants, and other skilled and unskilled labor must be valued in accordance with 2 CFR 200.306(e).

b. **Services of Third Parties' Employees**. When a third-party organization furnishes the services of its employees to you or a subrecipient, values for the contributions must be established in accordance with 2 CFR 200.306(f).

c. **Additional Requirement for Donations to Nonprofit Organizations**. For volunteer services or services of third parties' employees furnished to a nonprofit organization:

(1) OMB guidance in 2 CFR 200.434(e) also applies and may require the nonprofit

organization to allocate a proportionate share of its applicable indirect costs to the donated services.

(2) The indirect costs that the nonprofit organization allocates to the donated services in that case must be considered project costs and may be either reimbursed under the award or counted toward required cost sharing or matching, but not both.

3. **Valuation of Third-Party Property**. You must establish values for third-party property furnished to you or subrecipients as follows:

a. **Supplies Donated by Third Parties**. When a third-party organization donates supplies (e.g., office, laboratory, workshop, or classroom supplies), the value that may be counted toward cost sharing or matching may not exceed the fair market value of the supplies at the time of donation.

b. **Equipment, Buildings, or Land Donated by Third Parties**.

(1) The value of third-party donations of equipment, buildings, or land that may be counted toward cost sharing or matching when the third party transferred title to you or a subrecipient depends on the purpose of the award in accordance with the following:

(a) If one of the purposes of the award is to assist you or the subrecipient in the acquisition of equipment, buildings, or land, you may count the aggregate fair market value of the donated property toward cost sharing or matching.

(b) If the award's purposes instead include only the support of activities that require the use of equipment, buildings, or land, you may only charge depreciation unless you obtain our prior approval to count as cost sharing or matching the fair market value of equipment or other capital assets and fair rental charges for land.

(2) The values of the donated property must be determined in accordance with the usual accounting policies of the entity to which the third party transferred title to the property, with the qualifications specified in 2 CFR 200.306(i)(1) and (2) for donated land and buildings and donated equipment, respectively.

c. **Use of Space Donated by Third Parties**. If a third party makes space available for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed the fair rental value of comparable space as established by an independent appraisal, as described in 2 CFR 200.306(i)(3).

d. **Equipment Loaned by Third Parties**. If a third-party loans equipment for use by you or a subrecipient, the value that you may count toward cost sharing or matching may not exceed its fair rental value.

FMS Article VII. Program Income.

Section A. Definition. The term “program income” as used in NGB CA awards:

1. Is gross income that:

   a. You earn that is directly generated by a supported activity or earned as a result of NGB CA awards; or

   b. A subrecipient earns as a result of a subaward you make under NGB CA awards.

2. Includes, but is not limited to, income earned under NGB CA awards from:

   a. Fees for services performed.

   b. The use or rental of real or personal property acquired under any federal award and currently administered under NGB CA awards.

   c. The sale of commodities or items fabricated under NGB CA awards.

   d. License fees and royalties on patents and copyrights.

   e. Payments of principal and interest on loans made with federal award funds.

3. Does not include for purposes of NGB CA awards any:

   a. Interest earned on advance payments, disposition of which is addressed in FMS Article II.

   b. Proceeds from the sale of real property, equipment, or supplies, which is addressed in PROP Articles III and IV.

   c. Rebates, credits, discounts, and interest earned on any of them.

   d. Governmental revenues, including any taxes, special assessments, levies, fines, and similar revenues you raise.

Section B. Encouragement to Earn Program Income.

You are encouraged to earn program income under NGB CA awards when doing so does not interfere with the project or program the award supports.

Section C. Costs of Generating Program Income.

You may deduct costs incidental to the generation of program income from the amount that you use in accordance with Section E of this Article, if those costs are not charged to NGB CA awards (which includes their being counted toward any cost sharing or matching you are required to provide).

Section D. License Fees and Royalties.

You have no obligations to the Federal Government with respect to program income earned under NGB CA awards from license fees and royalties for patents or patent applications, copyrights, trademarks, or inventions developed or produced under the award.

Section E. Use of Program Income.

1. You must use any program income that you earn during the period of performance under NGB CA awards to increase the amount of the award (the sum of the federal share and any cost sharing or matching you are required to provide), thereby increasing the amount budgeted for the project or program. The program income must be used for the purposes and under the terms and conditions of the award.

2. Your use of the additional funding is subject to the terms and conditions of NGB CA awards, including:

   a. FMS Article II concerning your use of balances of program income before you request additional funds from us.

   b. FMS Article III concerning allowability of costs for which the funds may be used.

3. You must report on each Federal Financial Report (SF-425) that you submit in accordance with REP Article II the program income that you earn and any that you use during the reporting period covered by that SF-425.

Section F. Duration of Accountability for Program Income.

The requirements concerning disposition of program income in Section E of this Article apply only to program income you or your subrecipients earn during the period of performance. There are no requirements under NGB CA awards applicable to program income you or your subrecipients earn after the end of the period of performance.

Part 2: Property Administration (Articles from this part are designated with "PROP" in the article title)

PROP Article I. Title to Property.

Section A. Title to Property Acquired under NGB CA Awards.

1. **General**. Other than any property identified in section A.2 of this section as exempt property:

   a. Title to real property, equipment, and supplies that you acquire (whether by purchase, construction or fabrication, development, or otherwise) and charge as direct project costs under NGB CA awards vests in you, the recipient. Title to intangible property that you acquire (other than by developing or producing it) under NGB CA awards also vests in you.

b. That title is a conditional title, subject to the terms and conditions in PROP Articles II-IV, Section D of PROP Article VI, and REP Article III of NGB CA awards.

c. There is a federal interest in the property, other than intangible property that you develop or produce under the award. For real property, equipment, and intangible property, we retain this federal interest until final disposition of the property under PROP Article III (for real property), PROP Article IV (for equipment), or Section D of PROP Article VI (for intangible property that is acquired, other than by developing or producing it), a period that in some cases may extend beyond closeout of NGB CA awards.

2. **Exempt property. RESERVED – Not Applicable.**

Section B. Property Trust Relationship.

1. **Basic Requirement**. Other than intangible property that you develop or produce under the award, you hold any real property, equipment, or intangible property that you acquire or improve under NGB CA awards in trust for the beneficiaries of the project or program that you are carrying out under the award.

2. **Notices of Record**. **RESERVED - Only applicable if provided in award-specific terms and conditions.**

Section C. Federally Owned Property.

Title to any federally owned property that we provide to you under NGB CA awards (or such property for which accountability is transferred to NGB CA awards from another federal award) remains with the Federal Government.

Section D. Federal Interest in Donated Real Property or Equipment.

If real property or equipment is acquired under NGB CA awards through your donation of the property to the project or program (i.e., counting the value of the remaining life of the property recorded in your accounting records or the fair market value as permitted under FMS Article VI of these general terms and conditions as part of your share of project costs to meet any cost sharing or matching requirements, rather than charging depreciation):

a. The Government acquires a federal interest in the real property or equipment that is donated for use in the project or program.

b. The real property or equipment is subject to Section B of this article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to property acquired under the award.

c. The federal interest in the real property or equipment must be addressed at the time of property disposition.

Section E. Federal Interest in Property Improved under the Award.

1. The Federal Government has an interest in improvements (as distinct from ordinary repairs and maintenance) you make to an item of real property or equipment if you charge the costs of the improvements as direct costs to NGB CA award.

2. We thereby acquire an interest in the property if the Federal Government did not previously have one. If the Federal Government already had an interest in the property, the value of that federal interest in the property increases by the amount of the federal interest in the improvements.

3. The property is subject to Section B of this article and the terms and conditions of PROP Articles II-IV and REP Article III that are applicable to real property or equipment acquired under the award.

4. The federal interest must be addressed at the time of property disposition.

PROP Article II. Property Management System.

Section A. Insurance Coverage for Real Property and Equipment.

You must, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired or improved under NGB CA awards as you provide for real property and equipment that you own.

Section B. Other Management System Standards for a State.

1. **Equipment.** Your property management system for equipment acquired or improved in whole or in part under an NGB CA award must be in accordance with your state laws and procedures.

2. **Federally Owned Property.** You may use your own property management system for any federally owned property for which you are accountable, if it meets the following minimum standards:

   a. **Records.** Your records must include for each item of federally owned property:

      (1) A description of the item.

      (2) The location of the item.

      (3) The serial or other identification number.

      (4) Which federal agency holds title.

(5) The date you received the item.

(6) Any data on the ultimate disposition of the item, such as the date of disposal.

(7) The federal award identification number of the award under which you are accountable for the item.

b. **Inventory.** You must take a physical inventory of federally owned property at least annually and reconcile the results with your records.

c. **Control System.** You must:

(1) Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of federally owned property.

(2) Investigate any loss, damage, or theft of federally owned property and promptly notify the award administration office.

d. **Maintenance.** You must maintain the property in good condition.

Section C. Other Management System Standards for an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, For-profit entity.

1. Your procedures for managing equipment (including replacement equipment) acquired or improved in whole or in part under NGB CA awards and any federally owned property for which you are accountable under NGB CA awards must, as a minimum, meet the requirements in this section.

2. **Records**. You must maintain records that include for each item of equipment or federally owned property:

a. A description of the item.

b. The serial or other identification number.

c. Who holds title (e.g., you or the Federal Government and, if the latter, which federal agency).

d. The source of funding for the equipment, including the award number, or the source of the federally owned property, including the award number of the award under which you are accountable for the property.

e. The acquisition date and cost of the equipment (or improvement to the equipment) or the date you received the federally owned property.

f. The location, use, and condition of the equipment or federally owned property.

g. Information from which one can calculate the amount of the federal interest in the acquisition or improvement of the item (this amount is zero after you compensate us for the federal interest in the item or improvement).

h. Any data on the ultimate disposition of the item including the date of disposal and sale price.

3. **Labelling**. You must ensure that property owned by the Federal Government is labeled to identify it as federally owned property.

4. **Inventory**. You must take a physical inventory of equipment in which there is a federal interest and reconcile the results with your records at least once every 2 years.

5. **Control system**. You must:

   a. Maintain an internal property control system with adequate safeguards to prevent loss, damage, or theft of equipment and federally owned property.

   b. Investigate any loss, damage, or theft and notify the award administration office if it involved equipment in which there is a federal interest under the award or federally owned property.

6. **Maintenance**. You must maintain equipment acquired or improved in whole or in part under the award and federally owned property in good condition.

PROP Article III. Use and Disposition of Real Property.

Section A. Use of Real Property.

1. You must use real property acquired or improved under NGB CA awards for the originally authorized purpose if needed for that purpose. During that time, you may not:

   a. Dispose of the property except, with the prior approval of the award administration office, to acquire replacement property under NGB CA awards, in which case you may use the proceeds from the disposition as an offset to the cost of the replacement property; or

   b. Encumber the title or other interests in the property without the prior approval of the award administration office.

2. RESERVED – Not Applicable.

3. RESERVED – Not Applicable.

Section B. Disposition of Real Property.

1. When you no longer need real property for the originally authorized purpose, you must

obtain disposition instructions from the award administration office except as provided in any section A.3 of this article. Those instructions will provide for one of the following three alternatives, which are that you:

a. Retain title after compensating us for the federal interest in the property, which is to be computed as specified in the definition of "federal interest."

b. Sell the property and compensate us for the federal interest in the property, as described in 2 CFR 200.311(c)(2).

2. Transfer title to us or a third party we designate, as described in 2 CFR 200.311(c)(3).

PROP Article IV. Use and Disposition of Equipment and Supplies.

Section A. Property Subject to This Article.

This article specifies requirements for use and disposition of equipment and supplies. If a provision of PROP Article I of these general terms and conditions and NGB CA award identifies any type of equipment or supplies as exempt property, requirements of this Article apply to that exempt property only to the extent specified in that provision of PROP Article I or an award-specific term or condition. The types of non-exempt property to which this article applies are:

a. Supplies that you acquire either by purchase or by donation as cost sharing or matching under an NGB CA award.

b. Equipment for which title is vested conditionally in you. That includes equipment with a conditional title resulting from your having, either under an NGB CA award or under a previous award from which you transferred accountability for the equipment to an NGB CA award:

(1) Directly charged as project costs, in whole or in part, the acquisition (by purchase, construction or fabrication, or development) of equipment,

(2) Donated the equipment to the project or program by counting the value of the remaining life of the property recorded in your accounting records or the fair market value toward any cost sharing or matching requirements under the award, rather than charging depreciation (see PROP Article I, Section D); or

(3) Directly charged as project costs improvements to the equipment that meet the criteria given in section E.1 of PROP Article I.

Section B. Requirements for a State's Use and Disposition of Equipment.

a. You must use the equipment for the authorized purposes of the project or program during the period of performance, or until the property is no longer needed for those purposes.

b. You may not encumber the property without the prior approval of the award administration office.

c. You must use and dispose of the equipment in accordance with your state laws and procedures.

Section C. Use of Equipment by an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, or For-profit Entity.

1. You must use the equipment for the authorized purposes of the project or program under an NGB CA award until the equipment is no longer needed for those purposes, whether the project or program continues to be supported by NGB CA awards.

2. You may not encumber the equipment without the prior approval of the award administration office.

3. During the time that the equipment is used for the project or program under an NGB CA award:

   a. You must make the equipment available for use on other projects or programs but only if that use will not interfere with the equipment's use as needed for the project or program supported by NGB CA award.

      (1) First preference must be given to other projects or programs supported or previously supported by NGB and second preference to those supported or previously supported by other federal agencies.

      (2) Third preference is for other projects or programs not supported by the Federal Government. You should charge user fees for use of the equipment in those cases if it is at all practicable.

   b. You may use the equipment, if you need to acquire replacement equipment, as a trade-in or sell it (using sales procedures designed to ensure the highest possible return) and use the proceeds from the sale to offset the cost of the replacement equipment.

4. When the equipment is no longer needed for the project or program under an NGB CA award, you may defer final disposition of the equipment and continue to use it on other federally sponsored projects or programs. You must give priority to other projects or programs supported by NGB.

5. Notwithstanding the encouragement in FMS Article VII to earn program income, you may not use equipment in which there currently is a federal interest--whether you acquired it under an NGB CA award or are otherwise accountable for it under an NGB CA award--to provide services for a fee that is less than private companies charge for equivalent services.

Section D. Disposition of Equipment by an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, or For-profit Entity.

1. You must request disposition instructions from the award administration office when either original or replacement equipment acquired under an NGB CA award with a current fair market value that exceeds $5,000 is no longer needed for the original project or program or for other federally sponsored activities as described in Section C.4. of this article. For each item of equipment with a current fair market value of $5,000 or less, you may retain, sell, or otherwise dispose of the item with no further obligation to the Federal Government.

2. We may issue disposition instructions that:

    a. Allow you to retain or sell any item of equipment after compensating us for the federal interest in the property, which is to be computed as specified in the definition of "federal interest;" or

    b. Require you to transfer title to the equipment to a federal agency or a third-party, in which case you are entitled to compensation from us for the non-federal interest in the equipment, plus any reasonable shipping or interim storage costs incurred.

3. If we fail to provide disposition instructions for any item of equipment within 120 calendar days of receiving your request, you may retain or sell the equipment, but you must compensate us for the amount of the federal interest in the equipment.

4. If you sell the equipment:

    a. You must use sales procedures designed to ensure the highest possible return.

    b. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

Section E. Use and Disposition of Supplies Acquired under NGB CA Awards.

1. **Use.** If we retain a federal interest in supplies acquired under an NGB CA award either by purchase or by donation as cost sharing or matching, you may not use the supplies to provide services to other organizations for a fee that is less than private companies charge for equivalent services, notwithstanding the encouragement in FMS Article VII to earn program income.

2. **Disposition**. If you have a residual inventory of unused supplies with aggregate value exceeding $5,000 at the end of the period of performance under an NGB CA award, and the supplies are not needed for any other federal award, you may retain the supplies or sell them but must in either case compensate us for the amount of the federal interest in the supplies. You may deduct and retain for selling and handling expenses either $500 or ten percent of the proceeds, whichever is less.

PROP Article V. Use and Disposition of Federally Owned Property.

Section A. Use.

During the time that federally owned property for which you are accountable under an NGB CA award is used for the project or program supported by the award, you:

a. Also, may make the property available for use on other federally supported projects or programs, but only if that use will not interfere with the property's use for the project or program supported by NGB CA award. You must give priority to other projects or programs supported by DoD Components (NGB).

b. May use the property for purposes other than federally supported projects or programs only with the prior approval of the awarding office or, if you request approval after the award is made, the award administration office.

Section B. Disposition.

You must request disposition instructions from the award administration office for any federally owned property under an NGB CA award, including any property for which a subrecipient is accountable under a subaward you make under an NGB CA award, either:

a. At any time during the period of performance if the property is no longer needed for the project or program supported by NGB CA awards; or

b. At the end of the period of performance.

PROP Article VI. Intangible Property.

Section A. Assertion of Copyright.

1. You may assert copyright in any work that is eligible for copyright protection if you acquire ownership of it under an NGB CA award, either by developing it or otherwise.

2. With respect to any work in which you assert copyright, as described in paragraph A.1 of this section, NGB reserves a royalty-free, nonexclusive, and irrevocable license to:

   a. Reproduce, publish, or otherwise use the work for Federal Government purposes.

   b. Authorize others to reproduce, publish, or otherwise use the work for Federal Government purposes.

Section B. Inventions Developed under the Award.

1. **Applicability of Governmentwide Clause for Research Awards**. You must comply with the governmentwide patent rights award clause at 37 CFR 401.14, with the

modifications described in section B.2 of this section. NGB adopts that Governmentwide clause for the following entities, thereby broadening the applicability beyond types of entities included in the definition of “contractor” in 37 CFR part 401:

Any institution of higher education, non-profit organization, state, local government, Indian tribe, for-profit entity, foreign organization, or foreign public entity receiving a NGB award for the performance of experimental, research, or developmental work.

2. **Modifications to the Wording of the Federal Governmentwide Clause**. NGB adopts the governmentwide clause at 37 CFR 401.14, as described in paragraph B.1 of this section, with the following modifications:

   a. **Terminology**. Throughout the governmentwide award clause:

      (1) Insert the terms “recipient” and “subrecipient (or contractor to the recipient or to a subrecipient)” to replace the terms “contractor” and “subcontractor,” respectively.

      (2) Insert the terms “award” and “subaward (or contract under either the award or a subaward)” to replace the terms “contract” and “subcontract,” respectively.

   b. **Final report**. Add a new subparagraph (f)(5) to read, “The recipient must submit a final report listing all subject inventions made under the award or stating that there were none. The final report is due 120 calendar days after the end date of the period of performance unless you request, and we grant an extension of the due date.”

   c. **Broadening Applicability to all Entities**. Delete sections (g)(2) and (3) of the governmentwide clause, redesignate paragraph (g)(1) as paragraph (g), and delete the phrase “to be performed by a small business firm or domestic nonprofit organization” from paragraph (g) as redesignated.

Section C. Data Produced under the Award.

1. **Data in general**. The Federal Government has the right to:

   a. Obtain, reproduce, publish, or otherwise use the data produced under NGB CA awards.

   b. Authorize others to receive, reproduce, publish, or otherwise use the data produced under NGB CA awards for Federal Government purposes.

2. **Research Data Requested under the Freedom of Information Act (FOIA)**.

   a. If we receive a request under the FOIA for “research data” that are related to “published research findings” produced under NGB CA awards and that were “used by the Federal Government in developing an agency action that has the force and effect of law,” you must provide the data to us within a reasonable time after we request it from you, so that the data can be made available to the public through procedures established under the FOIA.

b. For purposes of the requirement in paragraph C.2.a of this section, 2 CFR 200.315(e) provides definitions of the phrases “published research findings,” “used by the Federal Government in developing an agency action that has the force and effect of law,” and “research data.”

Section D. Use and Disposition of Intangible Property Acquired, but not Developed or Produced, under the Award.

1. **Applicability**. This section applies to a patent, patent application, copyright, or other intangible property acquired, but not developed or produced, under NGB CA awards.

2. **Use**. You:

   a. Must use the intangible property for the authorized purpose under NGB CA awards until the intangible property is no longer needed for that purpose, whether that purpose is still being supported by NGB CA awards.

   b. May not encumber the intangible property without the prior approval of the award administration office.

3. **Disposition.** When the intangible property is no longer needed for the originally authorized purpose, you must contact the award administration office to arrange for disposition in accordance with the procedures specified for disposition of equipment in either Section B or D of PROP Article IV, as applicable.

Part 3: Procurement (Articles from this part are designated with “PROC” in the article title)

PROC Article I. Procurement Standards for States.

Section A. Use of State Procurement System.

Subject only to the conditions in Sections B through D of this article, you must use the same policies and procedures to procure supplies, equipment, real property, and services under NGB CA awards that you use when you procure those items for state purposes using non- federal funds.

Section B. Procurement of Recovered Materials.

You must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.323.

Section C. Debarment and Suspension.

You must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by NGB at 2 CFR part 1125.

Section D. Contract Provisions.

You must include provisions in your procurement transactions under NGB CA awards to require the contractors' compliance with the requirements specified in PROC Article III, as applicable.

PROC Article II. Procurement Standards for Institutions of Higher Education, Nonprofit Organizations, Local Governments, Indian Tribes, and For-profit Entities.

Section A. General Procurement Standards.

1. For procurement under NGB CA awards, you must comply with the OMB guidance in 2 CFR 200.318.

2. You must do business only with responsible contractors who are able to perform, as described in OMB guidance in 2 CFR 200.318(h). Related to that, you must comply with restrictions on awarding procurement transactions to excluded or disqualified parties and other requirements specified by OMB guidelines on nonprocurement debarment and suspension at 2 CFR part 180, as implemented by DoD (NGB as a Component) at 2 CFR part 1125.

Section B. Competition.

You must award procurement transactions NGB CA awards in accordance with the competition requirements described in OMB guidance in 2 CFR 200.319.

Section C. Procurement Methods.

You must award procurement transactions under NGB CA awards using methods described in OMB guidance in 2 CFR 200.320.

Section D. Contracting with Small and Minority Businesses, Women's Business Enterprises, and Labor Surplus Area Firms.

You must take the affirmative steps described in OMB guidance in 2 CFR 200.321 when awarding procurement transactions under NGB CA awards.

Section E. Contract Cost and Price.

When awarding a procurement transaction under NGB CA awards, you must follow the procedures related to cost and price that are described in OMB guidance in 2 CFR 200.324, using the applicable cost principles specified in FMS Article III.

Section F. Contract Provisions.

You must include provisions in your procurement transactions under NGB CA awards to require the contractors' compliance with the requirements of PROC Article III, as applicable.

Section G. Procurement of Recovered Materials.

If you are a political subdivision of a state, you must comply with the Resource Conservation and Recovery Act requirements described in OMB guidance in 2 CFR 200.323.

Section H. Review of Procurement Documents.

Upon our request, you must make available:

a. Technical specifications on proposed procurement transactions, as described in 2 CFR 200.325(a).

b. Pre-procurement documents for our review, as described in 2 CFR 200.325(b) unless you are exempt from that requirement under 2 CFR 200.325(c).

Section I. Domestic Preferences for Procurements.

As appropriate and to the extent consistent with law, you should, to the greatest extent practicable under NGB CA awards, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). This must be included in all subawards including all contracts and purchase orders for work or products under NGB CA awards.

Section J. Bonding Requirements. RESERVED - Only applicable if provided in award-specific terms and conditions.

PROC Article III. Contract Provisions for Recipient Procurements.

Section A. Contract Provisions for Administrative Requirements.

1. **Remedies**. In any contract under NGB CA awards for an amount more than the simplified acquisition threshold, you must provide for administrative, contractual, or legal remedies, including any appropriate sanctions and penalties, when the contractor violates or breaches the contract terms.

2. **Termination**. In any contract for an amount more than $10,000, you must specify: conditions under which you may terminate the contract for cause or convenience; the procedures for termination; and the basis to be used for settlement.

3. **Allowable Costs under Cost-Type Contracts**. In any cost-type contract with an entity, you must include a clause to permit the entity to charge to the contract only costs that are allowable under the cost principles that FMS Article III identifies as applicable to that type of entity, as supplemented by any award-specific terms and conditions related to allowability of costs that are included in NGB CA awards. Your contract clause may permit the contractor to use its own cost principles in determining the allowability of its costs charged to the contract, if its cost principles comply with those federal cost principles supplemented by any award-specific terms and conditions of NGB CA awards.

4. **Rights in Copyright and Data**. You must include in each contract under NGB CA awards a provision requiring that the contractor:

   a. Grant the Federal Government a royalty-free, nonexclusive, and irrevocable right to:

      (1) Reproduce, publish, or otherwise use for federal purposes any work that is subject to copyright and that the contractor develops, or acquires ownership of, under NGB CA awards.

      (2) Authorize others to reproduce, publish, or otherwise use such work for federal purposes.

   b. Grant the Federal Government the right to:

      (1) Obtain, reproduce, publish, or otherwise use data produced under NGB CA awards.

      (2) Authorize others to receive, reproduce, publish, or otherwise use such data for federal purposes.

      (3) Include the Federal Government rights described in subparagraphs 4.a. and 4.b. of this section in any subcontracts.

5. **Access to Records**.

   a. In any negotiated, cost-type or time and materials contract for an amount more than the simplified acquisition threshold, you must provide for access to any of the contractor's books, documents, papers, and records that are directly pertinent to that contract, to enable and support audits, examinations, excerpts, and transcriptions. The contract provision must provide access to those records for all of the following and their duly authorized representatives:

      (1) You.

(2) Us as the federal awarding agency, including our Inspector General.

(3) The Comptroller General of the United States.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the access to audit documentation described in 2 CFR 200.517(b).

6. **Records Retention**.

a. In directly pertinent to that contract for 3 years after you make final payment, and all pending matters are closed.

b. In any audit services contract for performance of an audit required by the Single Audit Act, as implemented by OMB in Subpart F of 2 CFR part 200, you must provide for the retention any negotiated, cost-type or time and materials contract for an amount more than the simplified acquisition threshold, you must provide for retention of all records that are of audit documentation described in 2 CFR 200.517(a).

7. **Reporting.** In any contract awarded under NGB CA awards, you must include any provision for the contractor's reporting to you that may be needed for you to meet your requirements under NGB CA awards to report to us.

Section B. Contract Provisions for National Policy Requirements.

1. **Equal Employment Opportunity**. You must include the clause provided in 41 CFR 60-1.4(b) in any "federally assisted construction contract" (as defined in 41 CFR 60-1.3) under NGB CA Awards unless provisions of 41 CFR part 60-1 exempt the contract from the requirement.

2. **Wage Rate Requirements (Construction)**. **RESERVED - Only applicable if provided in award-specific terms and conditions.**

3. **Copeland Act prohibition on Kickbacks**. **RESERVED - Only applicable if provided in award-specific terms and conditions.**

4. **Contract Work Hours and Safety Standards Act for Work Involving Mechanics or Laborers**. In each contract for an amount greater than $100,000 that involves the employment of mechanics or laborers and is not a type of contract excepted under 40 U.S.C. 3701, you must include the clauses specified in Department of Labor (DoL) regulations at 29 CFR 5.5(b) to require use of wage standards that comply with the Contract Work Hours and Safety Standards Act (40 CFR, Subtitle II, Part A, Chapter 37), as implemented by the DoL at 29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction."

5. **Patents and Inventions**. If you procure the services of a nonprofit organization, small

business firm, or other entity for the performance of experimental, developmental or research work, you must include in the contract the clause prescribed in Section B of PROP Article VI to establish contractual requirements regarding subject inventions resulting from the contract and provide for Government rights in those inventions.

6. **Clean Air and Water Requirements**. You must:

   a. In each contract for an amount greater than $150,000 under NGB CA awards, include a clause requiring the contractor to comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401-7671q), Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and standards, orders, or regulations issued under those acts.

   b. Report any violations of the Acts, standards, orders, or regulations to both the award administration office and the appropriate regional office of the Environmental Protection Agency.

7. **Nonprocurement Suspension and Debarment**. Unless you have an alternate method for requiring the contractor's compliance, you must include a clause in each contract for an amount equal to or greater than $25,000 and in each contract for federally required audit services to require the contractor to comply with OMB guidance on nonprocurement suspension and debarment in 2 CFR part 180, as implemented by NGB regulations at 2 CFR part 1125.

8. **Byrd Amendment Anti-Lobbying Requirements**. In each contract for an amount exceeding $100,000, you must include a clause requiring the contractor to submit to you the certification and any disclosure forms regarding lobbying that are required under 31 U.S.C. 1352, as implemented by the DoD (NGB) at 32 CFR part 28.

9. **Purchase of Recovered Materials by States or Political Subdivisions of States**. In each contract under which the contractor may purchase items designated in Environmental Protection Agency (EPA) regulations in 40 CFR part 247, Subpart B, you must include a clause requiring the contractor to comply with applicable requirements in those EPA regulations, which implement section 6002 of the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. 6962).

10. **Fly America Requirements.** In each contract under which funds provided under NGB CA awards might be used for international air travel for the transportation of people or property, you must include a clause requiring the contractor to:

    a. Comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118, also known as the "Fly America" Act), as implemented at 41 CFR 301-10.131 through 301-10.143. The law and regulations provide that U.S. Government-financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available.

b. Include the requirements of the Fly America Act in all subcontracts that might involve international air transportation.

11. **Cargo preference for United States flag Vessels**. In each contract under which equipment, material, or commodities may be shipped by oceangoing vessels, you must include the clause specified in Department of Transportation regulations at 46 CFR 381.7(b) to require that at least 50 percent of equipment, materials or commodities purchased or otherwise obtained with federal funds under NGB CA awards, and transported by ocean vessel, be transported on privately owned U.S.-flag commercial vessels, if available.

12. **Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements**. You must include the provision provided in Section B.1 of NP Article IV in Part 8 of these general terms and conditions in each contract under NGB CA awards.

13. **Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment.** You must include the provision provided in Section A.18 of NP Article IV in Part 8 of these general terms and conditions in each contract under NGB CA awards.

14. **The Infrastructure Investment and Jobs Act ("IIJA"). Pub. L. No. 117-58, which includes the Build America, Buy America Act ("the Act"). Pub. L. No. 117-58, §§ 70901-52.**

    The Act strengthens Made in America Laws and will bolster America's industrial base, protect national security, and support high-paying jobs. The Act requires that the head of each Federal agency shall ensure that "none of the funds made available for a Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States."

Part 4: Reporting (Articles from this part are designated with "REP" in the article title)

REP Article I. Performance Management, Monitoring, And Reporting.

Section A. Required Reporting Form, Format, or Data Elements for Interim and Final Performance Reports. RESERVED - Language in award-specific terms and conditions.

Section B. Frequency, Reporting Periods, and Due Dates for Interim Performance Reports. RESERVED - Language in award-specific terms and conditions.

Section C. Due Date and Reporting Period for Final Performance Report.

1. **Due Date**. You must submit the final performance report NGB CA awards no later than 120 calendar days after the end date of the period of performance unless we approve an extension of that due date as described in Section D of this article.

2. **Reporting Period**. Final reports must be cumulative (i.e., each final report should cover the entire period of performance under the award and not just the period since the previous interim performance report).

Section D. Extensions of Due Dates.

You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will consider approving extensions that are adequately justified.

Section E. Reporting Significant Developments.

You must report the following information to us as soon as you become aware of it:

a. Problems, delays, or adverse conditions that will materially impair your ability to meet the objectives of NGB CA awards. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.

b. Favorable developments which will enable you to meet schedules and objectives sooner or at less cost than anticipated or produce more or different beneficial results than originally planned.

Section F. Performance Reporting Procedures. **RESERVED - Language in award-specific terms and conditions.**

Section G. Site Visits.

We reserve the right to make site visits as warranted to monitor program performance under NGB CA awards.

REP Article II. Financial Reporting.

Section A. Required Reporting Form, Format, or Data Elements for Interim and Final Financial Reports. RESERVED - Language in award-specific terms and conditions.

Section B. Interim Financial Reports: Frequency, Reporting Periods, and Due Dates. RESERVED - Language in award-specific terms and conditions.

Section C. Final Financial Report.

You must submit the final financial report under NGB CA awards no later than 120 calendar days after the end date of the period of performance.

Section D. Extensions of Due Dates.

You may request extensions of the due dates that Sections B and C of this Article specify for interim and final reports, respectively. You must provide the reasons for your request, and we will consider approving extensions that are adequately justified.

Section E. Where and How to Submit Financial Reports. RESERVED - Language in award-specific terms and conditions.

REP Article III. Reporting on Property.

Section A. Real Property.

1. Sections A.1 through A.4 apply to real property for which you are accountable under NGB CA awards, for as long as there is a federal interest in the property (whether that interest is due to you or a subrecipient having acquired or improved the property under NGB CA awards, or a transfer of the accountability for the property to NGB CA awards from another award).

2. **Periodic status reports.** You must submit periodic status reports, as follows:

   a. Frequency and duration of reporting requirement. RESERVED - Language in award-specific terms and conditions.

   b. Due dates. RESERVED - Language in award-specific terms and conditions.

   c. Other submission instructions. **RESERVED - Language in award-specific terms and conditions**.

3. **Notifications of Critical Changes**. You must notify the award administration office of any critical change in the status of real property as soon as feasible after you become aware of it. A critical change is any event with a significant adverse impact on the condition or value of the property, such as damage due to fire; flood, hurricane, or other severe weather; earthquake; or accident.

4. **Requests for Disposition Instructions**. You must comply with applicable requirements in PROP Article III to request disposition instructions, either during the period of performance or at closeout.

5. **Closeout Accounting**. You must account to the award administration office for real property at the time of closeout of the award, as required by Section D of OAR Article VI.

Section B. Equipment and Supplies.

1. Section B.1 through B.4 apply to equipment or supplies for which you are accountable under NGB CA awards and in which there is a federal interest (whether that interest is due to you or a subrecipient having acquired or improved the property under NGB CA awards, or a transfer of the accountability for the property to NGB CA awards from another award).

2. **Periodic Status Report**. There is no requirement for periodic reporting during the period of performance.

3. **Notifications of Loss, Damage, or Theft**. You must comply with applicable requirements in PROP Article II governing your property management system to promptly notify the award administration office of any loss, damage, or theft of equipment.

4. **Requests for Disposition Instructions**. You must comply with applicable requirements in PROP Article IV to request disposition instructions for equipment, either during the period of performance or at closeout.

5. **Closeout Accounting.**

   a. **Equipment**. You must account to the award administration office for equipment at the time of closeout of NGB CA awards, as required by Section D of OAR Article VI.

   b. **Supplies.** If you have a residual inventory of unused supplies that meets the criteria specified in Section E.2 of PROP Article IV, you must as part of your closeout accounting arrange with the award administration office for the compensation that paragraph specifies for the federal interest in the supplies.

Section C. Federally Owned Property.

1. Sections C.1 through C.4 apply to federally owned property for which you are accountable under NGB CA awards.

2. **Annual Inventory**. You must submit annually to the award administration office an inventory of federally owned property.

3. **Notifications of loss, Damage, or Theft**. As provided in PROP Article II governing your property management system, you must promptly notify the award administration office of any loss, damage, or theft of federally owned property.

4. **Requests for Disposition Instructions**. You must comply with requirements in Section B of PROP Article V to request disposition instructions, either during the period of performance or at closeout.

5. **Closeout Accounting**. Your requests for disposition instructions for federally owned property, as described in paragraph C.4 of this section, satisfy the need to account for federally owned property at closeout (see Section D of OAR Article VI).

Section D. Intangible Property.

1. Sections D.1 through D.3 apply to intangible property for which you are accountable under NGB CA awards.

2. **Inventions Developed under the Award**. You must submit all reports on subject inventions developed under NGB CA awards that are required by the modified Governmentwide patent rights award provision specified in Section B of PROP Article VI, which include a disclosure of each subject invention and a final report listing all such subject inventions.

3. **Copyrights and Data.** You are not required to submit periodic reports about data produced under the award or about works for which you acquired ownership under NGB CA awards, either by development or otherwise, and in which copyright was asserted. However, because the Federal Government has the rights in the works and data that Sections A and C of PROP Article VI specify, you must provide information about the works and data if we request it.

4. **Intangible Property Acquired, but not Developed or Produced, under the Award**. You must comply with requirements in Section D of PROP Article VI to request disposition instructions for intangible property acquired, but not developed or produced, under the award.

REP Article IV. Reporting on Subawards and Executive Compensation.

You must report information about subawards and executive compensation as specified in the award provision in appendix A to 2 CFR part 170, "Reporting subaward and executive compensation information," modified as follows:

a. To accommodate any future designation of a different Governmentwide Web site for reporting subaward information, the Web site "http://www.fsrs.gov" cited in paragraphs a.2.i. and a.3 of the award provision is replaced by the phrase "http://www.fsrs.gov or successor OMB-designated Web site for reporting subaward information;"

b. To accommodate any future designation of a different Governmentwide Web site for reporting executive compensation information, the Web site "http://www.sam.gov" cited in paragraph b.2.i. of the award provision is replaced by the phrase "https://www.sam.gov or successor OMB-designated Web site for reporting information on total compensation."

Part 5: Other Administrative Requirements (Articles from this part are designated with "OAR" in the article title)

OAR Article I. Submitting and Maintaining Recipient Information.

Section A. System for Award Management.

1. Unless you are exempted from this requirement in accordance with OMB guidance in 2 CFR 25.110, you must maintain the currency of information about yourself in the system the Federal Government specifies as the repository for information about its business partners (currently the System for Award Management (SAM)). This includes information on your immediate and highest-level owner and subsidiaries, as well as on all your predecessors that have been awarded a federal contract or federal financial assistance within the last three years, if applicable.

2. You must maintain the information in that system until you submit the final financial report required under NGB CA awards or receive the final payment, whichever is later.

3. You must review and update the information at least annually after your initial registration in the system (unless you are subject to the requirements in Section B) and more frequently if required by changes in your information.

Section B. Reporting of Performance and Integrity Information.

1. **General Reporting Requirement.** If the total value of your currently active grants, cooperative agreements, and procurement contracts from all federal agencies exceeds $10,000,000 for any time during the period of performance of NGB CA awards, then during that time you must maintain in SAM the currency of information required by Section B.2 of this section. Note that:

    a. This reporting is required under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313).

    b. As required by section 3010 of Public Law 111-212, all performance and integrity information posted in the designated information system on or after April 15, 2011, except past performance reviews required for federal procurement contracts, will be publicly available.

    c. Recipient information is submitted to the OMB-designated integrity and performance system through the SAM, as described in section B.3 of this section. The currently designated integrity and performance information system is the Federal Awardee Performance and Integrity Information System (FAPIIS).

2. **Proceedings About Which You Must Report.** Submit the information that the designated information system requires about each proceeding that:

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

    b. Reached its final disposition during the most recent 5-year period.

    c. Is one of the following:

(1) A criminal proceeding that resulted in a conviction, as defined in Section B.5. of this section.

(2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of $5,000 or more.

(3) An administrative proceeding, as defined in Section B.5. of this section, that resulted in a finding of fault and liability and your payment of either monetary fine or penalty of $5,000 or more or a reimbursement, restitution, or damages more than $100,000; or

(4) Any other criminal, civil, or administrative proceeding if:

(a) It could have led to an outcome described in section B.2.c.i, ii, or iii of this section.

(b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part.

(c) The requirement in this section to disclose information about the proceeding does not conflict with applicable laws and regulations.

3. **Reporting Procedures.** Submit the information required in Section B.2 of this section to the Entity Management functional area of SAM.

   a. Current procedures are to submit the information as part of the maintenance of your information in the SAM that Section A of this article requires.

   b. You do not need to submit the information again under NGB CA awards if you already reported current information to the SAM under another federal grant, cooperative agreement, or procurement contract.

4. **Reporting frequency.** During any period when you are subject to the requirement in section B.1 of this section, you must report to SAM at least semiannually following your initial report of any information required in Section B.2 of this section, either to provide new information not reported previously or affirm that there is no new information to report.

5. **Definitions.** For purposes of this section:

   a. *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, grant, or cooperative agreement. It does not include audits, site visits, corrective plans, or inspection of deliverables.

b. *Conviction* means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.

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

(1) Only the federal share of the funding under any federal agency award with a recipient cost share or match.

(2) The value of all expected funding increments and options, even if not yet exercised, under each federal agency award.

Section C. Disclosure of Evidence of Integrity-Related Issues.

1. **Disclosure requirement.** At any time during the period of performance of NGB CA awards, if you have evidence that a covered person committed a covered action (see Sections C.2 and C.3 of this section) that may NGB CA awards, you must disclose the evidence in writing to the Office of the Inspector General, DoD, with a copy to the grants officer identified in the award cover pages.

2. **Covered Person.** As the term is used in this section, "covered person" means a principal, employee, or agent of either you or a subrecipient under NGB CA awards, where:

   a. "Principal" means:

      (1) An officer, director, owner, partner, principal investigator, or other person with management or supervisory responsibilities that relate to NGB CA awards; or

      (2) A consultant or other person, whether employed by you or a subrecipient or paid with funds under NGB CA awards, who:

         (a) Is in a position to handle funds under NGB CA awards;

         (b) Is in a position to influence or control the use of those funds; or

         (c) Occupies a technical or professional position capable of substantially influencing the development or outcome of an activity required to perform the project or program under NGB CA awards.

   b. "Agent" means any individual who acts on behalf of, or who is authorized to commit you or the subrecipient, whether or not employed by you or the subrecipient.

3. **Covered Action.** As the term is used in this section, "covered action" means a violation of federal criminal law in Title 18 of the United States Code involving fraud,

bribery, or a gratuity violation.

4. **Safeguarding of the Information**.

   a. To the extent permitted by law and regulation, we will:

      (1) Safeguard and treat information you disclose to us as confidential if you mark the information as “confidential” or “proprietary.”

      (2) Not release the information to the public in response to a Freedom of Information Act (5 U.S.C. 552) request without notifying you in advance.

   b. We may transfer documents you provide to us to any other department or agency within the Executive Branch of the Federal Government if the information relates to matters within that organization’s jurisdiction.

OAR Article II. Records Retention and Access.

Section A. Records Retention Period.

1. Except as provided in Sections B through D of this article:

2. You must keep records related to any real property and equipment acquired, in whole or in part, using federal funds under the award for 3 years after final disposition of the property. For any item of exempt property with a current fair market value greater than $5,000, and for which final disposition was not a condition of the title vesting, you must keep whatever records you need for as long as necessary to ensure that you can deduct the federal share if you later use the property in contributions for cost sharing or matching purposes under any federal award.

3. You must keep records related to rate proposals for indirect or facilities and administrative costs, cost allocation plans, and supporting records such as indirect cost rate computations and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback or composite fringe benefit rates) as follows:

   a. If you are required to submit a proposal, plan, or other computations to your federal cognizant agency for indirect costs, as the basis for negotiation of a rate, you must keep the submissions and all supporting records for 3 years from the date on which you were required to make the submissions.

   b. If you are not required to submit a proposal, plan, or other computation as the basis for negotiation, you must keep the proposal, plan, other computation, and supporting records for 3 years from the end of the fiscal year or other accounting period covered by the proposal, plan, or other computation.

4. You must keep other financial records, supporting documents, statistical records, and

other records pertinent to NGB CA awards for a period of 3 years from the date you submit your final financial report under the award.

Section B. Extensions of Retention Period Due to Litigation, Claim, or Audit.

1. If any litigation, claim, or audit begins before the end of the 3-year retention period specified in Section A of this article and the final action related to the litigation, claim, or audit is not taken before the end of that 3-year period, you must retain all records related to NGB CA awards that may be involved in the litigation, claim, or audit until all findings involving the records have been resolved and final action taken.

2. We may disallow costs and recover funds under NGB CA awards based on an audit or other review of records during the record retention period, including any extension to that retention period that we required in a written notification to you.

Section C. Records for Program Income Earned After the End of the Performance Period.

In accordance with Section F of FMS Article VII, there are no requirements under NGB CA awards applicable to program income you earn after the end of the period of performance and therefore no associated records retention requirements.

Section D. Records for Joint or Long-term Use.

1. **Joint Use**. To avoid duplicate recordkeeping for records that you and we both need to use on a continuous basis, we may ask you to make special arrangements with us, by mutual agreement, to make records available for joint and continuous use.

2. **Long-term use**. If we determine that some records will be needed longer than the 3-year period specified in Section A of this article, we may request that you either:

   a. Retain the records for a longer time; or

   b. Transfer the records to our custody for long-term retention.

3. **Retention requirements for transferred records**. For any records transferred to our custody, you are not subject to the records retention requirements in Section A of this article.

Section E. Methods for Collecting, Transmitting, and Storing Information.

1. You should, whenever practicable, collect, transmit, and store information related to NGB CA awards in open and machine-readable formats rather than in closed formats or on paper. However, if you request it, we will:

   a. Provide award related information to you on paper.

   b. Accept award related information from you on paper. In that case, we will not require more than an original and two copies.

2. When your original records are in an electronic form that cannot be altered, you do not need to create and retain paper copies of those records.

3. When your original records are on paper, you may substitute electronic versions produced through duplication or using other forms of electronic media, provided that:

   a. You conduct periodic quality control reviews of the records.

   b. You provide reasonable safeguards against alteration of the records.

   c. The records remain readable.

Section F. Access to Records.

1. **Scope of Government Access Rights**.

   a. We as the awarding agency, the Federal Government Inspectors General, the Comptroller General of the United States, and any of our authorized representatives have the right of access to any documents, papers, or other records you have that are pertinent to NGB CA awards, to make audits, examinations, excerpts, and transcripts.

   b. This right also includes timely and reasonable access to your personnel for the purposes of interview and discussion related to the records.

   c. As described in OMB guidance at 2 CFR 200.337(b), the access to records described in this section will include access to the true name of a victim of a crime only under extraordinary and rare circumstances.

      (1) You are required to provide that access only in response to a court order or subpoena pursuant to a bona fide confidential investigation, or in response to a request duly authorized by the head of NGB or his or her designee.

      (2) You must take appropriate steps to protect this sensitive information.

2. **Duration of Government Access Rights**. We have the access rights described in paragraph F.1 of this section as long as you retain the records.

3. **Public access**.

   a. You must comply with requirements to protect information that Federal statute, Executive order, or regulation requires to be protected (e.g., personally identifiable or export-controlled information), to include both information generated under NGB CA awards and information provided to you and identified as being subject to protection. Other than those limitations on dissemination of information, we place no restrictions on you that limit public access to your records pertinent to NGB CA awards.

b. We do not place any requirements on you to permit public access to your records separate from any federal, state, local, or tribal statute that may require you to do so.

c. The Freedom of Information Act (FOIA, 5 U.S.C. 552) does not apply to records in your possession but records you provide to us generally will be subject to FOIA, with the applicable exemptions.

OAR Article III. Remedies and Termination.

Section A. Noncompliance with Award Terms and Conditions.

If you fail to comply with a term or condition of NGB CA awards or an applicable federal statute or regulation, we may amend NGB CA awards to impose award-specific conditions, as described in OMB guidance in 2 CFR 200.208. If imposing award specific conditions, we will notify you before modifying the award and, once you have corrected the noncompliance, promptly remove the award-specific conditions. If we determine that the imposition of award-specific conditions is insufficient to correct the noncompliance or the non-compliance remains uncorrected despite the use of award-specific conditions, we may consider taking one or more of the remedies specified in Section B of this article.

Section B. Remedies for Noncompliance.

1. If you fail to comply with a term or condition of NGB CA awards or an applicable Federal statute or regulation, we may take one or more of the following actions that we deem appropriate to the circumstances:

   a. Temporarily withhold cash payments pending:

      (1) Your correction of the deficiency.

      (2) Our taking more severe remedies.

   b. Disallow (that is, deny both use of funds and any applicable cost-sharing or matching credit for) all or part of the cost of the activity or action not in compliance.

   c. Suspend or, in accordance with section C.1.a.i. of this article, terminate NGB CA awards, in whole or in part (suspension of an award is a separate and distinct action from suspension of a person under 2 CFR parts 180 and 1125, as noted in Section B.3 of this article).

   d. Withhold further awards to you for the project or program that is not in compliance.

   e. Take any other action legally available to us under the circumstances.

2. You may raise an objection to our taking any remedy we take under Section B.1 of this section and will be given an opportunity to provide information and documentation challenging the action. The procedures are those specified in OAR Article IV for claims and disputes.

3. Our use of any remedy under Section B.1 of this section, including suspension or termination of the award, does not preclude our referring the noncompliance to a suspension and debarment official and asking that official to consider initiating a suspension or debarment action under 2 CFR part 1125, the DoD (NGB) implementation of OMB guidance at 2 CFR part 180.

Section C. Termination.

1. NGB CA awards may be terminated in whole or in part as follows:

   a. **Unilaterally by the Federal Government**. We will provide a notice of termination if we unilaterally terminate NGB CA awards in whole or in part, which we may do for either of the following reasons:

      (1) Your material failure to comply with the award terms and conditions. If we terminate the award for that reason, we will report the termination to the OMB-designated integrity and performance system (currently FAPIIS). In accordance with 41 U.S.C. §2313, each federal awarding official must review and consider the information in the OMB-designated integrity and performance system regarding any proposal or offer before awarding a grant or contract.

      (2) The program office does not have funding for an upcoming increment if NGB CA awards is incrementally funded. In that case, the Federal Government's financial obligation does not exceed the amount currently obligated under the award.

   b. **By Mutual Agreement**. With your consent, we may terminate NGB CA awards, in whole or in part, for any reason. In that case, you and we must agree to:

      (1) The termination conditions, including the effective date.

      (2) In the case of a partial termination, the portion to be terminated.

   c. **Unilaterally by the Recipient**. You may unilaterally terminate NGB CA awards, in whole or in part, by sending us written notification that states:

      (1) The reasons for the termination.

      (2) The effective date.

      (3) In the case of partial termination, the portion to be terminated. In that case, however, we may terminate the award in its entirety if we determine that the remaining portion of the award will not accomplish the purposes for which we

made the award.

2. If an NGB CA award is terminated in its entirety before the end of the performance period, you must complete the closeout actions for which you are responsible under OAR Article VI. The due date for each action is to be measured relative to the date of termination.

3. If an NGB CA award is only partially terminated before the end of the performance period, with a reduced or modified portion of the award continuing through the end of the performance period, then closeout actions will occur at the end of the performance period as specified in OAR Article VI.

4. You will continue to have all the post-closeout responsibilities that OAR Article VII specifies for you if an NGB CA award is wholly or partially terminated before the end of the performance period.

Section D. Effects of Suspension or Termination of the Award on Allowability of Costs.

1. If we suspend or terminate NGB CA awards prior to the end of the period of performance, costs resulting from obligations that you incurred:

   a. Before the effective date of the suspension or termination are allowable if:

      (1) You properly incurred those obligations.

      (2) You did not incur the obligations in anticipation of the suspension or termination.

      (3) In the case of termination, the costs resulted from obligations that were noncancellable after the termination.

      (4) The costs would have been allowable if we had not suspended or terminated the award and it had expired normally at the end of the period of performance.

   b. During the suspension or after the termination are not allowable unless we expressly authorize them, either in the notice of suspension or termination or subsequently.

OAR Article IV. Claims, Disputes, and Appeals.

Section A. Definitions.

1. **Claim**. The definition of the term "claim," as it is used in this article, is in 2 CFR 1108.80.

2. **Grant Appeal Authority**. **RESERVED – Only applicable if provided in DoD Component addendum to these terms and conditions.**

Section B. Submission of Claims.

1. **Your claims**. To submit a claim arising out of NGB CA awards, you must submit it in writing to the grants officer for decision, specify the nature and basis for the relief you are requesting, and include all data that supports your claim.

2. **Government claims**. You will receive a written grants officer's decision if an NGB claim arises out of NGB CA awards.

Section C. Alternative Dispute Resolution.

1. We encourage resolution of all issues related to NGB CA awards by mutual agreement between you and the grants officer.
2. If you and the grants officer are unable to resolve an issue through unassisted negotiations, we encourage use of Alternative Dispute Resolution (ADR) procedures to try to do so. ADR procedures are any voluntary means, such as mini-trials or mediation, used to resolve issues in controversy. ADR procedures may be used prior to submission of a claim or at any other time prior to the Grant Appeal Authority's decision on any appeal you submit.

Section D. Grants Officer Decisions for Claims you Submit.

1. Within 60 calendar days of receiving your claim, the grants officer will either:

   a. Transmit a written decision that:

      (1) Identifies data on which the decision is based.

      (2) Identifies and provides the mailing address for the Grant Appeal Authority to whom you will submit an appeal of the decision if you elect to do so; or

   b. If more time is required to render a written decision, notify you of a specific date when he or she will render the decision and inform you of the reason for delaying it.

2. The grants officer's decision will be final unless you decide to appeal, in which case we encourage use of ADR procedures as noted in Section C of this article.

Section E. Formal Administrative Appeals.

1. **Right to Appeal**. You have the right to appeal a grants officer's decision to the Grant Appeal Authority identified in Section A of this article.

2. **Notice of Appeal**. You may appeal a grants officer's decision within 90 calendar days of receiving the decision by submitting a written notice of appeal to the Grant Appeal Authority and grants officer. If you elect to use ADR procedures, you are allowed an additional 60 calendar days to submit the written notice of appeal.

3. **Appeal File**. Within 30 calendar days of the grants officer's receipt of your notice of appeal, you should receive the appeal file with copies of all documents relevant to the appeal. You may supplement the file with other documents you deem relevant and with a memorandum in support of your position for the Grant Appeal Authority's consideration. The Grant Appeal Authority may request additional information from you.

4. **Decision**. Unless the Grant Appeal Authority decides to conduct fact-finding procedures or an oral hearing on the appeal, the appeal will be decided solely based on the written record. Any fact- finding or hearing will be conducted using procedures that the Grant Appeal Authority deems appropriate.

Section F. Representation.

You may be represented by counsel or any other designated representative in any claim, appeal, or ADR proceeding, if the representative is not otherwise prohibited by law or regulation from appearing before NGB.

Section G. Non-exclusivity of Remedies.

Nothing in this article is intended to limit your right to any remedy under the law.

Section H. Effect of Grant Appeal Authority's Decision.

The Grant Appeal Authority's decision is the final administrative decision of NGB and cannot be further appealed within NGB.

OAR Article V. Collection of Amounts Due.

Section A. Establishing a Debt.

1. Any amount paid to you more than the amount to which you are determined to be entitled under the terms and conditions of NGB CA awards constitutes a debt to the Federal Government.

2. The grants officer will attempt to resolve any claim of your indebtedness arising out of NGB CA awards by mutual agreement.

3. If the grants officer fails to resolve the claim in that manner, you will receive a written notice of the grants officer's decision formally determining the debt, as described in Section B.2 of OAR Article IV. The notice will describe the debt, including the amount, name and address of the official who determined the debt, and a copy of that official's determination.

Section B. Debt Delinquency and Appeals.

1. Within 30 calendar days of the grants officer's decision, you must either pay the amount owed to the address provided in the written notice or inform the grants officer

that you intend to appeal the decision. Appeal procedures are described in OAR Article IV.

2. If you elect not to appeal, any amounts not paid within 30 calendar days of the grants officer's decision will be a delinquent debt.

3. If you elect to appeal the grants officer's decision, you will have 90 calendar days after receipt of the grants officer's decision to file your appeal unless Alternative Dispute Resolution (ADR) procedures are used, as described in Section C of OAR Article IV, in which case you will have 150 calendar days.

Section C. Demand Letter, Interest, and Debt Collection.

1. If within 30 calendar days of the grants officer's decision, you neither pay the amount due nor provide notice of your intent to appeal the grants officer's decision, the grants officer will send you a demand letter identifying a payment office that will be responsible for any further debt collection activity.

2. If you do not pay by the due date specified in the written demand letter, the Federal Government may collect part or all the debt by:

   a. Making an administrative offset against your requests for reimbursements under federal awards.

   b. Withholding advance payments otherwise due to you.

   c. Any other action permitted by federal statute.

3. The debt will bear interest, and may include penalties and other administrative costs, in accordance with applicable provisions of NGB Financial Management Regulation (DoD 7000.14-R), which implements the Federal Claims Collection Standards. The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

OAR Article VI. Closeout.

Section A. Liquidation of Financial Obligations.

Unless the award administration office authorizes an extension of the due date, you must liquidate all financial obligations that you incurred under NGB CA awards not later than 120 calendar days after the end date of the period of performance.

Section B. Refunds of Unobligated Balances.

You must promptly refund to the award administration office any balances of unobligated cash that we have advanced or paid to you and not authorized you to use on other projects or programs.

Section C. Final Reports.

You must submit the:

1. Final performance report under NGB CA awards no later than the date specified in Section C of REP Article I, subject to any extensions granted under Section D of that article.

2. Final financial report under NGB CA awards no later than the date specified in Section C of REP Article II, subject to any extensions granted under Section D of that article.

3. Final report listing subject inventions made under the award no later than the date specified in Section B of PROP Article VI.

4. Other final reports that are required under NGB CA awards no later than 120 calendar days after the end date of the period of performance, unless you request an extension of the due date, and the award administration office approves the request.

Section D. Accounting for Property.

You must account for any real property, equipment, supplies, and intangible property that you and any subrecipients acquired or improved under the award, in accordance with PROP Articles I through IV and VI. Your requests for disposition instructions for any federally owned property, as required by PROP Article V, meet the need described in OMB guidance at 2 CFR 200.344(f) to account for that property at closeout.

Section E. Delinquent Final Reports and Timeframe for Closeout.

1. We intend to closeout NGB CA awards no later than one year after the end date of the period of performance.

    a. If you or your lower-tier entities (e.g., subrecipients) do not have negotiated final indirect costs rates before the due date of the final financial reports, the final reports must be based on the best information at the time (e.g., proposed final indirect rates). You will have post-closeout continuing responsibilities related to the finalization of those rates in accordance with section A.2 of OAR Article VII.

    b. If you do not provide timely and/or accurate final reports or do not respond timely to our requests to reconcile discrepancies in these reports or other records, we may initiate closeout based on information we have on hand. For example, if you fail to submit a timely final financial report, we may use amounts provided in the latest interim financial report and/or payment request to determine final amounts to be paid for closeout purposes.

2. Failure to submit timely and accurate final reports may result in our taking one or more remedies as specified in Section B of OAR Article III and reporting your material failure to comply with the terms and conditions of NGB CA awards in the OMB-designated

integrity and performance system accessible through SAM (currently FAPIIS).

OAR Article VII. Post-Closeout Adjustments and Continuing Responsibilities.

Section A. Adjustments.

The closeout of NGB CA awards does not affect:

1. Our right to disallow costs and recover funds based on a later audit or other review, if we make the determination that the costs are disallowed and notify you about that determination as specified in section B.2 of OAR Article II of these terms and conditions.

2. Your obligation to return any funds due to the Federal Government because of later refunds, corrections, or other transactions (to include any adjustments in final indirect cost rates).

Section B. Continuing Responsibilities.

After closeout of NGB CA awards, you must continue to comply with terms and conditions of NGB CA awards that have applicability beyond closeout, including requirements concerning:

a. Audits, as specified in FMS Article V, that cover periods of time during which you expended funds under NGB CA awards.

b. Management, use, and disposition of any real property or equipment acquired or improved under NGB CA awards in which we continue to have a federal interest after closeout, as specified in PROP Articles I through IV.

c. Retention of, and access to, records related to NGB CA awards, as specified in OAR Article II.

Part 6: Subawards (Articles from this part are designated with "SUB" in the article title)

SUB Article I. Distinguishing Subawards and Procurements.

Section A. Required Recipient Determination.

For each transaction into which you enter with another entity at the next tier below NGB CA awards, you must determine whether the transaction is a subaward or procurement transaction.

Section B. Considerations in Making the Determination.

1. The primary purpose of the transaction between you and the other entity is the key factor you must use to determine whether the transaction is a subaward or procurement transaction.

   a. The transaction is a subaward and the other entity, therefore, a subrecipient if the transaction's primary purpose is for you to transfer—for performance by the other entity—a portion of the substantive project or program for which we are providing financial assistance to you through NGB CA awards. You will continue to be accountable to us for performance of the project or program under the award, including portions performed by any subrecipients.

   b. The transaction is a procurement transaction and the other entity therefore a contractor if the transaction's primary purpose is for you to purchase goods or services that you need to perform the substantive project or program supported by NGB CA awards. The distinction from a subaward is the contractor is not performing a portion of the substantive project or program because of the transaction.

2. What you call the transaction is not a factor in distinguishing a subaward from a procurement transaction. If the transaction meets the criterion in section B.1.a of this article, it is a subaward for purposes of the requirements of NGB CA awards even if you call and consider the transaction a "contract."

Section C. Effect of the Determination on the Next-Tier Transaction.

1. **Process for Awarding the Transaction**. One important consequence of your determining whether a next-tier transaction is a subaward or procurement is that there are different requirements governing the pre-award and time of award processes that you use to award the transaction.

   a. SUB Article II of this Part specifies pre-award and time of award responsibilities for subawards.

   b. PROC Articles I and II of this Part govern pre-award and time of award processes for awarding procurement transactions.

2. **Transaction Terms and Conditions**. A second important consequence of your determining whether a next-tier transaction is a subaward or procurement transaction is that the terms and conditions you include in a subaward differ from those you include in a procurement transaction.

   a. Section C of SUB Article II of this Part addresses requirements you must include in subaward terms and conditions. Those requirements are generally either identical or directly related to requirements in the general terms and conditions of NGB CA awards. They include national policy requirements, as well as administrative requirements in areas such as financial and programmatic management, property administration, procurement, and reporting.

b. PROC Article III of these general terms and conditions lists requirements you must include in a procurement transaction when applicable.

SUB Article II. Pre-award and Time of Award Responsibilities.

Section A. Requirements for Unique Entity Identifiers.

1. **Definition of "Entity".** For purposes of the unique entity identifier requirements in paragraphs A.2 and 3 of this section, "entity" has the meaning given in paragraph C.3 of appendix A to OMB guidance in 2 CFR part 25.

2. **Pre-notification of Potential Subrecipients**. You must notify potential subrecipients that no entity may receive a subaward from you under NGB CA awards unless it has provided its unique entity identifier to you.

3. **Restriction on Making Subawards**.

   a. **General**. You may not make a subaward to an entity unless the entity has provided its unique entity identifier to you, as required in 2 CFR part 25.300. Subrecipients are not required to obtain an active SAM registration but must obtain a Unique Entity Identifier.

   b. **Exception**. You may make a subaward to an entity that has not provided its unique entity identifier to you in rare cases in which you requested, and we approved an exemption from the requirement for the entity to provide a unique entity identifier, based on the criteria in OMB guidance in 2 CFR part 25.110(c).

Section B. Pre-award Risk Assessment.

1. Before making a subaward to an entity, you must perform a risk assessment of the prospective subrecipient, as described in 2 CFR 200.332(b). OMB guidance in 2 CFR 200.206(c) provides examples of factors you may consider in evaluating risk.

2. As part of the risk assessment under Section B.1 of this article, you must:

   a. Verify that neither the prospective subrecipient nor its principals under the proposed subaward are excluded or disqualified from participating in the transaction, in accordance with requirements in Subpart C of OMB guidance in 2 CFR part 180, as implemented by NGB at 2 CFR part 1125; and

   b. If warranted by risks you identify, determine whether to impose award-specific terms and conditions in the subaward to mitigate the risks.

      (1) These award-specific terms and conditions may be in addition to, or differ from, the terms and conditions that SUB Articles IV through IX under this Part requires you to include in subawards.

(2) They may include items such as those listed in OMB guidance in 2 CFR 200.208(c)(1) through (6).

(3) Your procedures for imposing and removing the additional or different requirements must comply with the procedural guidance in 2 CFR 200.208(d) and (e).

Section C. Subaward Content.

1. **Cost-Type Subawards**.

a. SUB Article III of this Part specifies informational content that you must include in each cost type subaward.

b. SUB Articles IV through VIII specify administrative requirements that you must include:

(1) As applicable, in each cost-type subaward to:

(a) A domestic entity (i.e., an entity other than a foreign public entity or a foreign organization).

(b) An organizational unit of a foreign organization if that unit has a place of business in the United States.

(c) To the maximum extent practicable in each cost-type subaward to either a foreign public entity or an organizational unit of a foreign organization that does not have a place of business in the United States (regardless of whether another organizational unit of that foreign organization has one). However, absent our prior approval, you may not allow that foreign entity or organization to acquire real property or equipment under a subaward.

c. SUB Article IX of this Part specifies national policy requirements that you must include, as applicable, in each cost-type subaward.

d. SUB Article XI of this award specifies requirements that you must include in any subaward under which you determine that the subrecipient may make lower-tier subawards to other entities.

2. **Fixed-Amount Type Subawards**. SUB Article XII of this Part specifies informational content and administrative and national policy requirements that you must include in any fixed amount subaward.

3. **Additional Subaward Terms and Conditions**. You may include other requirements in your subawards that you need to meet your responsibilities under NGB CA awards for performance of the project or program (including portions performed by subrecipients) and compliance with applicable administrative and national policy requirements.

Section D. Subaward and Executive Compensation Reporting.

You must report subaward obligating actions and information on subrecipients' executive compensation as required by REP Article IV of these general terms and conditions.

SUB Article III. Informational Content of Subawards.

Section A. Informational Content in General.

You must include in each subaward (and each subsequent modification to a subaward that alters the amount of the subaward) the information specified in OMB guidance in 2 CFR 200.332(a)(1), "Federal Award Identification," with the clarifications provided in Sections B through G of this article.

Section B. Federal Award Identification Number and Award Date.

The "Federal Award Identification Number" and "Federal Award Date" described in 2 CFR 200.332(a)(1)(iii) and (iv), respectively, are the award number and award date for NGB CA awards to you. You must provide the information in a way that makes it clear that the subaward is under NGB CA award.

Section C. Amount of Federal Funds Obligated.

1. The "Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient" that is described in 2 CFR 200.332(a)(1)(vi) is either:

    a. The amount of your obligation to the subrecipient, if the terms and conditions of NGB CA awards do not require you to provide any cost sharing or matching for the project or program the award supports; or

    b. The amount of the federal share of your subaward obligation if NGB CA awards does require cost sharing or matching, which in that case is the product of:

        (1) The federal share of total project costs under NGB CA award to you, as a percentage of those total project costs; and

        (2) The total amount of project costs obligated for the subaward action.

2. Note that the total project costs of the award and subaward, as used in paragraphs C.1.b.i and ii of this section, include any cost sharing or matching that you or the subrecipient provides to meet any cost sharing or matching requirement under NGB CA awards.

Section D. Total Amount Obligated to the Subrecipient.

The "Total Amount of Federal Funds Obligated to the Subrecipient by the pass-through entity including the current obligation," as described in 2 CFR 200.332(a)(1)(vii), is the cumulative amount to date of the amounts described in Section C of this article.

Section E. Total Amount of the Federal Award.

The "Total Amount of the Federal Award committed to the subrecipient by the pass-through entity," as described in 2 CFR 200.332(a)(1)(viii), is the total amount through the end of the subaward that you and the subrecipient mutually agreed upon, to include: funding obligated to date, any future anticipated funding increments, and any options you may exercise in the future.

Section F. Federal Awarding Agency, Pass-Through Entity, and Awarding Official.

The "Name of federal awarding agency" and "pass-through entity," as those terms are used in 2 CFR 200.332(a)(1)(x) are NGB and the business name associated with your registration in the System for Award Management. In that same section of 2 CFR part 200, the "awarding official" is the individual in your organization who made the subaward.

Section G. Indirect Cost Rate. RESERVED – Not currently applicable to NGB - See Subdivision D of this document.

SUB Article IV. Financial and Program Management Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning financial and program management that you must include in the terms and conditions of each cost-type subaward that you make under NGB CA awards to a domestic entity.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under FMS Articles I through VII of these general terms and conditions.

3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Financial Management System Standards.

1. You must include in any subaward you make under NGB CA awards the requirements of:

   a. Sections A through C of FMS Article I of these general terms and conditions if the subrecipient is a state.

   b. Sections B and C of FMS Article I if the subrecipient is an institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity.

Section C. Payments.

1. **Subawards to States**. You must include the provisions of Section A of FMS Article II of these general terms and conditions in each subaward you make to a state.

2. **Subawards to Institutions of Higher Education, Nonprofit Organizations, Local Governments, Indian Tribes, and For-profit Entities**. The following paragraphs specify requirements you must include in subawards to institutions of higher education, nonprofit organizations, local governments, and Indian tribes.

   a. **Payment Method**.

      (1) If you are authorized to request advance payments under NGB CA awards, you must authorize a subrecipient to request advance payments unless:

         (a) The subrecipient does not maintain, or demonstrate the willingness to maintain, written procedures that minimize the time elapsing between its receipt of each payment and its disbursement of the funds for project or program purposes.

         (b) You impose a requirement for the subrecipient to be paid by reimbursement because of your risk evaluation of the subrecipient under SUB Article II of these general terms and conditions.

         (c) The subaward is for construction; or

         (d) The subrecipient requests reimbursement of funds after it disburses them for project or program purposes.

      (2) If you do not authorize advance payments for one of the reasons given in Section C.2.a.(1) of this article, you must specify either reimbursement or working capital advances as the payment method in accordance with OMB guidance in 2 CFR 200.305(b)(3) and (4).

   b. **Payment Timing and Amount**.

      (1) **Advances**. You must limit advance payments to the minimum amounts needed and time the payments to be in accordance with the subrecipient's actual, immediate cash requirements in carrying out the project or program under the subaward. The timing and amount of your advance payments to the subrecipient must be as close as is administratively feasible to the subrecipient's actual disbursements for direct project costs and the proportionate share of any allowable indirect costs. Your subawards also must include the requirements of sections B.2.b and c of FMS Article II to specify costs subrecipients must exclude from amounts of their advance payment requests.

(2) **Reimbursements or Working Capital Advances**. You must follow OMB guidance in 2 CFR 200.305(b)(3) and (4) concerning timing and amount of reimbursements or working capital advances.

c. **Frequency of Requests**. You must allow the subrecipient to request advance payments or reimbursements, including those associated with the working capital advance payment method, as often as it wishes if you pay using electronic funds transfers and at least monthly otherwise.

d. **Other Requirements**.

(1) In any subaward that was subject to our consent, you must include the requirements of Section B.5 of FMS Article II of these general terms and conditions concerning withholding of payments.

(2) You must include the provisions of Section B.6 of FMS Article II concerning depositories in each subaward that authorizes the subrecipient to request advance payments.

Section D. Allowable Costs, Period of Availability of Funds, and Fee and Profit.

1. You must include in each subaward a requirement that the allowability of costs under the subaward (and any lower tier subawards or procurement transactions into which the subrecipient enters) must be determined in accordance with the applicable cost principles identified in Section A of FMS Article III of these general terms and conditions.

2. You must specify in each subaward the period of availability of funds for any project or program purpose so that the period neither begins before nor ends after the period during which you may use funds available to you under NGB CA awards for that same project or program purpose.

3. You must include in each subaward the provisions concerning fee or profit that are in Section D of FMS Article III of these general terms and conditions.

Section E. Revision of budget and program plans.

You must include in each subaward provisions requiring the subrecipient to request your approval for any change in the subaward budget or program that would cause a budget or program change under NGB CA awards for which Section B of FMS Article IV requires you to first obtain our prior approval. You may not approve any budget or program revision that is inconsistent with the purpose or terms and conditions of NGB CA awards.

Section F. Non-Federal audits.

You must include a provision in each subaward that you make under NGB CA awards to require the subrecipient entity to comply with the audit requirements applicable to that entity, as specified in either Section A or Section B of FMS Article V.

Section G. Cost sharing or matching requirements.

1. If you make a subaward under which the subrecipient may provide contributions or donations of cash or third-party in-kind contributions to be counted toward any cost sharing or matching that is required under NGB CA awards, you must include provisions in that subaward to specify:

2. The criteria governing the allowability as cost sharing or matching of the types of cash or third-party in-kind contributions that the subrecipient may contribute or donate. Those criteria are specified in Sections B through D of FMS Article VI of these general terms and conditions if the subaward is to a state, institution of higher education, nonprofit organization, local government, Indian tribe, or a for-profit entity.

3. The methods for determining and documenting the values of those contributions or donations to be counted as cost sharing or matching. Those methods are specified in Sections E and F of FMS Article VI of these general terms and conditions if the subaward is to a state, institution of higher education, nonprofit organization, local government, Indian tribe, or a for-profit entity.

Section H. Program Income.

You must include requirements concerning program income in subawards, as follows:

a. In each subaward to a state, institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity.

b. You must require the subrecipient to account to you when it earns any program income under the subaward or uses it, so that you can prepare reports you are required to submit to us. If the award-specific terms and conditions of NGB CA awards require you to account for program income earned after the period of performance, you must include a corresponding requirement in your subawards.

c. You must include the provisions of Sections A through D of FMS Article VII of these general terms and conditions.

d. You may specify the deduction, addition, or cost sharing or matching alternative or a combination of those alternatives, for the subrecipient's use of any program income it earns. However, you still must comply with the alternative specified in Section E of FMS Article VII and any applicable award-specific terms and conditions for the total amount of program income earned, which includes amounts earned by you and your subrecipients. For example, if we require you to use the deduction alternative, you may authorize a subrecipient to use the addition alternative if you reduce the funding allocated for portions of the project or program that you or other subrecipients perform to make the required reduction in the total award amount.

SUB Article V. Property Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning property that you must include in the terms and conditions of each cost-type subaward that you make under NGB CA awards.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROP Articles I through VI of these general terms and conditions.

3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Title to Property.

1. **Subawards to Institutions of Higher Education, Nonprofit Organizations, States, Local Governments, Indian Tribes, or For-profit Entities**.

   General. You must include terms and conditions in each subaward to flow down to the subrecipient the provisions of:

   (1) Section A.1 of PROP Article I concerning vesting of title to property acquired under the subaward unless Section B.1.b of this section provides otherwise.

   (2) Sections B through E of PROP Article I that are applicable to types of property that the subrecipient may acquire, improve, donate, or for which it may otherwise be accountable under the subaward.

2. **Exceptions**. **RESERVED - Only applicable if provided in award-specific terms and conditions.**

Section C. Property Management System.

1. If you make a subaward under which the subrecipient either may acquire or improve equipment or real property, or may be accountable for federally owned property, you must include in the subaward:

2. If the subrecipient is a state, applicable provisions of:

   a. Section A of PROP Article II concerning insurance for real property and equipment.

   b. Section B of PROP Article II concerning other property management system standards.

3. If the subrecipient is an institution of higher education, nonprofit organization, local

government, Indian tribe, or for-profit entity, applicable provisions of:

a. Section A of PROP Article II concerning insurance for real property and equipment.

b. Section C of PROP Article II concerning other property management system standards.

Section D. Use and Disposition of Real Property.

If you make a subaward under which the subrecipient may acquire or improve real property, then you must include in the subaward:

a. **Use**. The requirements concerning use of real property:

In Section A of PROP Article III if the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity, unless the award-specific terms and conditions of NGB CA awards provide otherwise.

b. **Disposition.** Provisions to require the subrecipient to request disposition instructions through you when the property is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section B of PROP Article III to address the federal interest in the property.

Section E. Use and Disposition of Equipment and Supplies.

1. If you make a subaward under which the subrecipient may acquire or improve equipment, or acquire supplies, you must include in the subaward, as applicable:

2. If the subaward is to a state:

   a. The requirements in Sections B and E of PROP Article IV concerning use and disposition of equipment and supplies.

   b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

3. If the subaward is to an institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity:

   a. The requirements in Sections C and E of PROP Article IV concerning use of equipment and use and disposition of supplies.

   b. Provisions such as those in Section A of PROP Article IV that make clear the applicability of those requirements.

   c. Provisions to require the subrecipient to request disposition instructions from you when equipment is no longer needed for its originally authorized purpose, so that you can meet your responsibilities to us under Section D of PROP Article IV to address the federal interest in the equipment.

Section F. Use and Disposition of Federally Owned Property.

If you make a subaward under which the subrecipient may be accountable for federally owned property, you must include subaward provisions specifying that the subrecipient:

a. May use the property as specified in Section A.1 of PROP Article V;

b. Must submit requests through you for the award administration office's approval to use the property for other purposes, as described in Section A.2 of PROP Article V;

c. Must request the award administration office's disposition instructions through you when the property is no longer needed for subaward purposes or the subaward ends.

Section G. Intangible Property.

You must include in a subaward provisions specifying the requirements of Sections A through D of PROP Article VI if the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

SUB Article VI. Procurement Procedures to Include in Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning procurement procedures that you must include in the terms and conditions of each cost-type subaward that you make NGB CA awards.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under PROC Articles I through III of these general terms and conditions.

3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Subaward to a State.

In any subaward that you make to a state, you must include the requirements of PROC Article I and applicable sections of PROC Article III of these general terms and conditions.

Section C. Subaward to an Institution of Higher Education, Nonprofit Organization, Local Government, Indian Tribe, or For-profit Entity.

1. In any subaward that you make to an institution of higher education, nonprofit organization, local government, Indian tribe, or for-profit entity:

    a. You must include the requirements of Sections A through G of PROC Article II and applicable sections of PROC Article III of these general terms and conditions.

    b. You must include the requirement for the subrecipient to make available to you, upon request:

        (1) Technical specifications of proposed procurement transactions, under the conditions described in OMB guidance at 2 CFR 200.325(a).

        (2) Other procurement documents for pre-procurement review, under the conditions described in OMB guidance at 2 CFR 200.325(b).

2. If it is possible that, under a subaward you make, the subrecipient may award a construction or facility improvement contract with a value in excess of the simplified acquisition threshold, you must include provisions in the subaward to require the subrecipient to comply with at least the minimum requirements for bidders' bid guarantees and contractors' performance and payment bonds described in 2 CFR 200.326(a) through (c), unless you determine that the subrecipient's bonding policy and requirements are adequate to protect federal interests.

SUB Article VII. Financial, Programmatic, And Property Reporting Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies administrative requirements concerning reporting that you must include in the terms and conditions of each cost-type subaward that you make under NGB CA awards.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under REP Articles I through III of these general terms and conditions.

3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Performance Reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any performance information you need, by the time you need it, to comply with the performance reporting requirements in REP Article I and other terms and conditions of NGB CA awards.

2. You may specify a form, format, or data elements the subrecipient must use to provide

the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article I specifies for your reporting to us).

Section C. Financial Reporting.

1. You must include terms and conditions in each subaward to require the subrecipient to provide any financial information you need, by the time you need it, to comply with the financial reporting requirements in REP Article II and other terms and conditions of NGB CA awards.

2. You may specify a form, format, or data elements the subrecipient must use to provide the information to you (you need not require the subrecipient to use the same form, format, or data elements that REP Article II specifies for your reporting to us).

Section D. Reporting on Property.

1. Each subaward you make under NGB CA awards must include provisions concerning property reporting as described in section D.2 of this section if the subrecipient may, under the subaward:

   a. Acquire or improve real property or equipment;

   b. Acquire supplies or intangible property; or

   c. Be accountable for federally owned property.

2. The subaward provisions must require the subrecipient to give you the information you need about the property to meet your responsibilities to us under Sections A through D of REP Article III and PROP Articles II through VI.

SUB Article VIII. Other Administrative Requirements for Subawards.

Section A. Purposes of this Article in Relation to other Articles.

1. This article specifies other administrative requirements that you either must or should include in the terms and conditions of each cost-type subaward that you make under NGB CA awards.

2. It thereby addresses the flow down to subrecipients of requirements with which you must comply under OAR Articles I through VII of these general terms and conditions.

3. SUB Article XII of these general terms and conditions addresses which of these administrative requirements you must include in any fixed-amount subaward that you make, if you are authorized to make fixed-amount subawards under NGB CA awards.

Section B. Submission and Maintenance of Subrecipient Information.

You must include the substance of the provision in Section C of OAR Article I in any subaward you make under NGB CA awards. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

Section C. Records Retention and Access.

1. In each subaward you make under NGB CA awards:

   a. If the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity:

      (1) You must include the requirements of Section A of OAR Article II with the additional condition that, for any subrecipient under NGB CA awards that does not have a federally approved rate for indirect or facilities and administrative costs and that does not use the de minimis rate described in 2 CFR 200.414(f), you must:

         (a) Require the subrecipient to keep records that support its indirect or facilities and administrative costs charged to the subaward for 3 years from the end of the fiscal year (or other accounting period) to which the costs apply.

         (b) Keep any plan or computation the subrecipient submits to you to serve as a basis for your determining the reasonableness and allowability of indirect or facilities and administrative costs of the subaward, for 3 years from the end of the fiscal year (or other accounting period) to which the proposal, plan, or computation applies.

   b. You must include the requirements of Sections B, C, and F of OAR Article II.

   c. You must include provisions that enable you to comply with the requirements of Section D of OAR Article II concerning records for joint or long-term use.

   d. You must include provisions that establish the same rights and responsibilities for the subrecipient under the subaward that Section E of OAR Article II establishes for you under these general terms and conditions.

   e. You may not impose any other record retention or access requirements on the subrecipient.

Section D. Remedies and Termination.

1. The terms and conditions of each subaward you make under NGB CA awards should specify your rights and responsibilities and those of the subrecipient if you take a remedial action to address a subrecipient's noncompliance with an applicable federal statute or regulation or the terms and conditions of your subaward. Each subaward's terms and conditions should:

2. Identify remedial actions you may take to address the subrecipient's noncompliance.

Available remedies are described in OMB guidance in 2 CFR 200.339 for a subaward to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

3. With respect to termination specifically:

    a. Identify conditions under which you, the subrecipient, or both (by mutual agreement) may terminate the subaward, in whole or in part, as described in:

       OMB guidance in 2 CFR 200.340(a) for a subaward to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

    b. Inform the subrecipient that you will provide it with a notice of termination if you unilaterally terminate the award.

    c. Specify that you and the subrecipient remain responsible for applicable requirements addressed in Sections G and H of this article concerning closeout, post-closeout adjustments, and continuing responsibilities.

4. With respect to either suspension or termination of the subaward, inform the subrecipient about the criteria that you will use to either allow or disallow subaward costs, which are in Section D of OAR Article III for a subaward to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity.

Section E. Disputes, Hearings, and Appeals.

Each subaward's terms and conditions should specify any rights the subrecipient has to a hearing, appeal, or other administrative proceeding if it disputes a decision you render in administering its subaward. You must comply with any statute or regulation that affords the subrecipient an opportunity for a hearing, appeal, or other administrative proceeding and is applicable to the dispute.

Section F. Collection of Amounts Due.

Although your subaward terms and conditions do not need to include any of the requirements of OAR Article V because those requirements do not flow down to subrecipients, you should consider including provisions to specify what you would need from the subrecipient if you owed a debt to the Federal Government under NGB CA awards that is related to its subaward.

Section G. Closeout.

In each subaward that you make to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity, you must include provisions to require the subrecipient to:

a. Liquidate all obligations that it incurred under the subaward not later than 90 calendar days after the end date of the period of performance of either the subaward or NGB CA awards, whichever is earlier, unless you grant an extension.

b. Promptly refund to you any balances of unobligated cash that you advanced or paid to the subrecipient unless you received authorization from the award administration office for the subrecipient's use of those funds on other projects or programs.

c. Submit to you:

(1) Any information you need from the subrecipient to meet your responsibilities to us for an accounting of property, under Section D of OAR Article VI.

(2) Not later than 90 calendar days after the end date of the period of performance of NGB CA awards, unless you grant the subrecipient an extension, any information you need to meet your responsibilities to us for final reports, under Section C of OAR Article VI.

Section H. Post-Closeout Adjustments and Continuing Responsibilities.

You must include provisions in each subaward to require the subrecipient to provide what you need to comply with the requirements of OAR Article VII.

SUB Article IX. National Policy Requirements for Subawards.

Section A. General.

1. You must include provisions in the terms and conditions of each subaward you make to require the subrecipient entity's compliance with each of the national policy requirements in Sections B through E of this article that you determine is applicable, given the type of entity receiving the subaward and activities it will be carrying out under the subaward.

2. If an entity to which you are about to make a subaward will not accept an award provision requiring its compliance with a national policy requirement that you determine to be applicable, you must alert the award administration office immediately. You may not omit an applicable national policy requirement to make the subaward.

3. If at any time during the performance of a subaward, you learn that—or receive a credible allegation that—the subrecipient is not complying with an applicable national policy requirement, you must alert the award administration office immediately.

Section B. Nondiscrimination National Policy Requirements.

You must include provisions in each subaward to require the subrecipient's compliance with the nondiscrimination national policy requirements specified in sections A.1 through

A.5 of NP Article I, as applicable.

Section C. Environmental National Policy Requirements.

You must include provisions in each subaward to require that:

a. The subrecipient complies with all applicable federal environmental laws and regulations, including those specified in Sections A.2, A.3, A.5, and A.6 of NP Article II, as applicable.

b. Provide any information you need, when you need it, to comply with the requirement to immediately notify us of potential environmental impacts specified in Sections A.4, A.5, and A.6 of NP Article II, as applicable, due to activities under the award (which includes subaward activities).

Section D. National Policy Requirements Concerning Live Organisms. RESERVED –Not applicable.

Section E. Other National Policy Requirements.

1. You must include provisions in each subaward to require the subrecipient's compliance with the national policy requirements in the following portions of NP Article IV of these general terms and conditions, as applicable:

   a. Section A.1.

   b. Sections A.3.a and A.3.b.

   c. Sections A.4 through A.19.

   d. Section B.1.

SUB Article X. Subrecipient Monitoring and other Post-Award Administration.

Section A. General Requirement for Subrecipient Monitoring.

1. You must do the post-award monitoring of the subrecipient's activities under each subaward that is needed for you to ensure that:

   a. The subrecipient carries out the portion of the substantive project or program under NGB CA awards for which the subaward was made.

   b. The subrecipient is using project funds under the subaward (including any cost sharing or matching the subrecipient provides that is counted as project funds in the approved budget of NGB CA awards) for authorized purposes.

   c. The subrecipient's performance under the subaward is in compliance with applicable federal statutes and regulations, and the terms and conditions of your subaward.

Section B. Subrecipient Monitoring Actions.

1. **Required Monitoring Actions**. You must, as part of your post-award monitoring of each subrecipient:

   a. Review the financial and programmatic information that your subaward terms and conditions require the subrecipient to provide, in accordance with Sections B and C of SUB Article VII of these general terms and conditions.

   b. Follow up and ensure that the subrecipient takes timely and appropriate action to remedy deficiencies detected through any means, including audits and on-site reviews.

   c. With respect to audits of subrecipients that are required under FMS Article V of these general terms and conditions:

      (1) Verify that the subrecipient is audited in accordance with those requirements, as applicable (note that Section F of SUB Article IV requires you to include those audit requirements for the subrecipient in the subaward's terms and conditions).

      (2) Resolve and issue a management decision for audit findings that pertain to your subaward. Doing so is a requirement under either Section A or B of FMS Article V of these general terms and conditions (Section B requires that explicitly and Section A does so by implementing OMB guidance in 2 CFR 200.521, as well as other portions of Subpart F of that part).

      (3) Consider whether you need to adjust your own records related to NGB CA awards based on results of audits, on-site reviews, or other monitoring of the subrecipient and, as applicable, notify the award administration office.

2. **Other Monitoring Actions**. OMB guidance in 2 CFR 200.332(e)(1) through (3) describes other actions that may be useful as part of your subrecipient monitoring program, depending on the outcomes of the pre-award risk assessment you conducted in accordance with Section B of SUB Article II.

Section C. Remedies and Subaward Suspension or Termination.

1. With respect to any subaward under NGB CA awards, you must:

   a. Consider whether you need to take any remedial action if you determine that the subrecipient is noncompliant with an applicable federal statute or regulation or the terms and conditions of your subaward, as described in Section D of SUB Article VIII.

b. Provide a notice of termination to the subrecipient if you terminate its subaward unilaterally for any reason prior to the end of the period of performance.

c. In the case of either suspension or termination of a subaward prior to the end of the period of performance, allow or disallow subaward costs in accordance with Section D of OAR Article III.

Section D. Subaward Closeout.

1. You will close out each subaward when you either:

   a. Determine that the subrecipient has completed its programmatic performance under the subaward and all applicable administrative actions; or

   b. Terminate the subaward if you do so prior to completion of the subrecipient's programmatic performance.

2. With respect to the closeout of each subaward:

   a. You must pay the subrecipient promptly for allowable and reimbursable costs.

   b. Consistent with the terms and conditions of the subaward, you must make a settlement for any upward or downward adjustments to the federal share of project costs after you receive the information you need from the subrecipient to close out the subaward.

   c. You should complete the closeout of the subaward no later than one year after you receive and accept the final reports and other information from the subrecipient that you need to close out the subaward.

SUB Article XI. Requirements Concerning Subrecipients' Lower-tier Subawards.

Section A. Purpose.

This article specifies requirements you must include in any cost-type subaward under which you determine that the subrecipient may make lower-tier cost-type subawards to other entities.

Section B. Requirements for Lower-tier Subawards.

Your subaward terms and conditions must require your subrecipient, with respect to each lower-tier cost-type subaward that it makes to:

1. Ensure that the lower-tier transaction is a subaward, rather than a procurement transaction, by making the determination that SUB Article I of these general terms and conditions requires you to make.

2. Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of these general terms and conditions requires you to make for your subawards.

3. Include in any cost-type subaward it makes at the next tier:

   a. The informational content that SUB Article III specifies.

   b. The administrative requirements that SUB Articles IV through VIII of these general terms and conditions specify.

   c. The national policy requirements that SUB Article IX of these general terms and conditions specifies, as applicable.

   d. The requirements of this article if the next-tier subrecipient may make even lower-tier cost-type subawards to other entities.

4. Carry out the subrecipient monitoring and other post-award administration responsibilities specified in SUB Article X.

SUB Article XII. Fixed Amount Subawards.

Section A. Limitations on Use.

1. You may not use a fixed amount subaward:

   a. If the total value over the life of the subaward will exceed the simplified acquisition threshold.

   b. Unless the project or program scope is specific, with definite outcomes, and you can establish a reasonable estimate of the actual costs of accomplishing those outcomes.

   c. If you will predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under the subaward.

   d. If the subrecipient will acquire any real property or equipment under the subaward.

2. For fixed amount subawards not prohibited by paragraph 1 of this section and except as provided in Section B of this article, you must obtain our prior approval before making a fixed amount type of subaward.

   a. If Section B of FMS Article IV requires you to obtain our prior approval before you make any subaward, and you do not identify the subaward as a fixed amount subaward when you obtain that approval, then you must subsequently request separate approval before awarding it as a fixed amount type of subaward.

b. If a subaward is identified as a fixed amount type of subaward in the budget you submit for our approval, then our approval of the budget is the required prior approval.

Section B. Fixed Amount Subawards that do not Require Prior Approval.

1. You are not required to obtain our prior approval before using a fixed amount type of subaward if:

   a. The subaward is to either:

   b. A foreign public entity; or

   c. An organizational unit of a foreign organization, if that unit does not have a place of business in the United States, regardless of whether another organizational unit of that foreign organization has one.

2. You determine that the portion of the project or program under NGB CA awards which the subrecipient will be carrying out under the subaward has one or more specific outcomes with the following characteristics:

   a. You can define the outcomes well enough to specify them at the time you make the subaward. Note that:

      (1) Outcomes are distinct from inputs needed to achieve the outcomes, such as amounts or percentages of time that subrecipient employees or other participants will spend on the project or program.

      (2) The inherently unpredictable nature of basic or applied research makes it rarely, if ever, possible to define specific research outcomes in advance, which makes fixed amount subawards inappropriate for research. Note that technical performance reports serve to document research outcomes but are not themselves outcomes, notwithstanding the definition of "performance goals" in OMB guidance at 2 CFR 200.1.

   b. The accomplishment of each outcome will be observable and verifiable by you when it occurs, so that you will not need to rely solely on the subrecipient's assurance of that accomplishment.

   c. The subrecipient associates its estimated costs with outcomes in the proposal it submits to you, and you are confident that the costs of accomplishment of the outcomes will equal or exceed the subaward amount. This requires either that you have a high degree of confidence:

      (1) In your estimate of the costs associated with accomplishing the well-defined and observable outcomes, based on the prospective subrecipient's proposal (and using the applicable cost principles in FMS Article III as a guide); or

(2) That those costs will be within a finite range, rather than a specific amount, so that you may provide an amount of funding under the subaward that does not exceed the lower end of the range, with the provision that the subrecipient agrees to provide any balance above that amount that ultimately is needed to accomplish the outcomes. Your subaward then would include a term or condition to reflect the subrecipient's agreement to provide that balance (which would be in an amount to be post-determined when the outcomes are accomplished). Note that this is distinct from a situation in which you predetermine a set amount or percentage of cost sharing or matching that the subrecipient must provide under its subaward, a situation in which section A.1.c of this article prohibits use of a fixed amount subaward.

3. The subaward is based on a fixed rate per unit of outcome (or "unit cost") and you have both the confidence:

a. That is described in Section B.2.c of this article in the estimated costs associated with each unit of outcome.

b. In the subrecipient's guarantee that it can accomplish at least the number of units of outcome on which your total subaward amount will be based (i.e., the product of the unit cost and the number of units of outcome the subrecipient guarantees to accomplish).

c. Note, however, that not every fixed rate subaward is also a fixed amount subaward. If you have confidence in the unit cost but not also in the subrecipient's ability to guarantee the number of units of outcome that it will accomplish, then you should set a not-to-exceed award amount based on the number of units desired and reduce the subaward amount at the end if the subrecipient accomplishes fewer than that number. Examples of activities for which it may be appropriate to award this type of fixed rate subaward that is not a fixed amount subaward include:

(1) A clinical trial for which the unit cost is the cost of treating each participant. The not-to exceed amount would be based on the number of participants the subrecipient planned to recruit and the final award on the number who participated, documentation for which would be subject to audit.

(2) Labor costs for performance of a portion of the project or program under NGB CA awards by an organization or entity that treats its indirect cost rate as proprietary information. The unit cost in that case may be "loaded" labor rates for the organization's or entity's employees that include indirect costs. The final award amount would depend on the number of labor hours the organization's or entity's employees expended under the subaward, documentation for which may be audited without exposing proprietary details associated with the actual costs.

Section C. Informational Content of Fixed Amount Subawards.

You must include in each fixed amount subaward the informational content, other than the indirect cost rate, that is described in SUB Article III of these general terms and conditions.

Section D. Terms and Conditions Addressing Administrative Requirements.

1. **General.** This section:

   a. Specifies the minimum set of terms and conditions (in lieu of the more extensive set specified in SUB Articles IV through X for cost-type subawards) addressing administrative requirements that you must include in each fixed-amount subaward:

      (1) To an entity other than a foreign organization, as applicable.

      (2) To the maximum extent practicable, to a foreign organization.

   b. Does not preclude the inclusion of other requirements that you need to meet your responsibilities under NGB CA awards for performance of the project or program and compliance with applicable administrative requirements.

2. **Financial and Program Management Requirements**.

   a. **Financial Management System Standards**. For a subaward to other than a for-profit entity, your subaward must require the subrecipient to include the information specified in section B.1 of FMS Article I in its financial management system, for the purposes of the non-federal audits required by section 2.d of this section.

   b. **Payments**. Your payments must be based on accomplishment of the outcomes and associated costs that you used to establish the subaward amount, rather than on subrecipient expenditures for project or program purposes. Milestone payments before the end of the subaward's period of performance may be appropriate if there are outcomes that the subrecipient will accomplish at different times during that period.

   c. **Revision of Budget and Program Plans**. If our prior approval was required under section A.2 of this article for use of a fixed-amount type of subaward, then you must:

      (1) Request our prior approval for any change in principal investigator, project leader, project partner, or scope or objective of the subaward.

      (2) Therefore, include a requirement in the subaward for the subrecipient to request that approval through you.

   d. **Non-Federal Audits**. You must include the requirement for non-federal audits described in Section F of SUB Article IV. The audits are intended to focus on compliance with the performance requirements in the subaward terms and conditions and not to review actual costs as they would for a cost-type subaward.

e. **Certification of completion**. You must include the requirement for the subrecipient to provide you with a certification at the end of the project as specified in 2 CFR 200.201(b)(3).

3. **Property Requirements**.

a. **Federally Owned Property**. If the subrecipient will be accountable for federally owned property, you must include the property management system, use, and disposition requirements described in Sections C and F of SUB Article V that are applicable to federally owned property.

b. **Intangible Property**. You must include the applicable intangible property requirements described in Section G of SUB Article V.

4. **Reporting Requirements**. You must include requirements for reporting that you need to meet your responsibilities under NGB CA awards for reporting to us.

5. **Other Administrative Requirements**.

a. **Integrity-Related Information.** You must include the substance of the provision in Section C of OAR Article I in any subaward you make under NGB CA awards. The provision must require the subrecipient's disclosure of any evidence directly to the Inspector General, DoD.

b. **Records Retention and Access**. You must include the requirements for records retention and access in section A.3 and Sections B and F of OAR Article II, as applicable, if the subaward is to an institution of higher education, nonprofit organization, state, local government, Indian tribe, or for-profit entity. You may not impose any other records retention or access requirements on the subrecipient.

c. **Remedies and Termination**. You must include:

(1) The requirements concerning remedies and termination that are described in Sections D.1 and 2 of SUB Article VIII.

(2) Provisions addressing any hearing and appeal rights the subrecipient has, as described in Section E of SUB Article VIII.

(3) Terms and conditions addressing adjustment of the amount of the subaward if it is terminated before the subrecipient accomplishes all the specified outcomes.

d. **Continuing Responsibilities**. You must include requirements concerning continuing responsibilities for audits and records retention and access that are described in Sections B.1 and B.3 of OAR Article VII.

e. **Collection of amounts Due**. You should consider including requirements concerning collection of amounts due, as described in Section F of SUB Article VIII.

Section E. National Policy Requirements for Fixed Amount Subawards.

You must include in the terms and conditions of each fixed amount subaward the national policy requirements that SUB Article IX of these general terms and conditions specifies, as applicable.

Section F. Subrecipient Monitoring and Other Post-Award Administration.

You must carry out the subrecipient monitoring and post-award administration actions specified in SUB Article X, as applicable.

Section G. Fixed amount subawards at Lower Tiers.

1. **Authority**.

a. If Section B of this article authorizes you to use a fixed-amount type of subaward without our prior approval in some situations, a cost-type subaward that you make may authorize the subrecipient to use fixed-amount subawards at the next lower tier in those same situations without our prior approval.

b. If you wish to allow a subrecipient of a cost-type subaward to use fixed amount subawards at the next tier in other situations (i.e., situations in which this article requires you to obtain our prior approval before using a fixed-amount type of subaward), your subaward terms and conditions must require the subrecipient to submit a request through you to obtain our prior approval for use of that type of subaward.

2. **Subaward Requirements**. If your subrecipient is authorized to use lower tier, fixed amount subawards, as described in paragraphs 1.a and 1.b of this section, your subaward's terms and conditions must:

a. Require the subrecipient, before it makes any lower tier, fixed amount subaward, to:

(1) Ensure that the lower-tier transaction is a subaward, rather than a procurement transaction, by making the determination that SUB Article I of these general terms and conditions requires you to make.

(2) Conduct the pre-award risk assessment of its intended subrecipient that Section B of SUB Article II of these general terms and conditions requires you to make for your subawards.

b. Include the requirements specified in Sections A through F of this article.

SUBDIVSION C - General Terms and Conditions for National Policy Requirements

Part 1: National Policy Requirements (Articles from this part are designated with “NP” in the article title)

NP Article I. Nondiscrimination National Policy Requirements.

Section A. Cross-Cutting Nondiscrimination Requirements.

By signing NGB CA award or accepting funds under NGB CA awards, you assure that you will comply with applicable provisions of the national policies prohibiting discrimination:

a. On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), as implemented by Department of Defense (DoD) regulations at 32 CFR part 195.

b. On the basis of gender, blindness, or visual impairment, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 et seq.), as implemented by DoD regulations at 32 CFR part 196.

c. On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101 et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR part 90.

d. On the basis of disability, in the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR part 41 and DoD regulations at 32 CFR part 56.

e. On the basis of disability in the Architectural Barriers Act of 1968 (42 U.S.C. 4151 et seq.) related to physically handicapped persons’ ready access to, and use of, buildings and facilities for which federal funds are used in design, construction, or alteration.

Section B. Other Nondiscrimination Requirements. RESERVED - Only applicable if provided in award-specific terms and conditions.

NP Article II. Environmental National Policy Requirements.

Section A. Cross-Cutting Environmental Requirements.

1. You must:

   a. Comply with all applicable federal environmental laws and regulations. The laws and regulations identified in this section are not intended to be a complete list.

   b. Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.).

   c. Comply with applicable provisions of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), as implemented by the Department of Housing and Urban Development at 24 CFR part 35. The requirements concern lead-based paint in buildings owned by the Federal Government or housing receiving federal assistance.

   d. Immediately identify to us, as the federal awarding agency, any potential impact that you find NGB CA awards may have on:

      (1) The quality of the “human environment”, as defined in 40 CFR 1508.14, including wetlands; and provide any help we may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321 et seq.), the regulations at 40 CFR 1500-1508, and Executive Order 12114, if applicable; and assist us to prepare Environmental Impact Statements or other environmental documentation. In such cases, you may take no action that will have an environmental impact (e.g., physical disturbance of a site such as breaking of ground) or limit the choice of reasonable alternatives to the proposed action until we provide written notification of federal compliance with NEPA or Executive Order 12114.

      (2) Flood-prone areas and provide any help we may need to comply with the National Flood Insurance Act of 1968, as amended by the Flood Disaster Protection Act of 1973 (42 U.S.C. 4001 et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.

      (3) A land or water use or natural resource of a coastal zone that is part of a federally approved state coastal zone management plan and provide any help we may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.) including preparation of a Federal agency Coastal Consistency Determination.

      (4) Coastal barriers along the Atlantic and Gulf coasts and Great Lakes’ shores and provide help we may need to comply with the Coastal Barrier Resources Act (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers system and provide any help we may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source and in wellhead protection areas and provide any help we may need to comply with the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

e. You must comply fully with the Endangered Species Act of 1973, as amended (ESA, at 16 U.S.C. 1531 et seq.) and implementing regulations of the Departments of the Interior (50 CFR parts 10-24) and Commerce (50 CFR parts 217-227). You also must provide any help we may need in complying with the consultation requirements of ESA section 7 (16 U.S.C. 1536) applicable to federal agencies or any regulatory authorization we may need resulting from performance under NGB CA awards. This is not in lieu of responsibilities you have to comply with provisions of the Act that apply directly to you as a U.S. entity, independent of receiving NGB CA awards.

f. You must fully comply with the Marine Mammal Protection Act of 1972, as amended (MMPA, at 16 U.S.C. 1361 et seq.) and provide any assistance we may need in obtaining any required MMPA permit resulting from performance under NGB CA awards.

Section B. Other Environmental Requirements. RESERVED - Only applicable if provided in award-specific terms and conditions.

NP Article III. National Policy Requirements Concerning Live Organisms. RESERVED – Not Applicable.

NP Article IV. Other National Policy Requirements.

Section A. Cross-Cutting Requirements.

1. **Debarment and Suspension**. You must comply with requirements regarding debarment and suspension in Subpart C of 2 CFR part 180, as adopted by DoD at 2 CFR part 1125. This includes requirements concerning your principals under NGB CA awards, as well as requirements concerning your procurement transactions and subawards that are implemented in PROC Articles I through III and SUB Article II.

2. **Drug-Free Workplace.** You must comply with drug-free workplace requirements in Subpart B of 2 CFR part 182, which is the DoD implementation of 41 U.S.C. chapter 81, “Drug-Free Workplace.”

3. **Lobbying.**

   a. You must comply with the restrictions on lobbying in 31 U.S.C. 1352, as implemented by DoD at 32 CFR part 28, and submit all disclosures required by that statute and regulation.

   b. You must comply with the prohibition in 18 U.S.C. 1913 on the use of federal funds, absent express Congressional authorization, to pay directly or indirectly for any service, advertisement or other written matter, telephone communication, or other device intended to influence at any time a Member of Congress or official of any government concerning any legislation, law, policy, appropriation, or ratification.

   c. If you are a nonprofit organization described in section 501(c)(4) of title 26, United States Code (the Internal Revenue Code of 1968), you may not engage in lobbying activities as defined in the Lobbying Disclosure Act of 1995 (2 U.S.C., chapter 26). If we determine that you have engaged in lobbying activities, we will cease all payments to you under this and other awards and terminate the awards unilaterally for material failure to comply with the award terms and conditions.

4. **Officials not to Benefit.** You must comply with the requirement that no member of Congress shall be admitted to any share or part of NGB CA awards, or to any benefit arising from it, in accordance with 41 U.S.C. 6306.

5. **Hatch Act.** If applicable, you must comply with the provisions of the Hatch Act (5 U.S.C. 1501-1508) concerning political activities of certain state and local government employees, as implemented by the Office of Personnel Management at 5 CFR part 151, which limits political activity of employees or officers of state or local governments whose employment is connected to an activity financed in whole or part with federal funds.

6. **Native American Graves Protection and Repatriation**. If you control or possess Native American remains and associated funerary objects, you must comply with the requirements of 43 CFR part 10, the Department of the Interior implementation of the Native American Graves Protection and Repatriation Act of 1990 (25 U.S.C., chapter 32).

7. **Fly America Act**. You must comply with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118), commonly referred to as the “Fly America Act,” and implementing regulations at 41 CFR 301-10.131 through 301-10.143. The law and regulations require that U.S. Government financed international air travel of passengers and transportation of personal effects or property must use a U.S. Flag air carrier or be performed under a cost-sharing arrangement with a U.S. carrier, if such service is available.

8. **Use of United States-flag Vessels.** You must comply with the following requirements of the Department of Transportation at 46 CFR 381.7, in regulations implementing the Cargo Preference Act of 1954:

a. Pursuant to Public Law 83-664 (46 U.S.C. 55305), at least 50 percent of any equipment, materials or commodities procured, contracted for, or otherwise obtained with funds under NGB CA awards, and which may be transported by ocean vessel, must be transported on privately owned United States flag commercial vessels, if available.

b. Within 20 days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in section 8.a of this section must be furnished to both our award administrator (through you in the case of your contractor's bill-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590.

9. **Research Misconduct.** You must comply with requirements concerning research misconduct in Enclosure 4 to DoD Instruction 3210.7, "Research Integrity and Misconduct." The Instruction implements the Federal Governmentwide research misconduct policy that the Office of Science and Technology Policy published in the Federal Register (65 FR 76260, December 6, 2000, available through the U.S. Government Printing Office web site: http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR).

10. **Requirements for an Institution of Higher Education Concerning Military Recruiters and Reserve Officers Training Corps (ROTC).**

a. As a condition for receiving funds available to the DoD (NGB) under NGB CA awards, you agree that you are not an institution of higher education (as defined in 32 CFR part 216) that has a policy or practice that either prohibits, or in effect prevents:

(1) The Secretary of a Military Department from maintaining, establishing, or operating a unit of the Senior Reserve Officers Training Corps (ROTC)—-in accordance with 10 U.S.C. 654 and other applicable federal laws—-at that institution (or any sub element of that institution);

(2) Any student at that institution (or any sub element of that institution) from enrolling in a unit of the Senior ROTC at another institution of higher education;

(3) The Secretary of a Military Department or Secretary of Homeland Security from gaining access to campuses, or access to students (who are 17 years of age or older) on campuses, for purposes of military recruiting in a manner that is at least equal in quality and scope to the access to campuses and to students that is provided to any other employer; or

(4) Access by military recruiters for purposes of military recruiting to the names of students (who are 17 years of age or older and enrolled at that institution or

any sub element of that institution); their addresses, telephone listings, dates and places of birth, levels of education, academic majors, and degrees received; and the most recent educational institutions in which they were enrolled.

b. If you are determined, using the procedures in 32 CFR part 216, to be such an institution of higher education during the period of performance of NGB CA awards, we:

(1) Will cease all payments to you of federal funds under NGB CA awards and all other DoD grants and cooperative agreements.

(2) May suspend or terminate those awards unilaterally for material failure to comply with the award terms and conditions.

11. **Historic Preservation**. You must identify to us any:

a. Property listed or eligible for listing on the National Register of Historic Places that will be affected by NGB CA awards, and provide any help we may need, with respect NGB CA awards, to comply with section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 306108), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR part 800 and Executive Order 11593, “Identification and Protection of Historic Properties,” [3 CFR, 1971-1975 Comp., p. 559]. Impacts to historical properties are included in the definition of “human environment” that require impact assessment under NEPA (See NP Article II, Section A).

b. Potential under NGB CA awards for irreparable loss or destruction of significant scientific, prehistorical, historical, or archeological data, and provide any help we may need, with respect to NGB CA awards, to comply with the Archaeological and Historic Preservation Act of 1974 (54 U.S.C. chapter 3125).

12. **Relocation and Real Property Acquisition.** You must comply with applicable provisions of 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4601, et seq.) and provide for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

13. **Confidentiality of Patient Records.** You must keep confidential any records that you maintain of the identity, diagnosis, prognosis, or treatment of any patient in connection with any program or activity relating to substance abuse education, prevention, training, treatment, or rehabilitation that is assisted directly or indirectly under NGB CA awards, in accordance with 42 U.S.C. 290dd-2.

14. **Pro-Children Act**. You must comply with applicable restrictions in the Pro-Children Act of 1994 (Title 20, Chapter 68, subchapter X, Part B of the U.S. Code) on smoking in any indoor facility:

a. Constructed, operated, or maintained under NGB CA awards and used for routine or regular provision of kindergarten, elementary, or secondary education or library services to children under the age of 18.

b. Owned, leased, or contracted for and used under NGB CA awards for the routine provision of federally funded health care, day care, or early childhood development (Head Start) services to children under the age of 18.

15. **Constitution Day.** You must comply with Public Law 108-447, Div. J, Title I, section 111 (36 U.S.C. 106 note), which requires each educational institution receiving federal funds in a federal fiscal year to hold an educational program on the United States Constitution on September 17th during that year for the students served by the educational institution.

16. **Trafficking in Persons.** You must comply with requirements concerning trafficking in persons specified in the award term at 2 CFR 175.15(b), as applicable.

17. **Whistleblower Protections.** You must comply with 10 U.S.C. 2409, including the:

a. Prohibition on reprisals against employees disclosing certain types of information to specified persons or bodies.

b. Requirement to notify your employees in writing, in the predominant native language of the workforce, of their rights and protections under that statute.

18. **Section 889 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Public Law 115-232).**

a. Prohibits the head of an executive agency from obligating or expending loan or grant funds to procure or obtain, extend, or renew a contract to procure or obtain, or enter into a contract (or extend or renew a contract) to procure or obtain the equipment, services, or systems prohibited systems as identified in section 889 of the NDAA for FY 2019.

b. In accordance with 2 CFR 200.216 and 200.471, all awards that are issued on or after August 13, 2020, 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).

(a) 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).

(b) Telecommunications or video surveillance services provided by such entities or using such equipment.

(c) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

c. In implementing the prohibition under Public Law 115-232, section 889, subsection (f), section (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.

d. See Public Law 115-232, section 889 for additional information.

e. Covered Foreign Country means the People's Republic of China.

f. Telecommunications Cost means the cost of using communication and telephony technologies such as mobile phones, land lines, and internet.

g. Do Not Contract with the Enemy (2 CFR 183**)**

Section B. Additional Requirements.

1. Prohibition on Using Funds under Grants and Cooperative Agreements with Entities that Require Certain Internal Confidentiality Agreements.

2. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a federal department or agency authorized to receive such information.

3. You must notify your employees, contractors, and subrecipients that the prohibitions

and restrictions of any internal confidentiality agreements inconsistent with NGB CA award, inclusive of these general terms and conditions are no longer in effect.

4. The prohibition in paragraph 1.a. of this section does not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a federal department or agency governing the nondisclosure of classified information.

5. If the Federal Government determines that you are not in compliance with NGB CA awards provisions, it:

   a. Will prohibit your use of funds under NGB CA awards, in accordance with section 743 of Division E of the Consolidated and Further Continuing Resolution Appropriations Act, 2015, (Public Law 113-235) or any successor provision of law.

   b. May pursue other remedies available for your material failure to comply with award terms and conditions.

SUBDIVISION D - General Terms and Conditions for Programmatic Requirements.

Part 1: Authorities

Section A. General Authority.

1. Title 32 United States Code (U.S.C.) §§ 106 and 107 authorize NGB to contribute funds for the support of the operation and training of the Army National Guard and Air National Guard.

2. It is NGB's policy to do so in the form of a Cooperative Agreement.

Section B. Other Specific Authorities.

Other specific authorities to the programs will be in each the individual Cooperative Agreement.

Part 2: NGB Definitions

Section A. Airport Authority.

A Public Agency controlling a Public Airport. A Public Agency is a State or any agency of a State, a municipality or other political subdivision of a State, a tax- supported organization, or an Indian tribe or pueblo. Public Airport means an airport which is used for or to be used for public purposes, under the control of a public agency, and the landing area of which is publicly owned.

Section B. Air National Guard.

The Air National Guard (ANG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that:

a. Is an air force.

b. Is trained, and has its officers appointed, under the sixteenth clause of section 8, article 1 of the Constitution.

c. Is organized, armed, and equipped wholly or partly at federal expense.

d. Is federally recognized (32 USC § 101).

Section C. Army National Guard.

The Army National Guard (ARNG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that --

a. Is a land force.

b. Is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution.

c. Is organized, armed, and equipped wholly or partly at federal expense.

d. Is federally recognized (32 U.S.C. § 101).

Section D. Army National Guard and Air National Guard Cooperative Agreement Award.

Any agreements entered by the Department of Defense, National Guard Bureau, with recipients, funded by Department of Defense appropriations for the Army National Guard and Air National Guard, minor construction, maintenance, repair, or operation of facilities, operations of the Army National Guard and Air National Guard, and for other programs authorized and directed by Congress or the Department of Defense to be performed by the recipients and the National Guard Bureau.

Section E. Chief, National Guard Bureau.

The appointed head of the National Guard Bureau

Section F. Centralized Personnel Plan.

The centralized personnel plan is the mechanism which the recipient may charge indirect rates should they choose to centralize cooperative agreement personnel within the recipient military department.

Section G. Federal Fiscal Year.

The federal fiscal year that runs from October 1 to September 30.

Section H. Grant Appeal Authority.

The Chief, National Guard Bureau will establish one or more grant appeal authorities to decide formal, administrative appeals. The individual so designated will be a General Officer or Senior Executive Service Civilian. The appointment order will be issued by the Chief, National Guard Bureau.

Section I. In-Kind Assistance.

The federal procurement of supplies and or services, in lieu of funds, to satisfy National Guard Bureau's obligation of assistance support to the recipient. To be used sparingly as the exception to the rule with strong justification for each action submitted to the Grants Officer for pre-approval prior to submitting the request to the contracting office.

Section J. In-Kind Contribution.

Property or services (valued at the time of the contribution at fair market value) which benefit a federally assisted program or activity contributed by or on behalf of the recipient to satisfy (in whole or in part) the recipient's match share of assistance to the Cooperative Agreement Award.

Section K. Military Equipment.

Military Equipment is federal equipment, authorized and used by the Army and Air National Guard to carry out tactical military missions (i.e., combat, or homeland defense/security), listed in the ARNG Modified Table of Organization Equipment, or AF Designed Operational Capability. Military equipment cannot be issued/transferred to the State for the purpose of National Guard Bureau cooperative agreement award execution.

Section L. National Guard Bureau.

DoD Component and a Joint Activity of the Department of Defense headed by a Chief who sits on the Joint Staff and is the advisor on National Guard matters. The National Guard Bureau is the channel of communication between the departments concerned and the several States, Territories, Puerto Rico, and the District of Columbia, on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States.

Section M. Principal Investigator.

Also known as Project Director and State Program Manager The individual within that group identified by the organization as the one with whom National Guard Bureau's Federal CA PM generally should communicate as the primary contact for, technical, and related budgetary matters concerning the project.

Section N. Renewal Award

An award made subsequent to an expiring Federal award for which the start date is contiguous with, or closely follows, the end of the expiring Federal award. A renewal award's start date will begin a distinct period of performance.

Section O. State.

Any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam…, and any agency or instrumentality thereof exclusive of local governments. For Military Construction Cooperative Agreements and other Cooperative Agreements awarded to meet the purpose of facilities under 10 USC Chapter 1803, FACILITIES FOR RESERVE COMPONENTS, the term "State" means any of the States of the United States, the District of Columbia, the Commonwealth of

Puerto Rico, and each territory and possession of the United Ss and includes political subdivisions and military units thereof and tax-supported agencies therein.

Section P. The Adjutant General

The head of the State (Commonwealth, or Territory) Military Department, appointed by the Governor of the State (Commonwealth, or Territory) or elected, according to the respective State's (Commonwealth's, or Territory's) constitution, or statute. The Adjutant General receives funds and property, accounts for expenditures and property acquired through a cooperative agreement award and makes returns and reports concerning those expenditures and property, as required by the cooperative agreement award.

Section Q. United States Property and Fiscal Officer.

The qualified commissioned officer of the Army National Guard or the Air National Guard designated by the Chief, National Guard Bureau, to be the United States Property and Fiscal Officer of a State or Territory. He/she receives and accounts for funds and property of the United States in the possession of the National Guard for which he/she is property and fiscal officer; and make returns and reports concerning those funds and that property, as required by the Secretary concerned.

Part 3: NGB General Provisions

Section A. Successors and Assigns.

NGB CA awards may not be assigned by a party without the express written consent of the other party. All covenants made under NGB CA awards shall bind and take effect to the benefit of any successors and assigns of the parties whether expressly assumed or acknowledged by such successors or assigns.

Section B. Entire Agreement.

NGB CA award and these general terms and conditions, which are incorporated in whole by reference into all NGB CA awards, form the entire agreement between the parties as to scope and subject matter of NGB CA award. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by NGB CA awards.

Section C. Severability.

If any provision of NGB CA award is held judicially invalid, the remainder of the CA award shall continue in force and effect to the extent not inconsistent with such holding.

Section D. Waiver of Breach.

If a party waives enforcement of any provision of NGB CA award upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

Section E. Notices.

1. Any notice, transmittal, approval, or other official communication made by you the recipient, under an NGB CA award shall be in writing and shall be delivered by hand, email, facsimile transmission, or by mail to the grants officer.

2. Any notice, transmittal, approval, or other official communication made by us, NGB, under an NGB CA award shall be in writing and shall be delivered by hand, email, facsimile transmission, or by mail by the grants officer or as delegated by the grant officer.

Section F. Liabilities and Indemnity.

Except as stated in section G, nothing in NGB CA awards shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage, or for death or personal injury arising out of and during performance of the activities supported by NGB CA awards. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or (assigns) or by third persons, arising out of and during the performance of supported activities shall be determined according to applicable law.

Section G. Government Furnished Equipment (GFE).

In addition to the Liability and Indemnity provisions in section F, nothing in NGB CA award shall be construed as an indemnification by the United States of the State, its employees, agents, or third persons, for liability with respect to any and all claims, including, but not limited to: (1) claims for damages; and (2) claims for reimbursement arising from property loss, personal injury or accident damage related to the use, care, or operation of GFE. The Recipient's liability for lost or damaged GFE will be in accordance with applicable State laws. In the event that State law does not authorize indemnification, GFE should not be provided.

Part 4: Legal Authorities

Section A. Legal Authority.

The Recipient represents and warrants that it is under no existing or foreseeable legal disability that would prevent or hinder it from fulfilling the terms and conditions of NGB CA award. The Recipient shall promptly notify NGB of any legal impediment that arises during the term of NGB CA award that may prevent or hinder the state's fulfillment of its obligations under NGB CA award.

Section B. Opinion of Counsel.

Concurrent with its execution of NGB CA award, the Recipient shall furnish an opinion of counsel by the highest legal officer of the State, or his or her designee, that:

a. The Recipient has the requisite authority to enter into NGB CA award.

b. The Recipient can make the warranty set forth in Section A above.

c. The Recipient is empowered to assume the responsibilities and obligations it proposes to undertake under NGB CA award.

d. The provisions of NGB CA award intended to secure the interests of NGB are enforceable according to their terms.

e. The execution of NGB CA award has been duly authorized by the state.

f. That the individual signing NGB CA award on behalf of the recipient has the requisite legal authority to bind and obligate the recipient to the terms and conditions of NGB CA award.

Part 5: Responsibilities of Parties

Section A. National Guard Bureau (NGB) Responsibilities.

NGB has overall responsibility for NGB-funded awards, including providing oversight for technical, programmatic, financial, and administrative performance.

a. Grants Officer.

Grants officer authority is authorized by a warrant issued by NGB, Head of Contracting Activity (HCA) or HCA delegate. The grants officer is responsible for all actions on behalf of NGB, including entering, modifying, or terminating awards. In addition, the grants officer is responsible for the administrative coordination and liaison with the recipient. The grants officer is the only person authorized to approve changes to any of the requirements in the award.

b. Grants Officer Representative (GOR).

The GOR is a federal employee delegated in writing by the grants officer who is responsible for completing day-to-day administrative actions and technical monitoring relative to all cooperative agreement awards. The GOR ensures internal controls are in place and effective. The GOR establishes and maintains a separate file for each award.

c. **Federal Cooperative Agreement Program Manager (CA PM).**

The CA PM is a federal employee, delegated in writing, by the grants officer to administer certain aspects of the award. The CA PM has the technical expertise related to program implementation and monitors assigned cooperative agreement's performance to ensure compliance with the terms and conditions of the award. The CA PM provides technical input, direction, and guidance to assist the recipient in meeting the terms and conditions of the cooperative agreement. A recipient employee cannot be designated as a CA PM.

d. **NGB Office of Primary Responsibility Program Manager (NGB-OPR Program Manager).**

It is NGB policy that all CA awards shall have an appointed NGB-OPR Program Manager. They should have knowledge of and are responsible for the programmatic and/or technical aspects of the federal assistance award. They provide administrative and financial guidance to the grants officer and CA PMs as stated in the agreement. Lines of communication between the NGB-OPR Program Manager and you the recipient will go through the CA PM or grants officer as appropriate.

Section B. Recipient Responsibilities and Compliance with Federal Requirements.

1. The recipient is responsible for notifying NGB of any significant problems relating to the administrative, programmatic, or financial aspects of the award. The recipient should direct all correspondence related to programmatic and budgetary issues to the grants officer, GOR, and CA PM. Lines of communication between the NGB-OPR Program Manager and you the recipient will go through the CA PM or grants officer as appropriate.

2. The recipient is responsible for the management of the project or activity supported under the award and for adherence to federal regulations, the award provisions, and these general terms and conditions. Although the recipient is encouraged to seek the advice and opinion of the grants officer, GOR, and/or the CA PM on special circumstances that may arise, such advice does not diminish the recipient's responsibility for making prudent and sound administrative judgments under the circumstances prevailing at the time the decision was made and should not imply that the responsibility for operating decisions has shifted to NGB.

3. In addition to the requirements specified in 2 CFR 200.331, these terms and conditions flow down to all sub recipients (subcontracts and sub agreements) and must be included in the recipient's sub award instrument. Depending on the type of entity, all sub recipients and subcontractors are subject to the federal regulations specified in Part 2 of these terms and conditions.

4. Nothing in this provision alters the recipient's responsibility for conduct of the project and compliance with all applicable laws and regulations.

Part 6: Period of Performance of Cooperative Agreement Awards (Articles from this part are designated with “POP” in the article title)

POP Article I. Period of Performance

Section A. Opening of a new NGB Cooperative Agreement Award

1. With the exceptions in Section C, NGB cooperative agreements will be awarded on 1 October of each fiscal year.

2. The period of performance will begin on 1 October of the Federal fiscal year in which funds the first tranche of funds are made available for obligation.

3. The necessary funds must be available for obligation for the fiscal year for the grants officer to award a cooperative agreement. However, if the appropriation has been signed into law but the funds have not been transferred to the specific grants officer’s accounts, a cooperative agreement award may still be awarded with the disclaimer “Subject to the Availability of Funds” included in the initial award.

   a. In such circumstances, the cooperative agreement award should reflect zero ($0) federal dollars obligated and an approved or estimated budget that is not to be exceeded. Unless the NGB-OPR Program Manager has approved a budget, the budget should be based on the prior year’s budget less ten percent.

   b. The cooperative agreement will be modified once funds are received to reflect the actual amount funded and budget amount.

Section B. Duration of the Period of Performance (PoP)

1. With the exceptions in Section C, the length of the period of performance will be negotiated between the recipient and the grants officer with the grants officer making the final decision.

2. The PoP can be from one to five years.

3. You, the recipient may request that the grants officer extend the period of performance for any of the following reasons:

   a. For projects, contracts and other allowable activities that do not require additional funding and were initiated by you during the period of performance but will not be completed by the end of the period of performance.

   b. An upward adjustment of funds for in-scope changes has been approved by the grants officer IAW NGB issuances for projects, contracts and other allowable activities that were initiated by you during the period of performance but will not be completed by the end of the period of performance.

c. For projects, contracts and other allowable activities that will begin after 30 September following the end of the first year of the PoP if:

    (1) There are unliquidated funds remaining in the cooperative agreement award.

    (2) Those remaining are not expired.

d. It is the grants officer's discretion on whether to extend the period of performance. It is within the authority of the grants officer to implement additional controls and safeguards when extending the period of performance.

Section C. Period of Performance Exceptions.

1. National Guard Youth ChalleNGe cooperative agreement awards may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The PoP will close twelve months after it is opened. The PoP may be extended IAW with Section B, paragraph 2 of this Article.

2. Army Compatible Use Buffer cooperative agreement awards may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The period of performance will be determined by NGB for each award. The period of performance may be extended IAW with Section B, paragraph 2 of this Article.

3. Military Construction Cooperative Agreement awards may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The period of performance will close upon completion of the project but not to extend beyond the period that the funds are available for liquidation. The period of performance may be extended IAW with Section B, paragraph 2 of this Article.

4. Other agreement awards that are for specific projects that will not be renewed may be opened on a date other than 1 October of the Federal fiscal year in which funds are made available for obligation. The PoP will close upon completion of the project but not to extend beyond the period that the funds are available for liquidation. The PoP may be extended IAW with Section B, paragraph 2 of this Article.

POP Article II. Use of Renewal Awards

1. If the determination is to use one year PoPs for a CA Award, the grants officer has the discretion to execute up to four one-year "renewal awards" to an initial award. If a renewal award is issued, each renewal period will have its own distinct PoP.

2. If the grants officer elects to execute a renewal award, there will not be a requirement for legal review unless there is a change to the terms of the agreement from the initial cooperative agreement award.

3. Cooperative agreement extension requirements under POP Article I applies to renewal awards the same as it does to the initial award.

Part 7: Payments

Payment Method, Timing, and Amounts.

1. Recipients will submit requests for reimbursement/advancement on the Standard Form (SF) 270.

2. To ensure proper fiscal stewardship, the SF 270 will be reviewed by the grants officer, GOR and the CA PM for the CA award.

3. Requested reimbursements will be processed by the grants officer and paid within 30 days after receipt and acceptance.

4. Exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under an NGB CA award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.

5. Reimbursement is the preferred method of NGB, however if state law or a non -federal entity's policies indicates it must have funds on hand, the recipient may request advance payment.

6. To request authority for the advance method the Recipient shall annually prepare and sign a memorandum and forward it to the grants officer NLT 1 September of each year. Recipient will work with the GOR and grants officer on required information per NGB Policies.

Part 8: Authorized Charges

Personnel.

1. Payments for salaries, to include approved overtime and allowable benefits IAW recipient personnel policy for the payment of salary and benefits of like recipient government positions within the same geographic area are allowable costs.

2. Personnel actions for recipient employees such as pay raises, bonuses, pay freezes or pay caps, hiring freezes or employee furloughs will be treated consistently as other like positions that do not support work being performed in support of a CA award.

3. When there is no like state government position available, salaries and benefits will be equivalent to a comparable grade and series Federal Civil Service position in the geographic area.

4. Raises for federally reimbursed state employees and state-contracted personnel will not exceed those of comparable state employees.

5. Costs for merit and incentive awards based on performance, providing the awards are part of a program available and consistent with those offered to similar state government positions.

6. Overtime required by Fair Labor Standards Act (FLSA), based on the work schedule authorized by the state. When operational requirements or personnel circumstances dictate additional staffing in support of the mission, overtime may be authorized as specified in the CA award to satisfy minimum staffing requirements.

7. Overtime may be approved on an exception basis (filling for sick or annual leave, emergency, or training, etc.).

8. Costs of training for qualification in accordance with established work center requirements, and as authorized in each CA award.

9. Any other charges or activities not otherwise authorized, require prior approval by the OPR-PM and grants officer, or as specified in the CA award.

Part 9: Centralized Personnel Plan (CPP)

Section A. CPP

1. The CPP is the mechanism which the recipient may charge indirect rates should they choose to centralize CA personnel within the recipient military department.

2. It is the decision of the grants officer whether to allow reimbursement for a CPP. The CPP is a negotiated document. The grants officer has final approval over the plan.

3. The recipient's personnel in the human resource office, procurement office, or accounting office are the personnel that are authorized to be a part of CPP.

4. Supervisor's time for positions being allocated to the CPP will not be calculated in the CPP; however, a supervisor, whose time can be validated and allocated to the performance of direct supervision over multiple CA awards over personnel working directly on those CA awards or non-supervisory functions in the CA award program, may be considered in the CPP calculations.

5. A formal DHHS negotiated Central Services Cost Allocation Plan (CSCAP) can be included in the CPP for consideration by the grants officer as part of the CPP

submission by the recipient.

Section B. Responsibilities.

The CPP will be negotiated annually between the recipient and the grants officer. The grants officer will have final approval.

a. It is the grants officer's responsibility to review and validate costs charged to agreements for reimbursement. The CPP will reflect only actual, direct personnel costs incurred. The CPP will include a methodology that accurately captures the separate cost drivers and metrics for each allowable personnel functional area. The two most used NGB methodologies to formulate CPP costs drivers are the time study of personnel method and the fee per action method.

b. Requested CPP reimbursements must be for incremental, direct, and personnel costs that are compensation for staff positions that would not exist if CA awards did not exist. Only non-supervisory compensation costs are allocable except as described in (1)(c) above. No other costs (i.e., audit costs, equipment) are authorized. Reimbursements must be allocated to specific CA awards. requested amounts must be based upon the actual level of effort and the personnel must be directly responsible for actions supporting the CA award.

Section C. State Central Services Cost Allocation Plan (CSCAP)

1. CSCAP is a cost that can be classified as either a direct or indirect cost. Recipient treatment of the cost, as reflected in its CSCAP or a recipient's approved indirect cost rate negotiated IAW Appendix E, 2 CFR 200.416, will apply. The CSCAP is prepared by the recipient IAW Appendix E, 2 CFR 200.416, and approved by the Department of Health and Human Services (HHS). The CSCAP is prepared to identify central service costs statewide.

2. When a cost cannot be easily classified as a direct or indirect cost, the recipient's treatment of that cost, as reflected in CSCAP or in its approved indirect cost rate proposal, will apply.

3. The CSCAP is prepared to identify central service costs statewide and must have a specific percentage identified and negotiated by HHS for each Department within the state.

   a. The percentage allowed to be considered in the CPP calculation is that of the percentage negotiated under the CSCAP by HHS specifically for the state military department.

   b. The grants officer will work with the recipient to ensure there is no duplication of charges between the CSCAP and proposed CPP.

Part 10: Program Income

You, the recipient must exclude from any payment request amounts from any of the following sources that are available to you for project or program purposes under an NGB CA award: program income, including repayments to a revolving fund; rebates; refunds; contract settlements; audit recoveries; and interest earned on any of those funds. You must disburse those funds for project or program purposes before requesting additional funds from us.

ANG FACILITIES SUSTAINMENT, REPAIR, MODERNIZATION COOPERATIVE AGREEMENT (FSRMCA)

AGREEMENT NO. ***W912LN2522101***	PAGE *[1 of 25]* PAGES
BETWEEN THE NATIONAL GUARD BUREAU (GRANTOR) AND PATRICK LEAHY BURLINGTON INTERNATIONAL AIRPORT (RECIPIENT)	

PROJECT TITLE: CURZ142307 – CA Construct AAS Drainage

PROJECT LOCATION: Patrick Leahy Burlington International Airport, Burlington, Vermont

TABLE OF CONTENTS

EXECUTION

By executing this cooperative agreement, the parties agree to the terms and conditions contained herein, including attachments.

IN WITNESS WHEREOF, the parties hereto have executed this Cooperative Agreement

RECIPIENT	GRANTOR
RECIPIENT: ***[As identified on the Agreement in Principle]*** BY:__________________________________ **NICHOLAS LONGO** **Director of Aviation** **Patrick Leahy Burlington International Airport** Date:__________________________________	**GRANTOR:** NATIONAL GUARD BUREAU BY:__________________________________ **MICHAEL D. CHASE, COL, USA** **U.S. Property & Fiscal Officer, Vermont** Date:________________________________

Approved Ver: 27 Mar 23

ARTICLE I – SCOPE, PURPOSE AND AUTHORITY

Section 101. General.

a. The Grantor, National Guard Bureau (GRANTOR) through the United States Property and Fiscal Officer (USPFO) and the State (any of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each Territory and Possession of the United States and includes political subdivisions and military units thereof and tax-supported agencies therein – *See 10 USC Chapter 1803, §18232)*, and hereinafter referred to as "Recipient", have entered into this Facilities Sustainment, Repair, Modernization Cooperative Agreement, hereinafter referred to as "FSRMCA" or "Agreement", to establish the terms and conditions applicable to the reimbursement of federal funds or contribution of federal funds or contribution of in-kind assistance for this project. GRANTOR and the Recipient desire to design, sustain, rehabilitate, restore, convert or modernize as applicable, this project using this single FSRMCA.

b. The attached technical appendices to this FSRMCA are integral to this FSRMCA.

c. This award incorporates the DoD Component (GRANTOR) Cooperative Agreement General Terms and Conditions (hereinafter referred to as GTC), October 2023 as well as 2 CFR 2 CFR Chapter II, Subtitle B, Chapter XI. GRANTOR This award incorporates the DoD Component (GRANTOR) Cooperative Agreement General Terms and Conditions (hereinafter referred to as GTC), October 2023 as well as 2 CFR 2 CFR Chapter II, Subtitle B, Chapter XI.

Section 102. Property and Improvements.

a. The Recipient will submit prior to solicitating the project, satisfactory evidence of the necessary property interest to the real estate upon which the project is to be executed. In addition, the Recipient must certify that the real estate is of a nature and located in an area that is appropriate, under local laws and ordinances, for the intended project and for the use intended under local laws and ordinances.

b. Title to real property improvements, including real property installed equipment, except for ANG Intrusion Detection System (IDS) or Joint-Services Interior Intrusion Detection System (J-SIIDS) equipment, executed under this FSRMCA, shall be held by the Recipient.

c. The Recipient waives any claim to title of any federal commercial IDS equipment furnished by the ANG for installation in the facility. The GRANTOR will reimburse the Recipient for costs of operation and maintenance of any installed IDS equipment or Electronic Security System (ESS) protecting federal assets as approved by the ANG ESS Program Manager. The Recipient, using its ESS Program certified technicians, will remove any IDS equipment or ESS system upon discontinuance of the use of the facility sustained, restored, altered, converted or modernized for administration or training of Reserve Forces of the United States or upon GRANTOR's determination that such removal is in the best interests of the United States, whichever is earlier.

Section 103. Scope of Activities.

The Scope of activities is contained in the technical appendices to this FSRMCA.

Section 104. Performance Specifications.

The Recipient's performance specifications are contained in the technical appendices to this FSRMCA.

Section 105. Authority

a. This FSRMCA is authorized under the Secretary of Defense, as provided in Title 10 U.S.C. Chapter 1803. In accordance with the provisions of 10 U.S.C. Chapter 1011, the Chief, National Guard Bureau (GRANTOR) is the channel of communication on all matters pertaining to the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States between (1) the Department of the Army and the Department of the Air Force, and (2) the several States. As the federal agent for the US, the CGRANTOR is authorized to contribute funds necessary for the design, alteration, rehabilitation, and conversion of facilities as set forth in 10 U.S.C. Chapter 1803. The contribution of funds by GRANTOR for sustainment, rehabilitation, restoration, expansion, conversion, or modernization of the facility is necessary to accomplish federal and state missions of the State's Air National Guard.

b. This FSRMCA is a cooperative agreement within the meaning of 31 U.S.C. §§ 6301-6308.

ARTICLE II – OBLIGATIONS OF THE PARTIES

Section 201. Obligations of the Recipient.

a. The Recipient will exercise its best efforts to supervise, manage, operate and maintain all activities or projects within the scope of this FSRMCA according to sound, efficient, commercial practice and the terms, conditions, and specifications of this FSRMCA.

b. The Recipient will obligate sufficient funds to pay its share of the costs of this FSRMCA.

c. Once the project is completed, the Recipient may not permit any use or disposition of the facility which will interfere with its use for the administration and training of units of the Reserve Forces of the United States, or in times of war or national emergency, by other units of the Armed Forces of the United States or any other use by the federal government until the event of termination of this FSRMCA. (See Section 701 Term of Agreement).

Section 202. Obligations of GRANTOR.

a. Whenever terms of this FSRMCA provide for reimbursement or cost sharing by the federal government, GRANTOR shall reimburse the Recipient for allocable and allowable costs incurred in the performance of this FSRMCA, according to terms and conditions for such reimbursement set forth herein.

b. Whenever the terms of this FSRMCA provide for approval by GRANTOR, such approval will not be unreasonably withheld. Any request for such approval shall be considered and acted upon by GRANTOR in a timely fashion.

c. The obligations of GRANTOR are subject to the availability of federal funds for the FSRMCA and the Recipient's funding contribution for its share of this FSRMCA.

ARTICLE III – COSTS

Section 301. General.

GRANTOR shall reimburse the Recipient for allocable and allowable costs incurred in the performance of this FSRMCA.

Section 302. Estimated Cost.

a. The total estimated costs of this FSRMCA are specified in the technical appendices to this FSRMCA.

b. The Recipient shall share in the costs of this FSRMCA performance as provided for in the approved budgets of the technical appendices to this FSRMCA.

Section 303. Cost Sharing.

a. Wherever any item of cost for the performance of this FSRMCA, as listed in a budget in the technical appendices to this FSRMCA, is identified to be funded in part by GRANTOR reimbursement, GRANTOR shall be obligated to reimburse the Recipient only for its percentage share of total costs that would otherwise be allocable and allowable under this FSRMCA.

b. Cost Share Percentage. For the purposes of liquidating the Recipient's obligation to pay for its share of costs, the percentage share of allocable and allowable costs for the execution of this project to be reimbursed to the Recipient shall be identified in the technical appendices to this FSRMCA.

Section 304. Allowability of Costs.

a. Except as otherwise stated in this article or elsewhere in this FSRMCA, the allocable and allowable costs incurred by the Recipient in the performance of this FSRMCA shall be determined according to 2 CFR Part 200, and GRANTOR issuances, effective at the time the cost is incurred. Specifically, the provisions of 2 CFR §200.400 are applicable to costs for awards to States to includes political subdivisions and military units thereof and tax-supported agencies therein, including but not limited to §200.416 (Special Considerations for States, Local Governments and Indian Tribes) and §200.420, et seq. (General Provisions for Selected Items of Cost).

b. The allowability of costs has no effect on the maximum funding level of this cooperative agreement. GRANTOR has no liability to reimburse any cost over and above the maximum amount of funding obligated in this cooperative agreement, even if such cost would otherwise be allowable.

Section 304-A. Authorized Charges.

a. Personnel.

(1) Payments for salaries, to include approved overtime and allowable benefits in accordance with Recipient personnel policy for the payment of salary and benefits of like government positions within the same geographic area. If a Recipient has a pay raise, pay freeze or pay cap, a hiring freeze or employee furloughs for like positions, then Recipient employees under this Appendix will have corresponding limitations. When there is no like government position available, salaries and benefits will be equivalent to a comparable grade and series federal civil service position in the geographic area.

(2) Benefit costs include Recipient or employer-paid Social Security contributions, premiums for workers compensation, medical and unemployment insurance, and the Recipient retirement system.

(3) Costs for merit and incentive awards based on performance providing the awards are part of a program available and consistent with those offered to similar Recipient government positions.

(4) Overtime required by Fair Labor Standards Act (FLSA), based on the work schedule authorized by the Recipient. When operational requirements or personnel circumstances dictate additional staffing in support of the mission, overtime may be authorized as specified in the technical appendices to this FSRMCA to satisfy minimum staffing requirements. Overtime may be approved on an exception basis (filling for sick or annual leave, emergency, or training, etc.).

b. Costs for travel expenses and per diem, at a rate consistent with Recipient travel regulations, for performing activities authorized under that technical appendices to this FSRMCA or separate Agreement away from their home office.

c. Costs of training for qualification in accordance with established work center requirements, and as authorized in each technical appendix to this FSRMCA.

d. Costs for facilities, equipment and supplies required or reasonably necessary to perform the activities specified or described in each technical appendices to this FSRMCA or separate Agreement.

e. Any other charges or activities not otherwise authorized require prior approval by the GRANTOR-OPR-PM (SRM Program Manager) or as specified in that technical appendices to this FSRMCA.

f. Advance Agreements on Allowability of Costs.

   (1) No cost incurred by the Recipient that is contrary to any restriction, limitation, or instruction contained in any approved Budget and/or Financial Plan under this FSRMCA shall be allocable or allowable.

   (2) The costs of compensation for personnel services, including but not limited to the costs of premiums for workmen's compensation, unemployment compensation, Recipient sponsored life/health insurance, and retirement benefits, shall be allocable and allowable as specified in current AQ policy, CI 9101.00 "National Guard Grants and Cooperative Agreements" or successor C Instruction and Manual and 2 CFR §200.431.

   (3) Other specific agreements on costs, such as Pre-Agreement Costs: NONE.

Section 305. Unauthorized Activities/Charges and Costs.

a. Costs for the acquisition of real property for purposes of this FSRMCA are unallowable.

b. Costs of Recipient improvements are unallowable. These unallowable improvements are facility components in excess of authorized criteria, which will not qualify for federal reimbursement.

c. In addition to the unauthorized activities and charges that may be identified in each specific technical appendices to this FSRMCA, unallowable costs identified in General Provisions for Selected Items of Cost, throughout 2 CFR §200.420 through 2 CFR §200.475 shall be unauthorized for reimbursement.

Section 306. Project Close Out and Settlement.

As specified in the GRANTOR issuances and 2 CFR 200, within 120 days of final completion of the project (execution date of the GRANTOR Form 593 PROJECT INSPECTION REPORT by the Recipient and the USPFO), or upon termination of this FSRMCA, whichever comes earlier, the Recipient shall promptly deliver to GRANTOR/A4I all required closeout documents such as as-built drawings and a full and final accounting liquidating all payments or reimbursements under this FSRMCA. After completion of the Recipient's final accounting, the Grants Officer shall make a final settlement of the total GRANTOR contribution for this FSRMCA. Costs incurred for the performance of the project which are not disclosed by the Recipient shall not be eligible for reimbursement by the Grants Officer. At its sole discretion, the Grants Officer may extend the time limit for good cause shown.

ARTICLE IV - FUNDING LIMITATIONS

Section 401. Funding Limitation.

a. GRANTOR funding limitations for the execution of this project are separately specified in the technical appendices to this FSRMCA.

b. Within its discretion, GRANTOR may unilaterally increase maximum funding limitations reflected in the technical appendices to this FSRMCA at any time.

c. Project Funding and Appropriation Limitation. Funding is limited to availability at GRANTOR and the limits in appendices of the current FSRMCA or FSRMCA modification. Due to appropriation limitations, GRANTOR funding authority for a project shall not exceed current GRANTOR, DoD Directives and Congressional limitations. Exceeding these limitations can only be done through re-approval protocols, as applicable.

Section 402. Method of Funding.

This FSRMCA shall be funded for each phase, according to technical appendices.

Section 403. Recipient Advance Funding of Pre-Design and/or Design Option.

a. Within its discretion, the Recipient may contract, and fund the payment of costs, for the preparation of project pre-design and/or design documents in order to fulfill its obligation to provide project design documents. To the extent that "federally reimbursed" costs are required, the Recipient's incurrence of costs shall be made on behalf of GRANTOR; GRANTOR shall reimburse the Recipient for these costs IAW 2 CFR 200.

b. Limitations in this article relate to funds necessary for reimbursement to the Recipient for its pre-design and/or design costs. The fact that federal funds may not be available for obligation, or obligated to this FSRMCA, or available for reimbursement of Recipient costs until completion of project design documents by the Recipient or the beginning of execution of the project, shall not be grounds for a claim by either party that this FSRMCA is unenforceable because of failure of consideration.

c. Pre-design and design costs associated with this project incurred by the Recipient in advance of this FSRMCA may not exceed the amounts identified in the Technical Appendix Recipient Design and may be reimbursed in accordance with Section 403.d. below.

d. The obligation of GRANTOR for federal reimbursement of Recipient costs for pre-design or design requires a pre-agreement be in place and is typically contingent upon one or more of the following conditions being met:

   (1) Project validated as part of the Execution Tasking Order distributed to the Bases typically in May FY-1 for the next FY Execution.

   (2) Project designated on the Integrated Priority List (IPL) or separate letter that provides specific authorization to add the project to the IPL.

      a) Time frame for eligible designs will be FY through FY+2.

e. In all conditions the design must meet all GRANTOR design criteria as set forth in the appropriate GRANTOR design guides and regulations.

ARTICLE V – PAYMENT

Section 501. General.

There are only two payment methods authorized in the execution of this FSRMCA, the reimbursement method and the advance method. Either payment method may be used, pursuant to the policy and procedures in the GRANTOR issuances; ***the award term for the method not chosen requires a strikethrough***.

Section 502. Payment by the Reimbursement Method.

Reimbursement method payments shall be according to procedures established by the Defense Finance and Accounting Service (DFAS), DoD Financial Management Regulation 7000.14R Volumes 11A and 11B and GRANTOR issuances.

Section 503. Payment by the Advance Method.

GRANTOR may reimburse the Recipient in advance when authorized by the Recipient's governing laws. The advance payment method shall be according to procedures established by the Defense Finance and Accounting Service and GRANTOR issuances.

Section 504. Direct Federal Payment of Recipient Obligations.

In no event, shall the Grants Officer make direct payment to a Recipient's contractor, Recipient's employee(s), contractor employee(s), or Recipient's vendor for any costs incurred by the Recipient under this FSRMCA.

Section 505. Interest.

The amount of interest due the United States on funds advanced to the Recipient or interest due the Recipient shall be determined and paid in accordance with 31 U.S.C. § 6503 and the items of the Cash Management Improvement Act Agreement in effect between the Recipient and U.S. Treasury and regulations as issued by the U.S. Department of Treasury and the Department of Defense, as amended. For interest on advance payments see 31 U.S.C. §6503, 32 C.F.R. § 33.21.

ARTICLE VI – DEFINITIONS

Section 601. Air National Guard FSRM Cooperative Agreement.

Refer to GT&C SUBDIVISION D, Part 2, Section D, Page 109.

Section 602. Air National Guard.

Refer to GT&C SUBDIVISION D, Part 2, Section C, Page 109.

Section 603. Airport Authority.

A Public Agency controlling a Public Airport. A Public Agency means a State or Territory or District of Columbia or any agency of a State, Territory or District of Columbia, a Municipality or any other political subdivision of a State, et. al., a tax supported organization, or an Indian tribe or pueblo. Public Airport means an airport used for or to be used for public purposes, under the control of a public agency, and the landing area of which is publicly owned. [Extracted from Public Law 97-248]. Refer to GT&C SUBDIVISION D, Part 2, Section A, Page 108.

Section 604. Chief, National Guard Bureau.

Chief, National Guard Bureau, means the head of the National Guard Bureau, or his or her designee. Refer to GT&C SUBDIVISION D, Part 2, Section E, Page 109.

Section 605. Facilities, Sustainment, Restoration, and Modernization (FSRM) Project.

When using SRM (O&M appropriation), project means the maintenance, sustainment, rehabilitation, alteration, restoration, modernization, conversion or expansion (not to exceed O&M statutory threshold) of a facility. This includes equipment (not furniture) installed and made a part of a facility, related site preparation, excavation, backfilling, landscaping, or other land improvements. The federal reimbursement of the project costs cannot exceed the statutory ceiling unless approved as prescribed in 10 U.S.C. §2811.

Section 606. Equipment (Non-Military).

Refer to GT&C, Subdivision A, Part 7, Section D, Page 21

Section 607. Fiscal Year.

Refer to GT&C SUBDIVISION D, Part 2, Section G, Page 109

Section 608. Estimated Project Costs.

Refer to PROJECT FINANCE PLAN found in the Technical Appendix – Recipient Project or Recipient Utility Connection

Section 609. Recipient.

Refer to GT&C, Subdivision A, Part 7, Section D, Page 22

Section 610. Grants Officer.

Refer to GT&C SUBDIVISION D, Part 5, Section A, Page 113.

Section 611. Grants Officer Representative.

Refer to GT&C SUBDIVISION D, Part 5, Section A, Page 113.

Section 612. In-Kind Assistance.

Refer to GT&C SUBDIVISION D, Part 2, Section I, Page 109.

Section 613. Military Equipment.

Refer to GT&C SUBDIVISION D, Part 2, Section K, Page 110.

Section 614. National Guard Bureau.

Refer to GT&C SUBDIVISION D, Part 2, Section L, Page 110.

Section 615. Pre Design and Design Services.

The pre-design and design services are outlined as “Type A” and Type B” services in Air National Guard Instruction 32-1023. Type A services include advance planning studies as well as field surveys and investigations required to obtain data essential to the performance of direct design. These surveys and investigations may include topographical surveys, geotechnical surveys, mechanical surveys and investigations, determination of utility locations and capacities, and similar fact-finding investigation, technical studies, life cycle costing, sustainable design, concept cost estimates, or concept development studies. Type B services provide production of complete designs, including plans, specifications, design analyses, and cost estimates.

Section 616. Operation and Maintenance Activities.

Operation and Maintenance (O&M) Activities mean and include, but are not limited to actions by the state, through employment by the state, by contract or hire, of sufficient personnel, acquisition by contract of supplies or services, or other necessary actions, to perform the services, tasks, or activities within the scope of this FSRMCA which are properly charged to an Operations and Maintenance appropriation.

Section 617. State.

Refer to GT&C SUBDIVISION D, Part 2, Section O, Page 110

Section 618. Territory.

Refer to GT&C SUBDIVISION D, Part 2, Section O, Page 110; See also 32 U.S.C. § 101.

Section 619. The Adjutant General.

Refer to GT&C SUBDIVISION D, Part 2, Section P, Page 111.

Section 620. United States Property and Fiscal Officer (USPFO) (Grants Officer).

Refer to GT&C SUBDIVISION D, Part 2, Section Q, Page 111.

Section 621. Unit.

The Unit includes Air National Guard (ANG) flying Groups and Wings, Combat Communication Flights and Squadrons, Engineering Installation Flights and Squadrons, and Combat Readiness Training Centers (CRTC}.

Section 622. Recipient Improvements.

Recipient improvements are other work to facilities or portions of facilities included within the scope of the project, as identified in the technical appendices to this FSRMCA to this FSRMCA, which are desired by the Recipient and for which the Grantor will make no reimbursement of funds.

ARTICLE VII - GENERAL PROVISIONS

Section 701. Terms of Agreements.

a. The terms of this FSRMCA remain in effect until changed.

b. The performance period for each appendix to the FSRMCA is the Federal Fiscal Year in which that award is made, except as specified in the award itself (e.g. the performance period for many Youth Challenge awards reflects the state's academic year).

Section 702. Sole Benefits.

This FSRMCA and associated appendices are intended for the sole benefit of GRANTOR and the Recipient and are not intended to create any other beneficiaries.

Section 703. Modifications.

This FSRMCA may be modified only by a written instrument signed by the parties hereto. Appendices may be modified separately. However, no appendix modification may modify this FSRMCA by reference.

Section 704. Successors and Assigns.

Refer to GT&C SUBDIVISION D, Part 3, Section A, Page 111.

Section 705. Entire Agreement.

Refer to GT&C SUBDIVISION D, Part 3, Section B, Page 111.

Section 706. Severability.

Refer to GT&C SUBDIVISION D, Part 3, Section C, Page 111.

Section 707. Waiver of Breach.

Refer to GT&C SUBDIVISION D, Part 3, Section D, Page 112.

Section 708. Notices.

Refer to GT&C SUBDIVISION D, Part 3, Section E, Page 112.

Section 709. Execution.

This FSRMCA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all Appendices shall not affect the legality or enforceability of this FSRMCA.

Section 710. Conflict of Interest.

The Recipient shall insure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

Section 711. Access to and Retention of Records.

Refer to GT&C SUBDIVISION B, Part 5, OAR Article II, Page 63

Section 712. Change of Circumstances.

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this FSRMCA.

Section 713. Liability and Indemnity.

Refer to GT&C SUBDIVISION D, Part 3, Section F, Page 112.

Section 714. Reports.

Refer to GT&C SUBDIVISION B, Part 4, REP Article I, Page 55

Section 715. Special Recipient Requirements.

Changes to established requirements of this FSRMCA made necessary by governing State statutes will be processed in accordance with current GRANTOR-AQ policy, NGR 5-1 Chapter 3 or successor GRANTOR I & M, for approval by GRANTOR. Upon approval, a statement of alterations or changes, along with justification, shall be attached to this FSRMCA and will be considered a part thereof. (If none, state NONE.)

Section 716. Government Furnished Equipment.

Refer to GT&C SUBDIVISION D, Part 3, Section G, Page 112.

ARTICLE VIII – APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law.

This FSRMCA is incidental to the implementation of a federal program. Accordingly, this FSRMCA shall be governed by and construed according to federal law as it may affect the rights, remedies, and obligations of the United States.

Section 802. Governing Regulations.

Refer to 2 CFR part 200, generally.

Section 803. Officials Not to Benefit.

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this agreement, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

Section 803-A Nondiscrimination.

Refer to GT&C SUBDIVISION C, Part 1, NP Article I Section A, Page 99

Section 804. Lobbying.

Refer to GT&C SUBDIVISION C, Part 1, NP Article IV Section A, Page 102

Section 805. Drug-Free Workplace.

Refer to GT&C SUBDIVISION C, Part 1, NP Article IV Section A, Page 101

Section 806. Environmental Protection.

Refer to GT&C SUBDIVISION C, Part 1, NP Article II Section A, Page 100

Section 807. Use of United States Flag Carriers.

Refer to GT&C SUBDIVISION B, Part 3, PROC Article III Section B, Page 54

Section 808. Debarment and Suspension.

Refer to GT&C SUBDIVISION B, Part 3, PROC Article III Section B, Page 54

Section 809. Buy American Act.

2 CFR part 184; Refer to GT&C SUBDIVISION B, Part 3, PROC Article III Section B, Page 55.

Section 810. Uniform Relocation Assistance and Real Property Acquisition.

Refer to GT&C SUBDIVISION C, Part 1, NP Article IV Section A, Page 104.

Section 811. Copeland "Anti-Kickback" Act. *(All contracts and sub-grants for repair.)*

Refer to GT&C SUBDIVISION B, Part 3, PROC Article III Section B, Page 53.

Section 812. Contract Work Hours and Safety Standards Act.

Refer to GT&C SUBDIVISION B, Part 3, PROC Article III Section B, Page 53.

Section 813. Project Wage Requirement Statute (formerly known as Davis Bacon Act)

Not Applicable

Section 814. National Historic Preservation.

(Any project, acquisition, modernization, or other activity that may impact a historic property.) The Recipient covenants and agrees to identify to the Grantor any property listed or eligible for listing on the National Register of Historic Places that will be affected by this Agreement, and to provide any help the Grantor may need, with respect to this Agreement, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593.

(36 CFR Part 800 requires Grants Officers to get comments from the Advisory Council on Historic Preservation before proceeding with federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.)

Section 815. Hatch Act.

The Recipient covenants and agrees to comply with the Hatch Act (5 U.S.C. 1501 - 1508 and 7324 - 7326), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits the political activity of employees or officers of the State or Local governments whose employment is connected to an activity financed in whole or part with federal funds. Refer to G,T&C, SUBDIVISON C, NP Article IV, Section A

Section 816. Equal Employment Opportunity.

(All project contracts awarded in excess of $10,000 by Recipients and their contractors or subrecipients.)

The Recipient covenants and agrees to comply with Executive Order 11246 of September 24, 1965, entitled “Equal Employment Opportunity,” as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60).

Refer to GT&C, SUBDIVISION C, NP Article I, Section A.

Section 817. Cargo Preference. *(Any agreement under which international air travel may be supported by U.S. Government funds.)*

The Recipient covenants and agrees that it will comply with the Cargo Preference Act of 1954 (46 USC Chapter 553), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of the equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this Agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S. flag commercial vessels, if available.

Section 818. Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Projects.

The Recipient covenants and agrees that it will comply with Executive Order 13202 of February 17, 2001, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, as amended on April 6, 2001.

Section 819. System for Award Management and Data Universal Numbering Requirements.

Refer to GT&C SUBDIVISION B, Part 5, OAR Article I, Page 59.

Section 820. Reporting Subawards and Executive Compensation

Refer to GT&C SUBDIVISION B, Part 4, REP Article IV, Page 59.

ARTICLE IX – PROCUREMENT

Section 901. Procurement Procedures Applicable to Recipients.

Refer to GTC, SUBDIVISION B, Part 3: PROC, page 49

Section 902. Recipient Contract Flow-down.

Refer to GTC, SUBDIVISION B, Part 3: PROC, page 49

ARTICLE X – PROPERTY

Section 1001. Equipment.

a. Equipment purchased by the Recipient under the terms of this Agreement becomes the property of the Recipient and will be managed, used, and disposed of in accordance with 2 CFR §200.313 and GRANTOR issuances.

b. Equipment purchased by the federal government, including equipment acquired specifically for a National Guard Cooperative Agreement, vests in the federal government. This equipment shall be managed, used, and accounted for as provided in 2 CFR 200.313(d), and GRANTOR issuances.

c. Equipment purchased by the federal government and issued to the Recipient is Government Furnished Equipment (GFE). The title to GFE vests in the federal government and cannot be transferred to the Recipient and therefore cannot be considered as In-Kind Assistance (IKA).

Section 1002. Operating Materials and Supplies.

a. Items to be consumed in normal operations purchased by the Recipient under the terms of this Agreement become the property of the Recipient and will be managed and disposed of in accordance with 2 CFR Part 200, and GRANTOR issuances.

b. Supplies purchased by the federal government shall be managed, used, and accounted for as provided in 2 CFR §200.314, and GRANTOR issuances. Recipient use of federal supplies and materials may be considered as IKA.

ARTICLE XI - LEGAL AUTHORITY

Section 1101. Legal Authority.

The Recipient represents and warrants that it is under no existing or foreseeable legal disability that would prevent or hinder it from fulfilling the terms and conditions of this FSRMCA. The Recipient shall promptly notify GRANTOR of any legal impediment that arises during the term of this FSRMCA that may prevent or hinder the Recipient's fulfillment of its obligations under this FSRMCA. Refer to GT&C SUBDIVISION D, Part 4, Section A, Page 112.

Section 1102. Opinion of Counsel.

Concurrent with its execution of this FSRMCA, the Recipient's highest legal officer, or his or her designee, certifies by signature approval as to legal form of this FSRMCA, that: Refer to GT&C SUBDIVISION D, Part 4, Section B, Page 113.

a. The Recipient has the requisite authority to enter into this FSRMCA.

b. The Recipient can make the warranty set forth in Section 1101 above;

c. The Recipient is empowered to assume responsibilities and obligations the Recipient proposes to undertake under this FSRMCA;

d. The provisions of this FSRMCA intended to secure GRANTOR interests are enforceable according to their terms;

e. The execution of this FSRMCA has been duly authorized by the Recipient; and

f. That the individual signing this FSRMCA on behalf of the Recipient has the requisite legal authority to bind and obligate the Recipient to the terms and conditions of this FSRMCA.

ARTICLE XII - TERMINATION, ENFORCEMENT, CLAIM AND DISPUTE RESOLUTION

Section 1201. Termination.

This FSRMCA may be terminated by either party according to the terms and conditions of 32 CFR § 33.44.

Section 1202. Enforcement.

a. GRANTOR may take such actions to enforce the terms of this CA as may be provided for in/under terms of 32 CFR §33.43.

b. Circumstances under which GRANTOR may take actions provided in Section 1202.a. above includes, but shall not be limited to, the following:

   (1) Failure by the Recipient to appropriate funds sufficient for its share of project costs;

   (2) Unreasonable failure by the Recipient to begin, prosecute, or complete project;

   (3) Failure by the Recipient to substantially complete the project in accordance with Project Design Documents, accepted in accordance with terms of this FSRMCA.

Section 1203. Claims, Disputes Resolution and Appeals.

Refer to GT&C, SUBDIVISON B, Part 5, OAR, Article 4

ARTICLE XIII - Agreement Particulars.

The information below shall be recorded by the Grants Officer's Representative (GOR) for the compliance with the reporting requirements of the DoD Assistance Award Action Report System (DAADS) and the Federal Funding Accountability and Transparency Act of 2006.

a.	Recipient Category:	Government
b.	Recipient Type:	Airport Authority
c.	Recipient UEI:	KXQQKNB2GZL1
d.	Primary Place of Performance (Project Location):	Burlington, Vermont
e.	Recipient County (Primary Place of Performance):	Chittenden
f.	Recipient/Recipient Congressional District (Primary Place of Performance):	At Large (VT)
g.	Major Agency:	DoD
h.	Agency Code:	5700
i.	Funding Agency:	Air
j.	Program Source Agency:	57
k.	Transaction Type:	Cooperative Agreement
l.	CFDA:	12.400
m.	CFDA Program Title:	Repair, Air National Guard
n.	Program Source Account-Funding:	3840
o.	Treasury Appropriation Code:	3840
p.	Award/Obligation/Action Date:	FY24
q.	Starting Date:	TBD
r.	Ending Date:	TBD +2
s.	Record Type:	Individual Action
t.	Fiscal Year/Quarter:	2024/2
u.	Unique Federal Award Identification Number (FAIN)	W91243-25-2-2101
v.	Approved Budget Amount:	[See Technical Appendices]
w.	R&D Award (Yes or No)	No
x.	Indirect Cost Rate or CPP Rate:	0%

RECIPIENT DESIGN

PROJECT DESCRIPTION, SCOPE, SCHEDULE, STATEMENT OF WORK

PROJECT DESCRIPTION

Repair and alter existing Aircraft Arresting Systems (AAS) by repairing the drainage system by adding infiltration galleries and connecting drainage to existing storm water system to ensure proper treatment of storm water to comply with state and federal storm water regulations. Upgrade the sump pump capabilities to create redundant drainage capabilities in each barrier pit. Upgrade control system to allow controls monitoring of aircraft arresting system flood levels. Relocate the Arresting Gear Markers. These aircraft arresting systems are the only operating systems for this installation.

SCOPE

Design in accordance with latest published versions of Department of Defense (DoD) Unified Facilities Criteria (UFC) 1-200-01 “DoD Building Code” inclusive of all sub-referenced applicable core UFC’s therein, UFC 1-200-02 “High Performance and Sustainable Building Requirements”, UFC 4-010-01 “DoD Minimum Antiterrorism Standards for Buildings”, Air National Guard Engineering Technical Letter (ANG ETL) 10-03 “ANG Design Objectives and Procedures”, ANG ETL 12-06 “Design Meetings and Presentations”, ANG ETL 12-07 “Preparation of Project Documentation Package”, and ANG ETL 15-01-00 “ANG Design Policy” and/or successor publications. Latest published UFCs and their referenced codes and criteria are effective upon issuance for projects as follows:

i. A-E Design Statement of Work
ii. DD Form 1391 CURZ142307
iii. ANGETL 12-05 Design and Construction Handbook
iv. ANG ETL 15-01, Air National Guard Design Policy (Tab D)
v. ANG ETL 15-03, MILCON Project Closeout
vi. ANG ETL 19-12, Geographic Information System data format Specifications
vii. ANGETL 24-01-05, Electrical and Communications Engineering
viii. ANGETL 24-02, Design Objectives and Procedures
ix. ANGI 32-1023, Criteria and Standards for Air National Guard Construction
x. UFC 1-200-01, DoD Building Code
xi. UFC 3-120-01, Design: Sign Standards
xii. UFC 3-201-01, Civil Engineering
xiii. UFC 3-220-01, Geotechnical Engineering
xiv. UFC 3-210-04FA, Backfill for Subsurface Structures
xv. UFC 3-220-18FA, Engineering Use of Geotextiles
xvi. UFC 3-220-10, Soil Mechanics
xvii. UFC 3-230-13, Industrial Water Treatment Operation and Maintenance
xviii. UFC 3-240-01, Wastewater Collection and Treatment

xix. UFC 3-420-01, Plumbing Systems

xx. UFC 3-501-01, Electrical Engineering

xxi. UFC 3-520-01, Interior Electrical Systems

xxii. UFC 3-530-01, Interior and Exterior Lighting Systems

xxiii. UFC 3-550-01, Exterior Electrical Power Distribution

Projects that have a delay, either planned or unintentional, of more than 18 months between design completion and the solicitation of offers for construction must be re-evaluated to determine if any design revision is necessary due to changes in criteria (including codes and standards) or site infrastructure (for example, water supply for fixed fire suppression system, water for host stream allowances, or fire department vehicle access). Note: The evaluation must also include retroactive requirements that have been included in the new editions of the criteria.

Provide all planning and engineering design coordination and consultation at applicable design stages to include the Assistant USPFO for Air (Real Property) for Vermont ("Base Civil Engineer"), local or State agencies such as for all utilities, environmental, and building code, as well as Airport Authority (or agency having jurisdiction over the airport) wherein the State's Air National Guard unit resides and trains from. If a tenant on a federal installation, coordinate with host also for any facilities compliance requirements as dictated by the approved Interservice Support Agreement.

Provide "Code and Criteria Review" Services where they become necessary under ANG ETL 24-02.

Provide "Value Engineering" Services in accordance with ANG ETL 24-02.

Note: DD Form 1391 documentation is used to establish scope.

SCHEDULE

Milestone Dates:
Project Start (i.e., Notice to Proceed) TBD
Code and Criteria Review/Data Collection – 60 days after Notice to Proceed
Design submittals – 30 days after Code and Criteria Review
Bid Phase – 60 days after design submittals
Construct Contract Award – 30 days after bids received
Notice to Proceed for Pre-Construction Activities – 30 days for
Construction Notice to Proceed – 60 days after notice to proceed for preconstruction activities

STATEMENT OF WORK

This Statement of Work defines the Recipient's obligation in providing design for a construction, sustainment, restoration, or modernization project.

By contract or in-house tasking, the Recipient will provide the Architect-Engineer (A-E) services necessary to develop plans, specifications, cost estimates, and any applicable phasing or sequencing requirements required for the construction of the project. ANG shall not issue directions to the Recipient's A-E contractor.

The Recipient shall transmit design documents for GRANTOR/A4I review, comment, and approval prior to the Recipient's acceptance of the documents. A signed copy of each document shall be sent through the Base Civil Engineer to the Grants Officer who forward it to the Project Manager, GRANTOR/A4I at 3501 Fetchet Avenue, Joint Base Andrews, Maryland 20762. Design documents relating to Recipient Improvements shall not be subject to GRANTOR/A4I validation. GRANTOR/A4I shall validate that the design documents meet the technical requirements for the project. If GRANTOR/A4I validates the documents subject to comments, the Recipient shall make good faith efforts to resolve the comments prior to accepting the documents from the design A-E.

Title to Design Documents:

Title to Design Documents shall be provided in the Recipient Design contract. The Recipient shall ensure that the design contract provides an unlimited right to use Design Documents at no additional cost.

Limitation of Liability:

The Recipient acknowledges that it (or its contractor) is preparing Design Documents in its right and not as an agent or contractor of GRANTOR. No GRANTOR or Recipient approval given under this Appendix shall be construed as a warranty of any kind.

Reimbursement of Pre-Design and Design Costs:

Pre-design and design costs shall be reimbursed upon acceptance of each submittal during the course of design.

Reimbursement of design costs will be made upon GRANTOR/A4I's acceptance of the project's submittal documents or IAW the cash flow requirements of the advance payment method and the Recipient's proper billing for reimbursement of the federal share of costs under the terms of this FSRMCA.

Architect-Engineer Fee limits:

Recipient will negotiate a fixed fee Architect-Engineer services contract. In addition to any other limitation on cost set forth in this FSRMCA, GRANTOR shall have no obligation to reimburse the Recipient for more than the federal prorated share as stipulated in the Project Design Finance Plan and/or Project Construction Finance Plan.

Project Design Finance Plan:

The project finance plan is the maximum amount for which GRANTOR/A4I is obligated to reimburse the Recipient for the costs of performance of the FSRMCA. The amount of any project finance plan line-item cost limitation shall not be exceeded.

Unless otherwise provided for in the project finance plan, any line item therein may be changed only by amendment of this FSRMCA. Either party may propose a change to finance plan by submitting such proposal in writing to the other party.

PROJECT DESIGN FINANCE PLAN

Project Title: CURZ142307 – CA Construct AAS Drainage

AUTHORIZED MAXIMUM CONSTRUCTION COST (MCC): $810,000

Activity	Estimated ANG Share	Estimated Recipient Share	Estimated Other Share	Estimated Total
Code and Criteria Review	$20,200	0	0	$20,200
Design Fees	$58,560	0	0	$58,560
Totals	$78,760	0	0	$78,760

Design Finance Plan Notes, Terms and Conditions:

1. This Design Finance Plan is incorporated into this Appendix for the purpose of establishing the total estimated costs and the amount of NGB funding necessary to produce the project's predesign and/or design documents.

2. The Maximum Construction Cost (MCC) only represents the Project Cost. The MCC does **not** include the Project Supervision, Inspection and Overhead; Project Agent Fee; or project Contingency.

3. In accordance with this Appendix, and subject to any other cost or fund limitation in this FSRMCA, NGB shall reimburse the Recipient for 100% of allocable and allowable costs for pre-design and/or design of ANG improvements which includes: **All work identified in the Technical Appendix "Recipient Design" Project Description**

4. NGB shall not be liable to reimburse the Recipient for any other costs of design except those for cost shared ANG improvements.

5. "Design Agent Fee - Recipient" is for the purpose of compensating the Recipient for its agency fee to perform as the Design Agent.

TECHNICAL APPENDIX

RECIPIENT CONSTRUCTION

PROJECT DESCRIPTION, SCOPE, AND SCHEDULE

PROJECT DESCRIPTION

Use A-E's approved scope of work from the final design submittal.

Provide "Construction Inspection and Testing Services (Type C)" in accordance with ANG ETL 10-03. Retain the Architect - Engineer Design Firm of Record to fulfill all A-E based Type C requirements for duration of construction.

Grantee shall provide all contracting, construction management services, and management of the Construction Inspection and Testing Services (Type C). Grantee shall provide quality control, and Grantor shall provide quality assurance for all change orders, field changes, and final closeout.

PROJECT SCOPE

Repair and alter existing Aircraft Arresting Systems (AAS) by repairing the drainage system by adding infiltration galleries and connecting drainage to existing storm water system to ensure proper treatment of storm water to comply with state and federal storm water regulations. Upgrade the sump pump capabilities to create redundant drainage capabilities in each barrier pit. Upgrade control system to allow controls monitoring of aircraft arresting system flood levels. Relocate the Arresting Gear Markers. These aircraft arresting systems are the only operating systems for this installation.

PROJECT SCHEDULE

Project Start (i.e., Notice to Proceed) TBD
Code and Criteria Review/Data Collection – 60 days after Notice to Proceed
Design submittals – 30 days after Code and Criteria Review
Bid Phase – 60 days after design submittals
Construct Contract Award – 30 days after bids received
Notice to Proceed for Pre-Construction Activities – 30 days for
Construction Notice to Proceed – 60 days after notice to proceed for preconstruction activities

TECHNICAL APPENDIX

RECIPIENT CONSTRUCTION

STATEMENT OF WORK

1. **Purpose.** This Statement of Work defines the Recipient's obligation in executing this project which is supported in full or in part with ANG Sustainment, Restoration or Modernization (SRM) funding.

2. **Scope of Responsibilities and Administration.**

2.1. Upon acceptance of the project's 100% Final Design Documents, approval to execution of project will be dependent on Grantor and NGB/A4I. The Recipient will contract for the execution of the construction project according to this FSRMCA.

2.2. This Recipient shall carry out the execution of the construction project in strict accordance with the project's 100% Final Design Documents.

2.3 NGB/A4I Validation of Proposed Contract(s). Unless authority is delegated, the Recipient shall provide any proposed contract(s) for this project to NGB/A4I for its review, comment, and validation prior to the Recipient's execution of the contract. By formal written notice, NGB/A4I shall respond to the Recipient with its validation and comments within 30 days of its receipt of the proposed Recipient contract(s). NGB/A4I may not validate the Recipient's contract(s) only for the following reasons:

2.3.1. The contract price exceeds the amount in the finance plan for the project in this Appendix; or,

2.3.2. The proposed contractor has been debarred or suspended from performing federal contracts or performing contracts under Grants or Cooperative Agreements with the federal government.

2.4 Inspection and Acceptance of Construction.

2.4.1. The Recipient shall be responsible for inspection and acceptance of the work by its construction contractor(s). ANG shall not issue directions to any Recipient contractor and shall communicate with a Recipient contractor only through, or with the permission of, an authorized Recipient representative.

2.4.2. Upon the USPFO's concurrence with final acceptance, final reimbursement of project costs shall be made and the project shall be considered complete.

3. **Project Finance Plans.**

3.1. The project finance plan is the maximum amount for which NGB is obligated to reimburse the Recipient for the costs of performance of this FSRMCA. The amount of any project finance plan line item cost limitation shall not be exceeded.

3.2. Unless otherwise provided for in the project finance plan, any line item therein may be changed only by amendment of this FSRMCA. Either party may propose a change to a finance plan by submitting such proposal in writing to the other party.

RECIPIENT CONSTRUCTION FINANCE PLAN

Project Title: CURZ142307 – CA Construct AAS Drainage

AUTHORIZED MAXIMUM CONSTRUCTION COST (MCC): $810,000

Activity	**Estimated ANG Share**	**Estimated Recipient Share**	**Estimated Other Share**	**Estimated Total**
Project's Cost Share				
Repair Controls/alarm system and relocation AGM (estimated $215K)	$215,000	0	0	$215,000
Install Drainage and sumps (estimated $595K)	$595,000	0	0	$595,000
Project Supervision, Inspection and Overhead – Recipient (art E/F, art C/D)	$102,519	0	0	$102,519
Project Contingency (estimated $0K)	$0	0	0	$0
Totals	$912,519	0	0	$912,519

Project Finance Plan Notes, Terms and Conditions:

1. This Project Finance Plan is incorporated into this Appendix for the purpose of identifying shared costs.

2. The Maximum Construction Cost (MCC) only represents the Project Cost. The MCC does **not** include the Project Supervision, Inspection and Overhead; Project Agent Fee; Project Contingency; etc.

3. "Project Supervision – Recipient" is for the Recipient's costs to retain the Design Architect-Engineer (A-E) of Record (DOR) under a "Type C Services" contract in order for A-E to furnish ANG ETL 10-03 "Construction Inspection and Testing Services (Type C)", and, for the A-E to retain third-party construction inspection services for "Quality Assurance" purposes.

4. "Project Agent Fee - Recipient" is for the purpose of compensating the Recipient for its agency direct overhead to execute this Project.

5. "Project Contingency" are funds accounted against this FSRMCA and held in reserve within the program at NGB/A4 to cover any project related contingency for the duration of the Project through "beneficial occupancy". Contingency funds will not be dispersed to the Recipient without prior written coordination of the Recipient, through the USP&FO and, subsequent NGB/A4I approval for disbursement.

6. Due to design not being at 100% at the time of the signing of the FSRMCA, a modification may have to be made between the Grantee and the Grantor to change the MCC and associated construction fees.

General Terms and Conditions

The DoD Component (NGB) general terms and conditions pertaining to the cooperative agreement are incorporated by reference. The Grants Officer can provide a paper copy of the General Terms and Conditions, and they are posted on our website at https://www.nationalguard.mil/Leadership/Joint-Staff/Special-Staff/Director-of-Acquisitions/

Board of Finance and City Council Submission Checklist

Department: Airport Submitter: Nicolas Longo

Title/Subject: Request for Arrestor Cable

	Approval:	Meeting Date:
☒	Board of Finance	12/9/2024
☒	City Council	12/16/2024
☐	Concurrent	Click or tap to enter a date.

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	11/27/2024	Approved by Nicolas Longo
Mayor's Office informed and approved memo	Yes	12/3/2024	Approved by Katherine Schad and Erin Jacobsen
Board/Commission, if required	Yes	11/6/2024	Approved by the Burlington Airport Commission
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CAO has reviewed budget, financing, and memo	N/A	Click or tap to enter a date.	Click or tap here to enter text.
Human Resources, if personnel action -Identify HR Manager in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	N/A	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	Yes	DOD Component (NBG) Cooperative Agreement; NG Facilities Sustainment, Repair, Modernization Cooperative Agreement (FSRMCA)
Additional Materials, if necessary	No	Click or tap here to enter text.
Draft Resolution or Motion?	N/A	Click or tap here to enter text.

Board of Finance and City Council Submission Checklist

If for submission to Council, are sponsors identified?	N/A	Click or tap here to enter text.

btv.aero

PATRICK LEAHY BURLINGTON INTERNATIONAL AIRPORT

To: Board of Finance and City Council

From: Nicolas Longo C.M., Director of Aviation

CC: Orieta Glozheni, Human Resources Manager; Mike Waite, Property Manager

Date: December 9, 2024

Subject: Addition of a new position; Airport Maintenance Worker II at the Patrick Leahy Burlington International Airport

Executive Summary:

Patrick Leahy Burlington International Airport is requesting to add a permanent AFSCME (American Federation of State, County and Municipal Employee Union) position by increasing the number of employees by one position in the existing "Airport Maintenance Worker II" job category within the Landside Division.

Background:
Currently, we have been utilizing a temporary employee whose one-year term expires in March 2025. It has become evident that maintaining this additional role as a permanent position is essential due to the division's scope and continued workload.

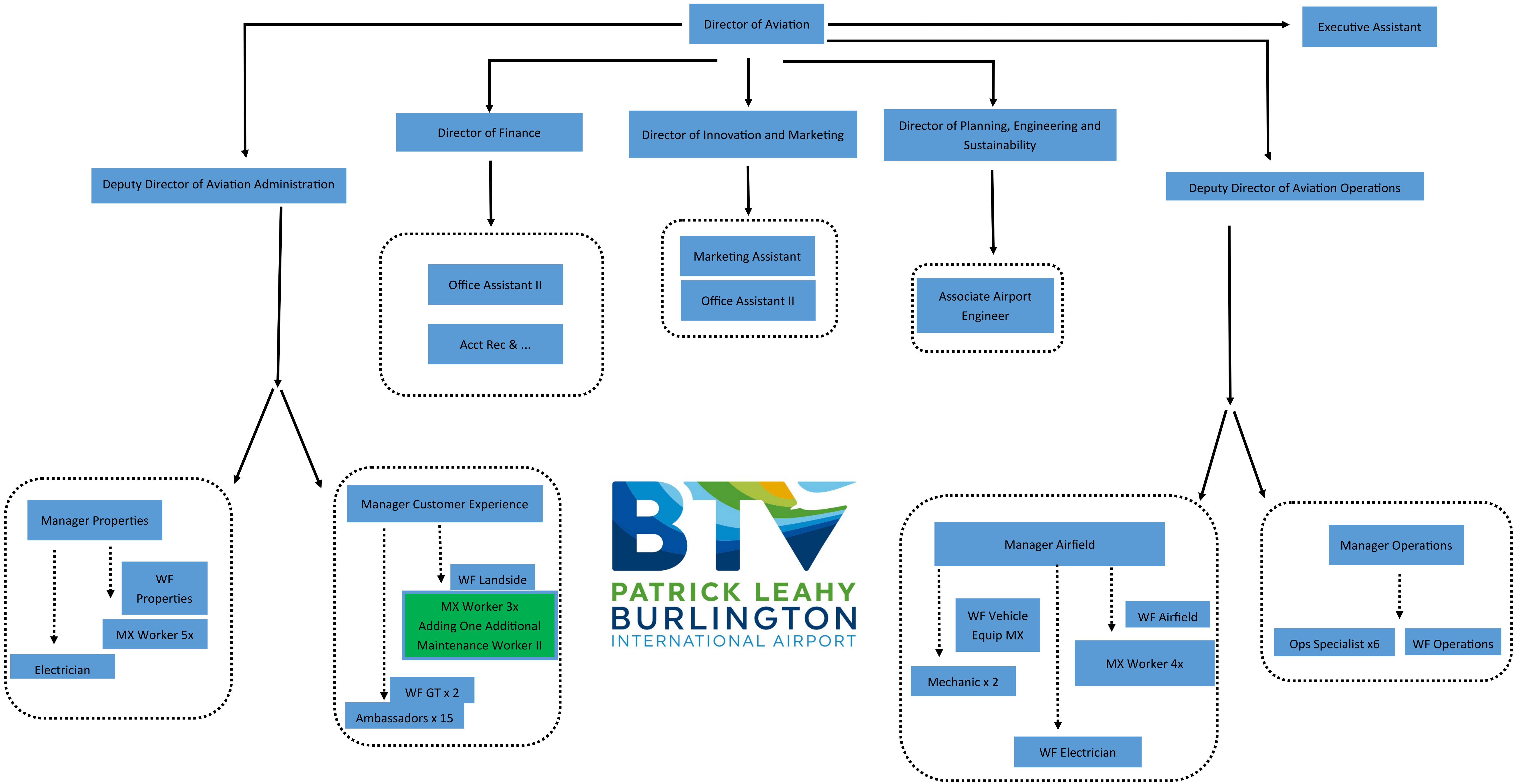
Budget:
We have allocated funding for multiple temporary positions in FY2025. The current temporary position is filled and would no longer be needed once this requested position is filled. Additionally, several positions, including a Manager, some ambassadors, and an Operations Specialist (for a short period), remain unfilled. This provides available budget within this FY and ensures that adding the new position will not impact our approved budget. For FY2026 and beyond, this position will be incorporated into our standard budget planning.

Position	Current Grade	Current Hourly pay	Current annual pay	FY26 Salary
New addition	Grade 14	$26.21 - $31.19	$54,531 - $64,881	$56,166 - $66,828

A: 1200 Airport Drive, #1 South Burlington, VT 05403
P: 802.863.2874

<u>Board of Finance:</u>
To approve and recommend that the City Council approve the addition of an additional full time Grade 14 AFSCME position in the existing “Airport Maintenance Worker II” job category within the Landslide Division at the Leahy Burlington International Airport.

<u>City Council:</u>
To approve the addition of an additional full time Grade 14 AFSCME position in the existing “Airport Maintenance Worker II” job category within the Landslide Division at the Leahy Burlington International Airport.



Green Background = Proposed Changes

WF = Working Foreman

MX Worker = Maintenance Worker II

Proposed Changes December 2024

Board of Finance and City Council Submission Checklist

Department: Airport Submitter: Nicolas Longo

Title/Subject: Request to Add New Airport Position

	Approval:	Meeting Date:
☒	Board of Finance	12/9/2024
☒	City Council	12/16/2024
☐	Concurrent	Click or tap to enter a date.

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	11/27/2024	Approved by Nicolas Longo
Mayor's Office informed and approved memo	Yes	12/3/2024	Approved by Katherine Schad and Erin Jacobsen
Board/Commission, if required	Yes	12/4/2024	Approved by the Burlington Airport Commission
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CAO has reviewed budget, financing, and memo	N/A	Click or tap to enter a date.	Click or tap here to enter text.
Human Resources, if personnel action -Identify HR Manager in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	N/A	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	N/A	Click or tap here to enter text.
Additional Materials, if necessary	Yes	Airport Organization Chart incl.
Draft Resolution or Motion?	N/A	Click or tap here to enter text.
If for submission to Council, are sponsors identified?	N/A	Click or tap here to enter text.

MEMORANDUM

To: Burlington Board of Finance and City Council

From: Darren Springer, General Manager
Emily Stebbins-Wheelock, CFO and Manager of Strategy & Innovation

Date: December 9, 2024

Subject: BED U.S. Department of Transportation Charging & Fueling Infrastructure grant

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Burlington Electric Department (BED) respectfully requests that the Board of Finance and City Council approve BED's acceptance of a U.S. Department of Transportation Federal Highway Administration Charging & Fueling Infrastructure grant in the amount of $4,890,821 to support the installation of 200 new public EV charging ports in Burlington. The grant, with matching funds from BED's revenue bond, will fund installation of 153 Level 2 and 47 Level 3 fast chargers at approximately 85 publicly accessible sites over the next 5 to 6 years. The project will expand by six times BED's existing public charging network, encourage EV adoption, and promote accessibility of EVs, including in federal Justice 40 locations that will serve high numbers of renters, low-income residents, and New Americans, Refugees, and Black, Indigenous, and People of Color. BED was the only Vermont recipient of federal grant funds in this latest funding announcement. The grant requires a net 20% cost share from BED over the performance period. The FY25 portion of the BED cost share has been considered and included in BED's FY25 budget.

As part of the project, BED is committed to engaging the community in selecting sites for the new public chargers and will partner with various community organizations to conduct community outreach and solicit community feedback. BED has already received over 80 suggested sites from the public as a result of its EV charger location survey.

The grant agreements are being finalized and will undergo review by the City Attorney's Office prior to signature. Please do not hesitate to contact us with any questions.

Burlington Electric Department
585 Pine Street Burlington, VT 05401
burlingtonelectric.com
Phone 802.658.0300

Motions:

Board of Finance

To approve and recommend the City Council approve and authorize the BED General Manager or their designee, subject to final review and approval by the City Attorney's Office, to accept and execute the grant agreement for a U.S. Department of Transportation Federal Highway Administration Charging & Fueling Infrastructure award.

City Council

To approve and authorize the BED General Manager or their designee, subject to final review and approval by the City Attorney's Office, to accept and execute the grant agreement for a U.S. Department of Transportation Federal Highway Administration Charging & Fueling Infrastructure award.

Board of Finance and City Council Submission Checklist

Department: BED Submitter: Darren Springer

Title/Subject: BED U.S. Department of Transportation Charging & Fueling Infrastructure grant

	Approval:	Meeting Date:
☐	Board of Finance	Click or tap to enter a date.
☐	City Council	Click or tap to enter a date.
☒	Concurrent	12/9/2024

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	12/2/2024	Darren Springer
Mayor's Office informed and approved memo	Yes	12/2/2024	Erin Jacobsen
Board/Commission, if required	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	Yes	NA	Approval subject to final review by City Attorney's Office, Kim Sturtevant
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Yes	12/2/2024	Kim Sturtevant
CAO has reviewed budget, financing, and memo	Yes	12/2/2024	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	N/A	Click or tap to enter a date.	Click or tap here to enter text.

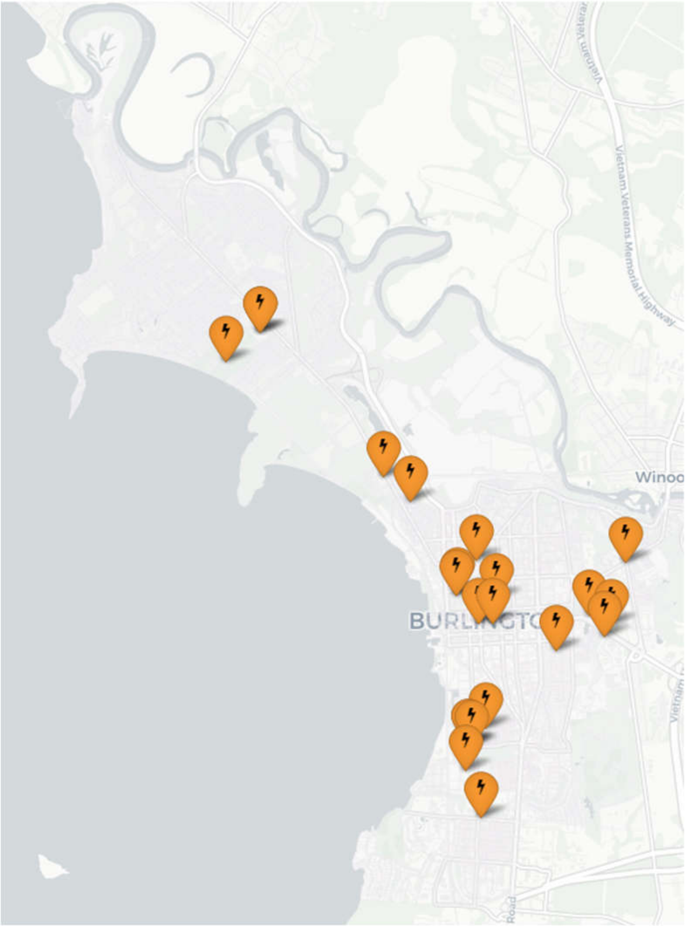
Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	No	Contract will be reviewed by City Attorney's Office
Additional Materials, if necessary	N/A	Click or tap here to enter text.
Draft Resolution or Motion?	Yes	Motions included in memo
If for submission to Council, are sponsors identified?	Yes	Board of Finance

BED Charging & Fueling Infrastructure Grant

Burlington Board of Finance & City Council
December 9, 2024

Burlington's Current Public EV Charging Infrastructure



Publicly owned by BED:

- Level 2: 23 stations / 39 ports
- DCFC: 1 station / 1 port
- Activated 2013-present

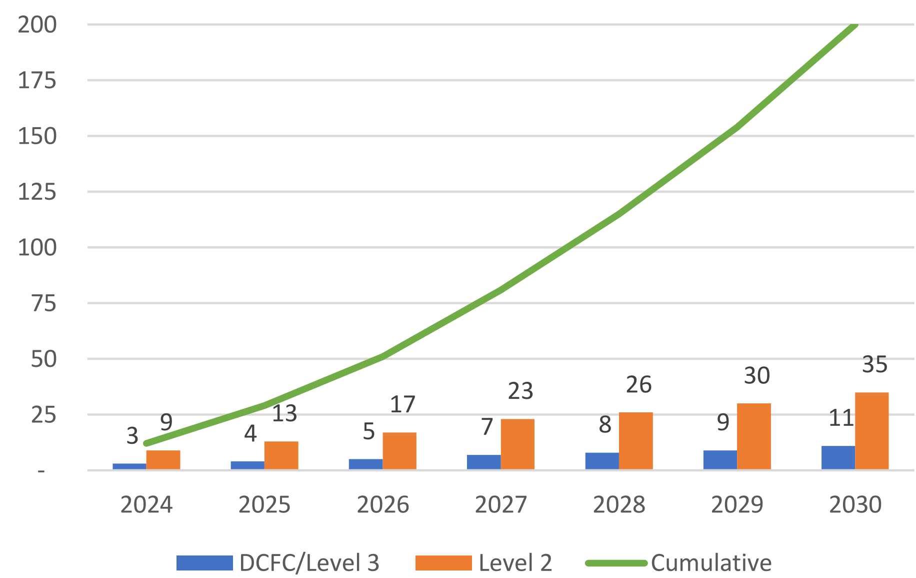
Privately owned:

- Level 2: 13 stations / 28 ports
- DCFC: 1 station / 1 port
- Activated 2019-present

Federal DoT Charging & Fueling Infrastructure Grant

- Applied in June 2023; selected for award Aug 27, 2024 as part of Round 1b
- Funding for BED's EV charging plan through 2030
    - 153 Level 2s
    - 47 DCFCs
- Funding breakdown
    - $4.89M federal funding
    - 20% BED net cost share (revenue bond-funded)

BED Public Charger Installs per Year



Key CFI Grant Requirements

- NEPA review
- Compliance with NEVI standards, 23 CFR Part 680
- Federal procurement guidelines
- Equity and engagement in site selection:
  - Equity analysis required
  - Detailed outreach plan to be developed
  - 40% of benefits should flow to disadvantaged communities
  - Webform for community input on charger locations – 145 submissions to-date

Next Steps

- City Council acceptance of award
- Grant agreement negotiation/execution with DOT/Federal Highway Administration
- NEPA review – obligate 100% of funds
- Review proposed sites
- Conduct equity analysis and community outreach
- Final site selection
- Procure and install chargers over next 7 years

CITY OF BURLINGTON
DEPARTMENT OF PUBLIC WORKS

645 Pine St. Suite A
Burlington, VT 05401
802.865.7200 VOX
802.863.0466 FAX
802.863.0450 TTY

Chapin Spencer
DIRECTOR OF PUBLIC WORKS

MEMORANDUM

To: Board of Finance / City Council

Fr: Chapin Spencer, Director

CC: Megan Moir, Division Director – Water Resources
Matt Dow, Wastewater Facilities Manager
Colby Delaire, President, AFSCME #1343
Damion Gilbert, Union Steward, AFSCME #1343
Lynn Reagan, Interim Human Resources Director

Re: **Wastewater Plant Operator Reclassification Grievance Agreement**

Date: December 9, 2024

REQUEST:

The Department of Public Works is requesting Council authorization to execute the attached agreement with AFSCME Local #1343 to resolve a grievance regarding the Wastewater Operators at Main Plant.

BACKGROUND:

The Wastewater Operators and Senior Wastewater Operator at Main Wastewater Plan submitted a request for reclassification on May 5, 2023 based on the operational complexities at Main Plant, such as the wet weather operation.

There were significant communications via email and in person noting that this reclassification was complicated for several reasons including that this same job description covered Wastewater Operators at North Plant and East Plant who were not having to manage wet weather operations and processes at those plants.

Both Management and the Union were exploring viable paths forward that addressed the concerns of the Main Plant Operators while considering the Operators at the other City wastewater plants.

Management moved to implement a solution after AFSCME leadership indicated an openness to tiering the Wastewater Operator position. The ultimate solution, agreed upon by both parties, was to create a new Wastewater Operator II position that strengthened wet weather process responsibilities and added additional certifications.

The tiering of the Wastewater Operator position through the creation of the Wastewater Operator II position, and the reclassification of the Senior Wastewater Operator position to accommodate the new position, was approved by the City Council on June 24, 2024 – thirteen months after the original reclassification request was submitted.

AFSCME filed a grievance on July 22, 2024 requesting retroactive pay for the newly tiered positions dating back to the original reclassification request on May 5, 2023.

Both parties acknowledge the Main Plant Wastewater Operators had been doing some significant duties that were included in the new Wastewater Operator II position – prior to the creation and tiering of this new position.

The City recognizes that although the concept of tiering positions is not explicitly addressed in the collective bargaining agreement between the Parties ("CBA"), given that the tiered positions were achieved through what started as a reclassification request submitted by the Union pursuant to Article 9.2, and that eligible employees performed advanced levels of work within their original job descriptions during the review process, the City wishes to recognize and compensate the unique work performed during the 13 month review process by the Main Plant Wastewater Operators as compared to operators at the City's other plants.

After a productive negotiation session on October 21, 2024, and a few subsequent communications, Management and the Union came to a tentative agreement on resolving the grievance. The terms of the proposed resolution are as follows:

- The City will pay to each of the three AFSCME Main Plant Wastewater Operators who were employed as of May 5, 2023 a lump sum payment of $4,250 each and to the Senior Wastewater Plant Operator who was employed as of May 5, 2023 a lump sum payment of $5,000. The total amount of lump sum payments made pursuant to this MOA shall not exceed $17,750 in total.
- Such payments shall be the exclusive remedy for the Union's grievance dated July 22, 2024 relating to retroactive pay for the 13 month position review period as referenced herein. The Union accepts these payments on behalf of eligible employees to fully resolve the grievance that is the subject of this MOA.
- The lump sum payments made pursuant to this Agreement will be added with eligible employees' next regular paycheck cycle as soon as reasonably practical after execution of this MOA.
- The Union understands and agrees that issuance of such payments to these specific employees in no way obligates the City to issue future lump sum payments to other employees within the Union. The Parties agree that the circumstances leading to the need for these payments are unique to the workgroup and not to be construed as precedent.

The funds for these lump sum payments are within DPW's FY'25 Main Wastewater Treatment Plant budget since there have been vacancies in the workgroup – and there were additional personnel moves budgeted for in the Wastewater Fund that have not yet happened in FY'25.

To avoid similar situations occurring again, DPW management will more quickly engage Human Resources in reviewing reclassification requests. While we sought in this case to explore other potential solutions with the Wastewater Plant Operators prior to advancing the reclassification request given overall workforce interests, moving forward we will promptly send the request for HR review and proceed based on HR's determination.

I want to thank the affected DPW employees, the Union Stewards, Water Resources Management, Human Resources and the City Attorney's Office for working diligently and patiently to resolve this grievance.

Please feel free to reach out with any questions or clarifications.

REQUESTED MOTIONS:

Board of Finance:

- To approve and recommend City Council approve the attached "Memorandum of Agreement Between AFSCME Local #1343 and the City of Burlington Re: Grievance Regarding Main Plant Wastewater Operators and Retroactive Pay" authorizing the pay of $17,750 in total wages to identified, eligible employees presently holding the positions of Wastewater Operator II and Senior Wastewater Operator and employed with the City as of May 5, 2023, and further authorize the Director of Public Works to execute said agreement on behalf of the City.

City Council:

- To approve and authorize the attached "Memorandum of Agreement Between AFSCME Local #1343 and the City of Burlington Re: Grievance Regarding Main Plant Wastewater Operators and Retroactive Pay", authorizing the pay of $17,750 in total wages to identified, eligible employees presently holding the positions of Wastewater Operator II and Senior Wastewater Operator and employed with the City as of May 5, 2023, and further authorizing the Director of Public Works to execute said agreement on behalf of the City.

MEMORANDUM OF AGREEMENT BETWEEN
AFSCME LOCAL #1343 AND THE CITY OF BURLINGTON
RE: GRIEVANCE REGARDING MAIN PLANT WASTERWATER OPERATORS AND RETROACTIVE PAY

This is an Agreement between the American Federation of State, County, and Municipal Employees, Local #1343 ("AFSCME" or "Union") and the City of Burlington ("City"), acting by and through the Department of Public Works ("DPW" or "Department"), collectively "Parties", meant to memorialize the Parties' understanding and agreement with respect to the terms and conditions of settlement and resolution of AFSCME's grievance regarding the reclassification request and retroactive pay for DPW Wastewater Operators at the City's Main Wastewater Plant, and the City's recognition of such employees' work and contributions to the City while the request was being evaluated and processed.

WHEREAS Wastewater Operators and Senior Wastewater Operator at Main Wastewater Plan submitted a request for reclassification on May 5, 2023 based on the operational complexities at Main Plant, such as the wet weather operation; and

WHEREAS there were significant communications via email and in person noting that this reclassification was complicated for several reasons including that this same job description covered Wastewater Operators at North Plant and East Plant who were not having to manage wet weather operations / processes at those plants; and

WHEREAS both Parties were exploring viable paths forward that addressed the concerns of the Main Plant Operators while considering the Operators at the other City wastewater plants; and

WHEREAS Management moved quickly to implement a solution after AFSCME leadership indicated an openness to tiering the Wastewater Operator position; and

WHEREAS the ultimate solution, agreed upon by both Parties, was to create a new Wastewater Operator II position that strengthened wet weather process responsibilities and added additional certifications; and

WHEREAS the tiering of the Wastewater Operator position through the creation of the Wastewater Operator II position, and the reclassification of the Senior Wastewater Operator position to accommodate the new position, was approved by the City Council on June 24, 2024 – thirteen months after the original reclassification request was submitted; and

WHEREAS AFSCME filed a grievance on July 22, 2024 requesting retroactive pay for the newly tiered positions dating back to the original reclassification request on May 5, 2023; and

WHEREAS both Parties acknowledge the Main Plant Wastewater Operators had been doing some significant duties that were included in the new Wastewater Operator II position – prior to the creation and tiering of this new position; and

WHEREAS the City recognizes that although the concept of tiering positions is not explicitly addressed in the collective bargaining agreement between the Parties ("CBA"), given that the tiered positions were achieved through what started as a reclassification request submitted by the Union pursuant to Article 9.2, and that eligible employees performed advanced levels of work within their original job descriptions during the review process, the City wishes to recognize and compensate the unique work performed during the 13 month review process by the Main Plant Wastewater Operators as compared to operators at the City's other plants; and

WHEREAS AFSCME wishes to accept such compensation on behalf of its affected members to wholly satisfy and resolve its grievance dated on or about July 22, 2024

NOW THEREFORE in recognition of the foregoing, the Parties agree as follows:

1. The Parties agree that the City shall pay to each of the three AFSCME Main Plant Wastewater Operators who were employed as of May 5, 2023 a lump sum payment of $4,250 each and to the Senior Wastewater Plant Operator who was employed as of May 5, 2023 a lump sum payment of $5,000. The total amount of lump sum payments made pursuant to this MOA shall not exceed $17,750 in total.

2. Such payments shall be the exclusive remedy for the Union's grievance dated July 22, 2024 relating to retroactive pay for the 13 month position review period as referenced herein. The Union accepts these payments on behalf of eligible employees to fully resolve the grievance that is the subject of this MOA. It further agrees that these payments are satisfactory to resolve any claim the Union may have with respect to backpay/retroactive wages for the time period inclusive of May 5, 2023 and June 24, 2024. By the City's tendering of this payment, AFSCME agrees that the Grievance has been addressed and is fully satisfied and waives any further procedural or substantive due process with respect to the same.

3. The lump sum payments made pursuant to this Agreement shall be added with eligible employees' next regular paycheck cycle as soon as reasonably practical after execution of this MOA. The lump sum payments shall be subject to all necessary taxes and withholdings as determined by the City. Such sums are understood to be a gross amount and the Union understands and agrees that actual amounts remitted to eligible employees will be on a net basis.

4. The Union agrees and understand that the lump sum payments contemplated herein for eligible employees is to the exclusion of all other bargaining unit members and only applies to the Wastewater Operator II and Senior Wastewater Operator positions at the

City's Main Plant. The Union further understands and agrees that issuance of such payments to these specific employees in no way obligates the City to issue future lump sum payments to other employees within the Union. The Parties agree that the circumstances leading to the need for these payments are unique to the workgroup and not to be construed as precedent.

5. The above-mentioned terms, beliefs and conditions are agreed upon by both Parties and shall not be altered or amended unless further agreed upon and reduced to writing by both parties. The Parties agree that this Memorandum of Agreement in no way alters the terms of conditions of the Collective Bargaining Agreement between the City and Union.

-signature page to follow-

Dated at Burlington, VT this ___ day of _____ 2024.

City of Burlington	American Federation of State, County, and Municipal Employees, Local #1343
By: ______________________________	By: ______________________________
Chapin Spencer, Director of Public Works	[Duly Authorized]

Board of Finance and City Council Submission Checklist

Department: DPW Submitter: Chapin Spencer

Title/Subject: Wastewater Operators Grievance Settlement

	Approval:	Meeting Date:
☐	Board of Finance	12/9/2024
☐	City Council	12/9/2024
☒	Concurrent	12/9/2024

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	11/14/2024	Chapin Spencer
Mayor's Office informed and approved memo	Yes	11/14/2024	Joe Magee
Board/Commission, if required	No	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	Yes	11/13/2024	Hayley McClenahan
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Yes	11/13/2024	Hayley McClenahan
CAO has reviewed budget, financing, and memo	Yes	11/13/2024	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	Yes	11/14/2024	Lynn Reagan
CIO, if an IT-related investment/purchase	No	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Memo
Contract Attached, if applicable?	Choose an item.	Click or tap here to enter text.
Additional Materials, if necessary	Yes	MOA attached
Draft Resolution or Motion?	Yes	In Memo
If for submission to Council, are sponsors identified?	Yes	Board of Finance

Resolution Relating to

AUTHORIZATION FOR $18,330,720 AMENDED STEP III LOAN FROM VERMONT CLEAN WATER STATE REVOLVING FUND AND FOR CONSTRUCTION CONTRACT WITH PC CONSTRUCTION FOR UP TO $15,540,800 FOR HEADWORKS IMPROVEMENTS (STAGE 0) AT THE CITY'S THREE WASTEWATER PLANTS

RESOLUTION_______

Sponsor(s): Bd. of Finance
Introduced: ____________________
Referred to: ____________________
____
Action: ________________________
Date: ___________________________
Signed by Mayor: ________________

CITY OF BURLINGTON

In the year Two Thousand Twenty-Four ……………………………………………………………………

Resolved by the City Council of the City of Burlington, as follows:

That WHEREAS, on November 6, 2018, 92% of voters in Burlington voted to approve borrowing up to $29,958,000 for the City's Clean Water Resiliency Plan (CWRP) for the purpose of paying for capital additions and improvements to the City's wastewater and stormwater systems, including (i) capital improvements to the City's wastewater treatment plants including disinfection system and treatment upgrades and improvements, (ii) capital improvements to the City's wastewater and stormwater collection system, (iii) combined sewer runoff and overflow mitigation (iv) stormwater outfall repair (v) stormwater treatment (vi) planning studies for future capital and programmatic improvements and (vii) implementation of asset management software for improvement maintenance tracking; and

WHEREAS, the City has determined the need to replace, rehabilitate and modernize critical infrastructure at the three wastewater treatment plants; and

WHEREAS, the first phase of this comprehensive infrastructure project is focused on the at-risk portions of the headworks infrastructure at the three wastewater treatment plant to ensure proper influent wastewater screening at the treatment plants and is referred to as Stage 0 –Wastewater Headworks Upgrades (the "Project"); and

WHEREAS, planning, design and construction of this Project was identified as part of the CWRP; and

WHEREAS, City Charter Section 64b provides that, upon receipt of voter approval, the City may issue bonds or notes for the purpose of financing improvements to any revenue producing facility, and pledge the revenues from such facilities to secure payment of such bonds or notes; and

WHEREAS, the City Council adopted a Wastewater System Revenue General Bond Resolution (the "General Bond Resolution"), authorizing such borrowing on December 6, 1990, which General Bond Resolution was amended and restated as of December 9, 2013; and

WHEREAS, the General Bond Resolution provides for a pledge of the Net Revenues (as defined in the General Bond Resolution) of the City's wastewater system for all bonds and notes and obligations incurred under such General Bond Resolution; and

WHEREAS, in order to reduce transaction costs and save the rate payers money, representatives of the

City have approached the Vermont Bond Bank (the "Bond Bank") to undertake the loan and repayment without the need to issue bonds under the General Bond Resolution, but with the same pledge and covenants to secure the repayment of the loan with a pledge of net revenues from the wastewater system on a basis similar to the covenants and pledgee of revenues under the General Bond Resolution; and

WHEREAS, the Bond Bank has indicated its willingness to provide the loan in such a basis, with a direct pledge of such net revenues and covenants to maintain and operate the wastewater system in a prudent manner; and

WHEREAS, the State of Vermont Clean Water State Revolving Fund (SRF) provides loans for planning (Step I), final design (Step II) and construction (Step III) of municipal wastewater and stormwater projects; and

WHEREAS, Step III Construction Loan amounts are inclusive of all SRF eligible costs incurred as part of the project, including Step I (Planning), Step II (Design) and Step III (Construction); and

WHEREAS, the standard Clean Water State Revolving Loan Fund terms for projects of this completing construction (Step III) are 20 years of repayment starting one year after completion of construction with a 2% administrative fee; and

WHEREAS, the City Council has previously authorized a Step I loan in a principal amount not to exceed $470,000 and a Step II loan in a principal amount not to exceed $1,095,700 pursuant to resolutions adopted on May 13, 2019 and September 13, 2021; and

WHEREAS, pursuant to such authorizations, the City entered into a Step II loan (RF 1-247-2.0) on or about August 14, 2023 in the total principal amount of $1,458,500, consisting of $463,000 for the purpose of financing planning and preliminary design of infrastructure improvements as authorized by the resolutions adopted on May 13, 2019 and $995,500 for the purpose of financing the preparation of final design engineering studies or facilities plans as authorized by the resolutions adopted on September 13, 2021; and

WHEREAS, pursuant to resolutions adopted on June 24, 2024 (the "Prior Resolution"), the City Council authorized (a) a Step III loan (RF1-247-3.0) in the total amount not to exceed $12,886,920, which Step III loan included (i) previously incurred planning and designing costs in the amount of $1,458,500, (ii) additional construction engineering in the amount of $1,081,420, and (iii) an initial construction estimate in the amount of $10,347,000 including contigency, direct equipment purchases and legal/administration fees and (b) entry by the City into an amended Design Engineering Services Agreement with Wright Pierce for an amount not to exceed $2,077,120, subject to approval by the City Attorney's Office; and

WHEREAS, the construction bid received from PC Construction on October 24, 2024 for the construction costs of the Project is $15,540,800, including contingency, resulting in a total construction cost of $15,790,800; and

WHEREAS, as a result, the total construction costs are $5,443,800 higher than the previous construction cost estimate of $10,347,000; and

WHEREAS, the total amount of the Step III construction loan required for the Project is now $18,330,720, reflecting the increased total construction cost of $15,790,800; and

WHEREAS, the City Council desires to modify the authorization for the Step III loan in the Prior Resolution to reflect such increase and to authorize the entry into a construction contract with PC Construction;

NOW, THEREFORE, BE IT RESOLVED that the City Council wishes to modify the authorization in the Prior Resolution to increase the principal amount of the loan authorized thereunder from an amount not to exceed $12,886,920 to an amount not to exceed $18,330,720 (the "Loan"); and

BE IT FURTHER RESOLVED that the City Council authorizes the Director of Public Works, or his designee, to complete and/or amend the Construction Loan Application for Revolving Loan Funds under 24 V.SA. Chapter 120 and to apply to the Bond Bank to increase the total principal amount of the Loan in accordance with these resolutions, subject to final review and approval by the Chief Administrative Officer, Director of Finance, and City Attorney's Office; and

BE IT FURTHER RESOLVED that the repayment of such Loan may be evidenced by the issuance of one or more bonds under the General Bond Resolution, or as a subordinate bond or note issued to the Bond Bank, in each such case payable from a pledge of the net revenues of the wastewater system and as the Authorized Officers (as defined herein) determine to be in the City's best interests; and

BE IT FURTHER RESOLVED that the City Council authorizes the Director of Public Works to negotiate and execute a construction contract with PC Construction for an amount not to exceed $14,128,000, with authorization for contingency funding of an additional $1,412,800.00, subject to approval by the City Attorney's Office; and

BE IT FURTHER RESOLVED that except as set forth in these resolutions, the Prior Resolution shall remain unmodified, including the authorization of the entry by the City into an amended Design Engineering Services Agreement with Wright Pierce; and

BE IT FURTHER RESOLVED that the City Council authorizes the Mayor, Chief Administrative Officer, Director of Finance, and Assistant Director of Finance (the "Authorized Officers"), individually or collectively, to execute and deliver: (i) a loan agreement with the Bond Bank to evidence the Loan and the repayment thereof, including covenants with respect to the operation of the wastewater system; (ii) a bond or bonds, or promissory note or notes in the principal amount of the Loan; (iii) such documents and instruments as the Bond Bank may request in connection with the Loan, in such form and with such terms as they deem necessary and in the City's best interest; and (iv) such other documents and instruments necessary or convenient in connection with the Loan, all subject to the prior review and approval of the City Attorney's Office; and

BE IT FURTHER RESOLVED that the City Council designates the following City staff member as an alternate authorized representatives of the Project with authority to execute administrative or reimbursement documents, and other ancillary documents other than the loan application or loan agreements: Department of Public Works Water Resources Division Director, Megan Moir.

TM/KK/Resolutions 2024/*Authorization For $18,330,720 Amended Step Iii Loan From Vermont Clean Water State Revolving Fund And For Construction Contract With Pc Construction For Up To $15,540,800 For Headworks Improvements (Stage 0) At The City's Three Wastewater Plants*
12/4/24

MEMORANDUM

TO: Board of Finance / City Council

FROM: Martin Lee, PE DPW Water Resources Engineering Manager
Megan Moir, Division Director Water Resources

CC: Chapin Spencer, DPW Director

DATE: December 9, 2024 Board of Finance and City Council

RE: Wastewater Treatment Facility Headworks Improvements – Step III Loan Amendment and Construction Contract

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REQUEST

The Department of Public Works ("DPW") and its Water Resources Division seeks authorization, through the attached resolution, to apply for a Clean Water State Revolving Fund ("CWSRF") amended loan amount of $18,330,720.00 for the Wastewater Treatment Facility Headworks Improvements Project (Comprehensive Wastewater Upgrade – Stage 0), to execute a contract with PC Construction in the amount up to $14,128,000.00 with authorization for contingency funding of an additional $1,412,800.00 for the construction of these improvements and to designate the Mayor and appropriate City staff to execute associated documents.

INTRODUCTION:

This Introduction section of the memo is an updated version of the same section that was presented in the City Council memo for the Wastewater Treatment Facility Headworks Improvements Project on June 24, 2024, where the Council authorized a State Revolving Fund Step II loan for the project and a contract amendment with design consultant Wright Pierce:

https://burlingtonvt.portal.civicclerk.com/event/7005/files/attachment/5035

This amended request is being submitted for approval due to the construction bid coming in at a higher price than the engineer's original estimate (see Construction Contractor Procurement).

The $30 million Clean Water Resiliency Plan ("CWRP") bond vote was approved in November 2018. The CWRP provided a roadmap to upgrade and modernize our wastewater and stormwater systems. DPW Water Resources has been actively working on implementing the CWRP since receiving 92% voter approval, and this project brings us very close to fully drawing down that 2018 bonding authority.

After tackling smaller upgrades of the systems that failed in the summer of 2018 (disinfection systems and the computerized controls system at Main Plant), Water Resources engineering staff and engineering consultant Wright Pierce have been undergoing preliminary engineering planning for a comprehensive upgrade of the City's 3 wastewater treatment plants (WWTPs). The WWTPs have not been overhauled in 30+ years and multiple systems are nearing their failure point. Additionally, State and Federal regulations require that additional treatment be added to further remove phosphorus. Lastly, the growth in housing now anticipated to occur within the City in the coming decade necessitates expansions to several treatment components.

The comprehensive upgrade is a significant project and there are not sufficient remaining funds in the CWRP authorization to fully fund the entire needed upgrade. As such, the project has been split up into multiple stages – Stage 0, 1, 2, and 3. This amended request is focused on the construction phase of Stage 0 – which advances critical headworks improvements at all 3 wastewater plants in Burlington. The headworks of a wastewater plant consists of the first line of wastewater treatment. This headworks improvement project includes the replacement of large mechanical screens that continuously remove solids from the influent wastewater as well as grit removal equipment. This equipment is in a harsh environment and is well past the useful life for equipment that was installed in the early 1990s. This equipment is important to help protect downstream equipment and processes at the wastewater plants. This Stage 0 work can be completed as a standalone project and not be impacted by the future stages needed to comprehensively overhaul the City's three wastewater plants. Since the future of the East Plant is planned to include conversion into a pump station conversion, only the minimum amount of headworks improvements will be completed as part of this project. The work at East Plant includes just the installation of a new screen (no grit removal upgrade) which ensures the plant will have a functional screen in the years prior to a potential pump station conversion, and then the screen will serve to protect the pump station equipment once the conversion occurs.

Authorization of this amended borrowing will bring the City even closer to having fully used the $30M CWRP authorization than previously reported in June.

Total CWRP Authorization	$29,958,000
Total Authorization obligated (loans authorized* –does not include June request)	$8,297,909
This request (full Step III loan amount)	**$18,330,720**
Remaining CWRP authorization after this loan (with $200K RF 1-247 subsidy applied)	$3,529,371

*Includes restoration of bonding authorization by approved loan subsidies on other projects and approved pollution control grants

The estimated remaining authorization calculation above includes the $100,000 planning and $100,000 design subsidy that has already been awarded to the earlier phases of the Stage 0 project. It does not include the potential $750,000 of construction subsidy that may be applied to the Stage 0 construction loan, as further explained below.

The remaining CWRP bond funding will be prioritized among other projects including but not limited to: repairs to a highly eroded outfall off of Manhattan Drive and combined sewer overflow reduction strategies in the Pine Street corridor (which now includes the possibility of collaborating with a large South End development to remove existing sewage flow from the system that is prone to overflows).

With the 2018 CWRP bond funds nearing completion, Water Resources is concurrently planning a major future bond request for improvements that are needed to ensure the future success of Burlington's water resources infrastructure. Public engagement is underway to help the community understand what infrastructure improvements will be part of any new bond requests. More information on this upcoming bond authorization request can be found here: https://burlingtonvt.gov/2025waterbonds.

CONSTRUCTION CONTRACTOR PROCUREMENT:

An Invitation for Bid was drafted, approved by the Attorney's Office, posted on the City RFP website, the State construction website, and the Wright Pierce bidding website. We received the following bid:

Contractor	Base Bid
PC Construction	$13,439,000.00

There are a few reasons why this bid is higher than the final engineer's estimate ($9,700,000.00)[1] in the attached Award Recommendation. Demand for wastewater work is fairly high, and contractors are being selective about projects they choose. This is a challenging project, and we heard from one potential bidder that there was concern with working around Burlington's large wet weather box culverts.

Burlington made an effort to appeal to more bidders by extending the bid period and by removing the requirement for a mandatory site visit. If we were to rebid the project, there is a high risk associated with the amount of time added to the project, the amount of money associated with rebidding and the uncertainty associated with getting bids.

PC Construction provided a responsive and responsible bid. PC Construction is a national construction company that is based locally. Both the City and engineers at Wright Pierce reviewed PC Construction and we are comfortable working with them on this large project. An award recommendation was developed per State guidelines (Attached).

There were multiple bid alternate additions that were included in the Bid:

- Add SLD-1 and SLD-2 Seal Replacement $39,000.00 (included in award recommendation) for the replacement of wastewater channel gate seals.
- Add Automated Grit Removal System $36,000.00 (included in award

[1] The engineers estimate used in the June 2024 request ($10,347,000) was a preliminary construction estimate with contingency, but was updated prior to bidding.

recommendation) for the addition of more automation to the grit removal system.

- Add replacement of East mechanical screen $614,000.00 (included in award recommendation) for the addition of a new influent wastewater screen at the east wastewater plant
- Add replacement of East grit removal system and Headworks Building $1,677,000.00 (NOT included in award recommendation because this work is not needed if the City's upcoming wastewater bond vote passes)

It is staff's recommendation to award a contract to PC Construction for a value of $14,128,000.00 as well as to authorize contingency funding of an additional $1,412,800.00 (10%) for a total of $15,540,800.00.

PROJECT COST AND LOAN AMENDMENT SUMMARY:

Water quality and rate affordability guide every decision we make. Therefore, we are advancing work through loans from the Clean Water State Revolving Fund ("CWSRF"). The CWSRF carries specific requirements during procurement, design, and construction phases of projects. While this adds some time on the front end, the advantages over a publicly offered bond include a lower borrowing cost (2% administration fee), potential access to subsidy and pollution control grants, repayment periods that can extend beyond 20 years where appropriate for longer life infrastructure, and a delayed repayment period (1 year from the completion of construction), which gives us some flexibility in budgeting for debt service. These benefits result in mitigated rate increases for our residents and customers.

To date, SRF projects have received $2.03M in planning and design subsidies and $1.014M in pollution control grants. Additionally, we have received $4.5M in ARPA funds for several of our SRF projects. The Stage 0 project is eligible for up to $750K in construction subsidy under the current intended use plan.

The following summary table outlines the costs that comprise the total CWSRF Amended Loan amounts for which we are seeking approval. Step III Construction Loans roll up all of the costs incurred on a project, including previous Step I (Planning) or Step II (Final Design) loans. DPW engineering project management time is eligible for loan reimbursement. We plan on leveraging this opportunity in select circumstances and for this project we only tracked DPW engineering during preliminary engineering phase work. We have estimated not-to-exceed (NTE) values for our loan applications to ensure there is contingency to make reasonable scope of work adjustments during the final review of the scope by the State and during the bid process.

Stage 0 – Wastewater Treatment Plant Upgrades: Headworks Improvements

Item	Estimated Costs	Loan Type
Step I and II eligible costs already approved (including force account)	$1,458,500	**Step III Loan Construction Costs which includes all Step**

Step III: Wright Pierce Construction Engineering already approved	$1,081,420	**I and Step II eligible costs and Step III costs (TOTAL NTE $18,330,720.00)****
Step III: Construction Cost with contingency*	**$15,540,800**	
Step III: direct equipment purchases, and legal/admin fees	$250,000	

*Seeking approval for the construction contract plus contingency from City Council
**Seeking approval from City Council to amend the NTE SRF loan from $12,886,920 to $18,330,720.00

The next step in advancing the project is obtaining approval from the Board of Finance and City Council to pursue the various steps in applying for and executing the associated SRF Loan. No debt will be incurred until the loans are executed by the Mayor and Chief Administrative Officer.

The annual debt service, which starts the fiscal year (FY27) after the completion of construction (Spring 2026), is estimated to be $774,667 a year, not including the potential construction subsidy. This debt service will require an additional approximate $0.82/100 cubic feet[2] rate increase no later than FY27. Fortunately, after FY2028, debt service from Loan RF103-2 ($108,519) and RF 1-069-3 ($111,782) will retire and help free up ratepayer funds that can be applied towards this and future debt service. The largest of our existing debt service, 2014 Series 1 & 2 ($1.028M annually currently, but trending down each year) does not retire until our last payment ($749,574) in 2034. While the debt service required for the comprehensive treatment plant upgrade is anticipated to be substantial, any debt service retirement does help ease the burden on ratepayers.

ATTACHMENTS:

- Attachment A: Award Recommendation
- Attachment B: Resolution

MOTIONS:
The Department of Public Works' Water Resources Division respectfully requests that the Board of Finance and City Council approve the following motions:

Board of Finance Actions:

1. "To approve and recommend that the City Council adopt the attached resolution authorizing a Step III $18,330,720.00 amended loan from the Vermont Clean Water State Revolving Fund and a $14,128,000.00 contract with PC Construction with authorization for contingency funding of an additional $1,412,800.00 for the construction of these improvements for the Stage 0 upgrade of the City's three wastewater treatment plants as more specifically set forth in the attached resolution."

[2] This calculation is the approximate volumetric rate increase that would be needed for only this debt service, assuming the revenue was generated entire from the volumetric portion and there was no change in customer usage from FY25. The principal amount used to generate this debt service calculation included the $200,000 of Planning and Design Loan forgiveness amounts but not the $750,000 of anticipated construction loan forgiveness.

City Council Actions:

2. “To adopt the attached resolution authorizing a Step III $18,330,720.00 amended loan from the Vermont Clean Water State Revolving Fund and a $14,128,000.00 contract with PC Construction with authorization for contingency funding of an additional $1,412,800.00 for the construction of these improvements for the Stage 0 upgrade of the City’s three wastewater treatment plants as more specifically set forth in the attached resolution.”

Thank you for your consideration of this request.

Board of Finance and City Council Submission Checklist

Department: DPW-Water Resources Submitter: Martin Lee

Title/Subject: Wastewater Treatment Facility Headworks Improvements – Step III Loan Amendment and Construction Contract

	Approval:	Meeting Date:
☐	Board of Finance	Click or tap to enter a date.
☐	City Council	Click or tap to enter a date.
☒	Concurrent	12/9/2024

This form must be completed by the person submitting the materials, and sent with the final submission. Please do not indicate that a signoff was received until it has actually been obtained.

Signoffs Received

Signoff Needed	Received	Date Received	Note
Department Head	Yes	12/3/2024	Chapin Spencer
Mayor's Office informed and approved memo	Yes	12/4/2024	Erin Jacobsen
Board/Commission, if required	N/A	Click or tap to enter a date.	Click or tap here to enter text.
City Attorney's Office has approved contract and/or legal documents, -Identify attorney in note	Yes	12/3/2024	Erik Ramakrishnan
City Attorney's Office has approved memo and motion(s) or resolution(s) -Identify attorney in note	Yes	12/3/2024	Erik Ramakrishnan
CAO has reviewed budget, financing, and memo	Yes	12/3/2024	Katherine Schad
Human Resources, if personnel action -Identify HR Manager in note	N/A	Click or tap to enter a date.	Click or tap here to enter text.
CIO, if an IT-related investment/purchase	N/A	Click or tap to enter a date.	Click or tap here to enter text.

Materials Included

	Included?	Note
Final Memo Attached?	Yes	Click or tap here to enter text.
Contract Attached, if applicable?	N/A	Click or tap here to enter text.
Additional Materials, if necessary	N/A	Click or tap here to enter text.
Draft Resolution or Motion?	Yes	Click or tap here to enter text.
If for submission to Council, are sponsors identified?	N/A	Click or tap here to enter text.

FY2025 Budget to Actuals Review through October 31, 2024

December 9, 2024

FY25 Budget to Actuals Overview through Oct. 31st

Presentation Goals:

1. Review FY2025 Budget to Actuals in total
2. Revenue Review – deeper dive into the “Big 5” revenues
3. Gross Receipt year-over-year comparison
4. Expenditure Review – Large City Departments
5. Conclusion & Recommendations

FY25 Budget to Actuals Overview through Oct. 31st

Revenue Category	Amended Budget	YTD Transactions	% Used/Rec'd	Projected Revenue	Prior Year Total
Tax & Tax Equivalents	**$ 75,322,585**	**$ 25,633,252**	**34%**	**$ 73,151,928**	**$ 66,273,900**
Property Taxes	$ 53,786,284	$ 18,787,748	35%	$ 53,624,925	$ 48,056,783
Sales Tax Equivalents	$ 13,400,165	$ 2,286,636	17%	$ 11,523,157	$ 10,433,509
PILOT, Dev Fees, FFS	$ 8,136,136	$ 4,558,868	56%	$ 8,003,846	$ 7,783,607
Direct	**$ 14,205,369**	**$ 4,899,576**	**34%**	**$ 13,495,101**	**$ 12,584,407**
FFS & Sales	$ 14,205,369	$ 4,899,576	34%	$ 13,495,101	$ 12,584,407
Non-Receipts	**$ 11,070,521**	**$ 1,933,527**	**17%**	**$ 9,982,521**	**$ 7,361,382**
Budget Balancing	$ 1,088,000	$ -	0%	$ -	$ -
Intra-City Xfers	$ 9,943,121	$ 1,897,193	19%	$ 9,943,121	$ 7,327,913
Pass-Through	$ 39,400	$ 36,334	92%	$ 39,400	$ 33,469
Ancillary	**$ 5,290,098**	**$ 2,298,741**	**43%**	**$ 4,616,218**	**$ 5,729,457**
Leases & Rent	$ 1,177,661	$ 368,774	31%	$ 1,106,321	$ 1,174,227
Miscellaneous	$ 411,149	$ 48,511	12%	$ 411,149	$ 95,945
Investments & Savings	$ 1,455,437	$ 1,272,811	87%	$ 1,272,811	$ 2,294,729
Fines & Penalties	$ 2,245,851	$ 608,646	27%	$ 1,825,938	$ 2,164,556
Charity	**$ 2,382,817**	**$ 1,572,163**	**66%**	**$ 2,517,606**	**$ 4,072,152**
Foundations & Grants	$ 1,355,317	$ 1,184,733	87%	$ 1,355,317	$ 3,165,964
Contributions, Donations, Gifts	$ 1,027,500	$ 387,430	38%	$ 1,162,289	$ 906,187
Revenue Total	**$ 108,271,390**	**$ 36,337,260**	**34%**	**$ 103,763,374**	**$ 96,021,298**

Expense Category	Amended Budget	YTD Transactions	% Used/Rec'd	Projected Expenses	Prior Year Total
Personnel Services	$ 67,053,873	$ 21,256,434	32%	$ 62,635,626	$ 60,834,385
Capital Equipment	$ 1,083,929	$ 115,430	11%	$ 1,083,929	$ 429,701
General Operating	$ 15,153,201	$ 4,530,846	30%	$ 15,153,201	$ 13,337,331
Regional Programs	$ 3,480,004	$ 1,032,197	30%	$ 3,480,004	$ 3,598,974
Debt Service	$ 7,970,125	$ 6,020,715	76%	$ 7,970,125	$ 7,194,896
Interfund	$ 13,530,258	$ 4,141,105	31%	$ 13,530,258	$ 12,601,480
Expense Total	**$ 108,271,390**	**$ 37,096,727**	**34%**	**$ 103,853,143**	**$ 97,996,766**
				$ (89,769)	**Projected Surplus/(Deficit)**

FY25 – Review of Big 5 Revenues

Big 5 Revenues	Budget	YTD Actuals	Projected Revenue	Proj. Surplus/(Deficit)
Property Taxes	53,786,284.00	18,787,747.59	53,624,925.15	(161,358.85)
PILOT, FFS, & Development Fees	8,136,136.00	4,558,867.81	8,136,136.00	-
Gross Recipts	7,270,000.00	2,071,474.30	6,000,000.00	(1,270,000.00)
Local Option Tax	3,400,000.00	803,397.71	3,213,590.84	(186,409.16)
Franchise Fees	2,605,165.00	725,311.43	2,175,934.29	(429,230.71)
Total	**75,197,585.00**	**26,946,798.84**	**73,150,586.28**	**(2,046,998.72)**

- **Property Taxes:** Tracking on budget - based on historical collections trends, we assume a **collection of 99.7% in any given fiscal year.**

- **Payment in Lieu of Taxes (PILOT), Fee For Service (FFS), & Development Fees:** Based on collections to date, all indications are that **nearly 100% of the FY25 budgeted revenue will be collected.**

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- **Gross Receipts (GR):** Based on gross receipts revenues through October 31st, gross receipts are on track to outpace FY24 levels by $1.3M. However, with rates increasing at the beginning of FY25 the City could have budgeted this too aggressively and if trends continue, actual **gross receipts could be under-budget by $1.2M**. (see further analysis on next slide)

- **Local Option Tax (LOT):** This 1% is added on top of the sales, meals, rooms, or alcoholic beverage tax and collected by the State. The City receives reimbursement quarterly and has only received one payment so far this fiscal year. **We expect this to come in slightly under-budget.**

- **Franchise Fees (FF):** Paid by services and utilities to the City for the use of its streets, this is a percentage of gross sales. While a bit early to tell, if year-to-date trends continue, **we expect this to come in under-budget unless trends change.**

FY25 – Gross Receipts Year to Year Comparison through October 31st 2024

	Sales Type	2025	2024	Change	
# of submissions	Admissions	23	27	(4)	-14.8%
	Alcohol	276	310	(34)	-11.0%
	Amusements	11	9	2	22.2%
	Meals	541	625	(84)	-13.4%
	Rooms	29	34	(5)	-14.7%
	Short-term Rentals	24	26	(2)	-7.7%
# of submissions	**Total**	**904**	**1,031**	**(127)**	**-12.3%**

Gross Receipts Tax submissions to CT are down -12.3% in FY25. This may indicate that both the Sales and Tax figures below could increase once more submissions are collected.

	Sales Type	2025	2024	Change	
Gross Sales (pre-GR tax)	Admissions	1,287,380	1,971,925	(684,545)	-34.7%
	Alcohol	11,157,732	13,178,074	(2,020,342)	-15.3%
	Amusements	187,091	186,183	908	0.5%
	Meals	36,177,819	39,932,475	(3,754,656)	-9.4%
	Rooms	17,925,339	18,830,488	(905,149)	-4.8%
	Short-term Rentals	2,597,958	2,770,886	(172,928)	-6.2%
Gross Sales (pre-GR tax)	**Total**	**69,333,319**	**76,870,032**	**(7,536,712)**	**-9.8%**

Comparing July-October in both FY25 and FY24, Gross Sales appears down $7.5M or (-9.8%).

	Sales Type	2025	2024	Change	
Gross Receipts Tax	Admissions	26,892	39,439	(12,546)	-31.8%
	Alcohol	258,956	263,562	(4,606)	-1.7%
	Amusements	4,643	3,724	919	24.7%
	Meals	843,184	798,649	44,535	5.6%
	Rooms	603,683	376,610	227,074	60.3%
	Short-term Rentals	233,816	249,380	(15,564)	-6.2%
Gross Receipts Tax	**Total**	**1,971,175**	**1,731,363**	**239,812**	**13.9%**

However, due to the tax increases on Rooms (2% increase) and Meals (0.5% increase), the Gross Receipts Tax figures in FY25 are ahead of FY24 by $239,812 or (+%13.9%).

FY25 – Gross Receipts Year to Year Comparison

County Summary	Period to Period Change
Vermont	-1.4%
Addison	-10.1%
Bennington	-8.5%
Caledonia	-5.9%
Chittenden	-5.1%
Essex	-9.2%
Franklin	-3.3%
Grand Isle	-7.9%
Lamoille	-0.9%
Orange	3.4%
Orleans	-5.0%
Other	0.6%
Rutland	2.1%
Washington	-3.0%
Windham	-3.2%
Windsor	10.0%

State of Vermont Department of Taxes	75 Day Processing
Summary of Towns with 10 or more reporting accounts	**Period to Period Change**
BURLINGTON	-5.3%
COLCHESTER	-6.7%
ESSEX	-5.6%
SHELBURNE	5.1%
SOUTH BURLINGTON	1.3%
WILLISTON	-16.0%
WINOOSKI	1.8%

Per VT Tax Department Sales & Use Tax data, this appears to be a **trend across Vermont in all counties** except Windsor & Rutland.

Source: 2024 Q2 Sales & Use Tax https://tax.vermont.gov/document/sales-and-use-tax-statistics-q2-2024-preliminary

FY25 Expenditures – Large Depts.

Department	Amended Budget	YTD Transactions	%	Budget - YTD Transactions
Fire	$ 17,207,947.00	$ 5,563,294.85	32%	$ 11,644,652.15
Police	$ 21,069,855.00	$ 6,262,877.95	30%	$ 14,806,977.05
Public Works	$ 10,458,493.00	$ 2,540,500.07	24%	$ 7,917,992.93
BPRW	$ 10,956,193.00	$ 3,927,051.68	36%	$ 7,029,141.32
Total	**$ 59,692,488.00**	**$ 18,293,724.55**	**31%**	**$ 41,398,763.45**
	Target Spend	**$ 19,877,598.50**		
	Underbudget	**$ (1,583,873.95)**		

- Expenditures are tracking predictably through October 31st (33% through the fiscal year).
- Spending in Police and Fire, by far the largest departments, are both exactly as expected at 30% and 32%.
- Public Works had a number of vacancies to begin the Fiscal Year, which results in their below-target figure to date.
- BPRW is fully staffed and has been since the end of FY24 – increases to salaries through reclass tip the budget ahead of target.
- City-wide projections for Personnel costs appear to be below budget by $4.4M. A majority of this projected savings stems from the 14% vacancy rate of sworn officers in BPD. The remainder accounts for historical attrition through turnover across the other city departments.
- All other spending categories (Capital Equipment, General Operating, Regional Programs, Debt Service, and Interfund) should all be assumed to expend 100% of the budget until later in the fiscal year, when more data is available to make the estimates more precise. History proves this is a conservative, but wise approach, though many of these categories end the year underbudget in a small amount.

FY25 Budget to Actuals Conclusion

- After 33% of the fiscal year, both Revenues and Expenditures are both projecting $4.5M below the FY25 budget.
  - That is typical for most fiscal years in recent history.
  - Revenues and expenditures are tracking to break even in FY25.

- **Downside**
  - Gross Receipts – requires additional review in January to revise revenue estimates. If gross sales continue the downward trend that has persisted in most of VT in Calendar Year 2024, we will need to mitigate revenue loss with a corresponding reduction in expenditures.
  - Intra-city Transfers – $2M of this revenue source is based on DPW project billing and reimbursements. In the last two fiscal years, those categories have lagged behind budgets – either through slow reimbursement or lack of available billing. If that trend continues, we will have to find offsets in General Fund spending.
- **Upside**
  - Gross Receipts normalizes to our budgeted figures through the winter months.

- **Recommendation:** Don't make changes currently but re-evaluate after January. In the meantime, CT will prepare a "just-in-case" menu of options to reduce FY25 expenses to ensure the budget balances by the end of the fiscal year.