

II. GENERAL TERMS AND CONDITIONS FOR OCE COOPERATIVE AGREEMENTS

(Effective for new awards and amendments issued after April 1, 2021, until amended)

A. Recipient. The Recipient shall remain in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements for the duration of the Agreement, including but not limited to 2 CFR Part 400, 415, 416, Non-procurement Debarment and Suspension 2 CFR Part 417, "New Restrictions on Lobbying", 2 CFR Part 418, "Requirements for Drug-Free Workplace", 2 CFR Part 421, and 422. Some of the most commonly referenced provisions are identified below.

1. **Financial and Program Management.** You must follow the requirements in 2 CFR §§ 200.300-.309.

- a. **Financial Assistance Use of Universal Identifier and Central Contractor Registration.** You must comply with 2 CFR Part 25, including Appendix A. Note that the Central Contractor Registration is now available through the System for Award Management at www.sam.gov.
- b. **Financial Management.** You must maintain a financial management system in compliance with 2 CFR § 200.302.
- c. **Internal Controls.** You must maintain internal controls in compliance with 2 CFR § 200.303.
- d. **Payments.** You must comply with the payment requirements described in 2 CFR § 200.305. Payment must be requested by using Standard Form 270, "Request for Advance or Reimbursement." Receipts, hourly wage rate, personnel payroll records, or other documentation must be provided upon request from OCE if the request is for an advance; otherwise, the documentation must be provided at the time of the request. Requests for payment must be sent to:

USDA, Office of the Chief Economist
Tel: 202-720-4793
Email: SM.OCE.Agreements@usda.gov

- e. **Cost Sharing.** You must comply with the requirements of 2 CFR § 200.306. Additionally, matching funds must be expended during the Period of Performance identified in Section I.
- f. **Program Income.** You must comply with the requirements of 2 CFR § 200.307. Additionally, if program income is earned during the period of performance, you may use it in accordance with 2 CFR § 200.307(e)(2), provided that you inform us in writing of your intent prior to the award date. However, if you earn program income in excess of what can be used under 2 CFR § 200.307(e)(2) or you earn unanticipated program income, you must comply with 2 CFR § 200.307(e)(1). Costs incidental to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.
- g. **Revisions of the Work Plan and Budget.** You must use project funds only for the purposes and activities specified in the budget in the Work Plan and SF-424A. You must report any changes and request prior approvals in accordance with 2 CFR § 200.308.

Award funds not expended by the end of the Period of Performance will be deobligated. Prior to deobligation, we will notify you in writing of our intent to deobligate the remaining award funds.

- h. **Period of Performance.** You may only incur costs chargeable to the award during your approved period of performance as identified in Section I, items 8 and 9 of this Agreement. See also 2 CFR § 200.309.

If you will not complete your project by the end of the specified period of performance, you may request an extension. The extension must be requested at least 10 days prior to the end of the period of performance or it will not be considered except under extenuating circumstances and solely at the discretion of the awarding official. No extension request be considered after the period of performance has expired.

The request to the Agency must be in writing and submitted to the OCE Contact noted in section I.A.1.d above. It must include the following: (1) the time period of the extension requested; (2) a revised budget and work plan demonstrating that funds will be completely expended by the end of the extension; (3) a detailed justification of why the project has been delayed; and (4) what steps will be taken by you to ensure that the project is completed by the end of the extension. Submission of a request for an extension

does not guarantee we will approve the extension. Extensions will only be approved in cases where significant circumstances beyond your control prohibited timely performance of project activities. Extensions will not be approved for changes in scope.

2. **Procurement Standards.** You must follow the requirements in 2 CFR §§ 200.317-.326.
3. **Performance and Financial Monitoring and Reporting.** You must follow the requirements in 2 CFR Part 170 and 2 CFR §§ 200.328-.330. You must submit reports according to the deadlines below. Reports must be sent to:
 - USDA, Office of the Chief Economist
 - Tel: 202-720-4793
 - Email: SM.OCE.Agreements@usda.gov
- a. **Reporting.** Submit accomplishment and financial reports in accordance with the agreed upon frequency as negotiated with the Federal awarding agency and specified in the workplan. Annual reports must be due 120 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Final reports are due within 120 days after the performance end date.
- b. **Subaward and Executive Compensation Reports.** You must comply with the instructions in 2 CFR Part 170, Appendix A.
- c. **Equipment.** If applicable, maintain an inventory control system of property purchased by the Recipient in whole or in part with Federal funds as required under 2 CFR §§ 200.3131. In accordance with Part 200.313 (d), Recipients shall conduct a physical inventory at least every two years and make available, as requested, the required records for review by OCE. The recipient is required to use the Federal Award Identification Number (FAIN) on property records.
- d. **Cost Category Changes.** When the Federal share of total project costs as reflected in the Financial Plan is over the Simplified Acquisition Threshold of \$250,000 and the Recipient desires to make a cumulative transfer among direct cost categories is in excess of ten percent of the current approved total budget, the Recipient will request written prior approval for the budget revision. The Recipient will submit a revised SF-424A, Budget Information, and detailed Financial Plan under a cover letter addressed to the OCE awarding official containing a narrative justification for the proposed revision. Transfers of funds among programs, functions, or activities as indicated in Section B of the SF-424A is prohibited.
- e. If applicable, pursuant to 31 USC Chapter 37, any funds paid to a Recipient in excess of the amount to which the Recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after demand for payment, the Federal awarding agency may reduce the debt by:
 - i. Making an administrative offset against other requests for reimbursements.
 - ii. Withhold advance payments otherwise due to the Recipient
 - iii. Taking other action permitted by statute.
- f. If applicable, except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR, Chapter II “Federal Claims Collection Standards” and 31 USC, Chapter 37.
4. **Subrecipient Monitoring and Management.** You must monitor and manage any subrecipients in accordance with 2 CFR §§ 200.331-.333.
5. **Record Retention and Access.** You must retain records related to the work performed under this Agreement and allow access to them in accordance with 2 CFR §§ 200.334-.338.
6. **Closeout.** You must comply with the requirements in 2 CFR § 200.344.
7. **Post-Closeout Adjustments and Continuing Responsibilities.** You must continue to comply with the requirements in 2 CFR § 200.345 after the Agreement’s period of performance has ended.
8. **Cost Principles.** You must comply with the requirements in 2 CFR Part 200 Subpart E.

9. **Audits.** Conduct audits as required under 2 CFR Part 200.500 and follow 2 CFR Part 200.512 for audit submission requirements and comply with provisions of the Single Audit Act as amended (31 U.S.C. 7507-7507)
10. **Civil Rights Compliance.** You must comply with Executive Order 12898, the Americans with Disabilities Act of 1990, Title VI of the Civil Rights Act of 1964, and Section 504 of the Rehabilitation Act of 1973. Your compliance shall include collection and maintenance of data on race, sex, and national origin of your membership, ownership, and employees. These data must be available to us for Civil Rights Compliance Reviews. A post-award compliance review may be conducted after the final disbursement of project funds has occurred.
11. **Deliverables.** You must provide deliverables for each completed task. Documentation can include, but is not limited to, research reports, presentations, training materials, and survey results.
12. **Outstanding Judgements in a Federal Court.** By submission of its proposal, application, or agreement, the applicant represents that the United States has not obtained an outstanding judgment against it in a Federal Court (other than in the United States Tax Court).
13. **Certification Regarding Lobbying.** The undersigned certifies, to the best of his or her knowledge and belief, that:
 - a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
 - c. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
 - d. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
14. **Other Conditions.** You must also comply with the additional conditions listed below:
 - a. Prohibition against using funds under grants and cooperative agreements with entities that require certain internal confidentiality agreements.
 - i. 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.
 - ii. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph (a) of this award provision are no longer in effect.

- iii. The prohibition in paragraph (a) of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing nondisclosure of classified information.
 - iv. If we determine that you are not in compliance with this award provision, we: (1) will prohibit your use of funds under this award, in accordance with sections 743, 744 of Division E of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113) or any successor provision of law; and (2) may pursue other remedies available for the recipient's material failure to comply with award terms and conditions.
- b. If applicable, comply with the requirements for coordination, development, and use of geospatial data as mandated in OMB Circular A-16, "Coordination of Geographic Information and Related Spatial Data Activities".
 - c. Any information furnished to OCE under this Agreement is subject to the Freedom of Information Act (5 USC 552). Fees related to providing copies of records are set forth in 7 CFR Part 1, Subpart A.
 - d. By accepting this agreement the recipient and its executives, as defined in 2 CFR § 170.315, certify that the recipient's policies are in accordance with the Office of Management and Budget's guidance located at 2 CFR part 200, all applicable Federal laws, and relevant Executive guidance, especially:
 - i. Guidance for Grants and Agreements in Title 2 of the Code of Federal Regulations (2 CFR), as updated in the Federal Register's 85 FR 49506 on August 13, 2020, particularly on: prohibiting the purchase of certain telecommunication and video surveillance services or equipment in alignment with section 889 of the National Defense Authorization Act of 2019 (Pub. L. No. 115—232) (2 CFR part 200.216),
 - ii. Promoting the freedom of speech and religious liberty in alignment with Promoting Free Speech and Religious Liberty (E.O. 13798) and Improving Free Inquiry, Transparency, and Accountability at Colleges and Universities (E.O. 13864) (§§ 200.300, 200.303, 200.339, and 200.341), and
 - iii. Providing a preference, to the extent permitted by law, to maximize use of goods, products, and materials produced in the United States (2 CFR part 200.322).
 - e. Post "And Justice for All" poster(s) which provide instruction for filing a program complaint of discrimination in designated workspaces specific to the actual recipient of this award. The poster is available here: [And Justice For All Poster](#).
 - f. Disclose in writing any potential conflicts of interest to OCE or the pass-through entity in accordance with 2 CFR Part 400.2. No employee, officer or agent may participate in the selection, award, or administration of a Federal award if he or she has a real or apparent conflict of interest. Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award and administration of Federal awards. In addition, if the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest.
 - g. Disclose, in writing to the Federal agency, all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award, in accordance with 2 CFR Part 200.113.
 - h. Unemployment Compensation: Actual costs incurred for unemployment insurance or equitable contributions made to a self-insured unemployment fund are allowable costs. However, OCE does not allow payment of costs incurred for unemployment claims.
 - i. Congressional Restriction: Under 41 USC 6306, no member of or delegate to Congress shall be admitted to any share or part of this Agreement or to any benefit to arise therefrom.
 - j. Patents and Inventions: The Recipient shall report Invention Disclosures and Utilization information electronically via the i-Edison Web Interface at: www.iedison.gov prior to the time of application for any patent or invention which is paid for in any manner or by any percentage of funds provided by OCE. This is required during the Agreement period and subsequent to the Agreement. OCE reserves to itself a

royalty-free, nonexclusive, and irrevocable right to use and authorize others to use Subject Invention(s)/invention(s) produced under this Agreement for Government purposes. The term “Invention” means any invention or discovery which is or maybe patentable or otherwise protectable. The term “Subject Invention” means any invention or other intellectual property conceived or first reduced to practice under this Agreement that is patentable or otherwise protectable under title 35 of the United States Code, or 7 U.S.C. 2321. OCE also retains the ability to force utilization of patented invention(s) set forth in 35 U.S.C. 203 and paragraph (j) of the clause at Sec. 401.14. Any royalties or equivalent income earned during the effective period of this Agreement on patents or inventions derived under this Agreement shall be considered program income and treated under the provisions of 2 CFR Part 200.307.

- k. Publications and Audiovisuals: The final draft of any funded publication or audiovisual must be submitted by the Recipient to OCE' authorized representative prior to final printing, editing or release of the product so that OCE can make a determination as to whether OCE' participation in the project will be acknowledged. OCE, furthermore, may require that the Recipient modify or purge any acknowledgment of its support for activities conducted under this Agreement as a result of its review of a final draft. If OCE does not respond within 30 days of receipt of the draft, the Recipient will be free to proceed with publication without an acknowledgment.
- l. In the event that OCE elects not to acknowledge the product, the Recipient agrees not to attribute sponsorship by OCE by any means including, but not limited to, publications, interviews, new releases, etc., unless required by State law. When an acknowledgment is desired by OCE, unless otherwise instructed by OCE, the statement shall read: “This [research/work/presentation] was supported [in part] by the U.S. Department of Agriculture, Office of the Chief Economist (OCE). It may not necessarily express the views of OCE.”
- m. Non-Discrimination Clause: The United States Department of Agriculture prohibits discrimination in all its programs and activities on the basis of race, color, national origin, age, disability, and where applicable, sex, marital status, familial status, parental status, religion, sexual orientation, genetic information, political beliefs, reprisal, or because all or a part of an individual’s income is derived from any public assistance program. Not all prohibited bases apply to all programs.
- n. Trafficking in Persons: OCE, as the Federal awarding agency, hereby advises the Recipient, as the recipient, that they are subject to the provisions of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 USC 7104(g)).
- o. Fly America Act: The Recipient organization shall comply with section 5 of the International Air Transportation Fair Competitive Practices Act of 1974, 49 U. S. C. 1517 (Fly American Act), which requires:
 - i. Any air transportation to, from, between, or within a country, other than the United States, of persons or property, the expense of which will be assisted by USDA funding, will be performed on a United States flag carrier if service provided by such carrier is “available.”
 - ii. For the purposes of the requirement:
 - A. Passenger or freight service by a certified air carrier is considered “available” even though:
 - a. Comparable or a different kind of service by a non-certificated air carrier costs less; or
 - b. Service by a non-certificated air carrier can be paid for in excess foreign currency; or
 - c. Service by a non-certificated air carrier is preferred by the Recipient organization contractor or traveler needing air transportation.
 - B. Passenger service by a certificated air carrier is considered to be “unavailable”:
 - a. When the traveler, while enroute, has to wait 6 hours or more for an available United States carrier: or
 - b. When any flight by a United States carrier interrupted by a stop anticipated to be 6 hours or more for refueling, reloading, repairs, and so forth, and no other flight by a United States carrier is available during the 6-hour period: or
 - c. When the flight by a United States carrier takes 12 or more hours longer than a foreign carrier.

- p. Reporting of Matters Related to Recipient Integrity and Performance (Only applicable when the total federal share of the award may include more than \$500,000 over the period of performance):
- i. General Reporting Requirement
 - A. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the Recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U. S. C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
 - ii. Proceedings About Which You Must Report
 - A. Submit the information required about each proceeding that:
 - a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
 - b. Reached its final disposition during the most recent five-year period; and
 - c. Is one of the following:
 - i. A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;
 - ii. 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;
 - iii. An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
 - iv. Any other criminal, civil, or administrative proceeding if:
 1. It could have led to an outcome described in paragraph 2.c.(1), (2), or (3) of this award term and condition;
 2. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
 3. The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.
 - iii. Reporting Procedures—Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.
 - iv. Reporting Frequency—During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.
 - v. Definitions
 - A. For purposes of this award term and condition:
 - a. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at

- the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- b. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
 - c. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
 - i. Only the Federal share of the funding under any Federal award with a Recipient cost share or match; and
 - ii. The value of all expected funding increments under a Federal award and options, even if not yet exercised.
- q. Prohibition on Providing Funds to the Enemy: The recipient must:
- i. Exercise due diligence to ensure that none of the funds, including supplies and services, received under this grant or cooperative agreement are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities, which must be completed through 2 CFR Part 180.300 prior to issuing a subaward or contract and;
 - ii. Terminate or void in whole or in part any subaward or contract with a person or entity listed in SAM as a prohibited or restricted source pursuant to subtitle E of Title VIII of the NDAA for FY 2015, unless the Federal awarding agency provides written approval to continue the subaward or contract.
 - iii. The recipient may include the substance of this clause, including sections p. (i) and (ii) above, in subawards under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
 - iv. The Federal awarding agency has the authority to terminate or void this grant or cooperative agreement, in whole or in part, if the Federal awarding agency becomes aware that the recipient failed to exercise due diligence as required by sections i and ii above or if the Federal awarding agency becomes aware that any funds received under this grant or cooperative agreement have been provided directly or indirectly to a person or entity who is actively opposing coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
- r. Additional Access to Recipient Records:
- i. In addition to any other existing examination-of-records authority, the Federal Government is authorized to examine any records of the recipient and its subawards or contracts to the extent necessary to ensure that funds, including supplies and services, available under this grant or cooperative agreement are not provided, directly or indirectly, to a person or entity that is actively opposing United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.
 - ii. The substance of this clause, including section q. (i) above, is required to be included in subawards or contracts under this grant or cooperative agreement that have an estimated value over \$50,000 and will be performed outside the United States, including its outlying areas.
- s. Departmental Regulations:
- i. [Public Access to Scholarly Publications and Digital Scientific Research Data, DR-1020-006](#). All cooperators will review the data management plan provided by the OCE Principal Investigator for cooperative agreements and agree to comply with the requirements of the DR-1020-002. Authors of scholarly publications funded by this cooperative agreement must ensure that the final, peer-reviewed, accepted manuscripts be made freely accessible to the public on a USDA public access archive system (PubAg) within 12 months of publication. Authors may submit the final published article if it is Open Access.

- ii. [Scientific Integrity, DR-1074-001](#). All cooperators who (a) engage in, supervise, manage, or report on scientific activities (see Section 9bb); (b) analyze and/or publicly communicate information resulting from scientific activities; and/or (c) utilize information derived from scientific activities in policy and decision making on behalf of USDA will comply with the requirements of the U.S. Department of Agriculture Regulation on Scientific Integrity (DR-1074-001).
- iii. [Enterprise Geospatial Data Management, DR-3465-001](#). If applicable, cooperators will work with the staff office to comply with the requirements of the U.S. Department of Agriculture Departmental Regulation on Enterprise Geospatial Data Management (DR-3465-001) to ensure that geospatial data collected utilizing Federal funds is documented and of high quality.
- iv. [Buy America Preference for Infrastructure Projects, P.L. 117-58](#). Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless: (1) All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and (3) All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below. Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project. Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) 15 Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated. Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified. Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions: (a) For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or (b) For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product. Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material. (1) Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States. (2) Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States. (3) Glass. All manufacturing

processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States. (4) Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others. 16 (5) Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States. (6) Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States. (7) Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States. (8) Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements. When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that: (1) applying the Buy America Preference would be inconsistent with the public interest; (2) the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or (3) the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent. A request to waive the application of the Buy America Preference must be in writing. The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

A. Definitions

“**Buy America Preference**” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

“**Construction materials**” means articles, materials, or supplies that consist of only one of the items listed in paragraph (1) of this definition, except as provided in paragraph (2) of this definition. To the extent one of the items listed in paragraph (1) contains as inputs other items listed in paragraph (1), it is nonetheless a construction material. (1) The listed items are: (i) Non-ferrous metals; (ii) Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); (iii) Glass (including optic glass); (iv) Fiber optic cable (including drop cable); (v) Optical fiber; (vi) Lumber; (vii) Engineered wood; and (viii) Drywall. (2) Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“**Infrastructure**” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging. “**Infrastructure project**” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“**Iron or steel products**” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both. “**Manufactured products**” means: (1) Articles, materials, or supplies that have been: (i) Processed into a specific form and shape; or (ii) Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies. (2) If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph (1) of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“**Predominantly of iron or steel or a combination of both**” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“**Section 70917(c) materials**” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

B. The Office of the Chief Economist. OCE shall remain in compliance with all applicable laws, regulations, Executive Orders, and other generally applicable requirements for the duration of the Agreement. The most commonly referenced provisions are identified below.

1. **Payments.** We will reimburse or advance funds up to the Award Amount identified in Section I.
2. **Substantial Involvement.** We will provide substantial involvement as described in the Work Plan.
3. **Monitoring and Enforcement.** We will monitor the project to ensure that you are in compliance with the terms of the award. If we find that you are not in compliance, we will enforce the terms of this Agreement using the provisions of 2 CFR §§ 200.339-343.

C. Both parties. The Recipient and OCE agree to the following:

1. **Invalid Clauses.** The invalidity of any one or more phrases, clauses, sentences, paragraphs, or provisions of this Agreement shall not affect the remaining portions of the Agreement.
2. **Conflict between this Agreement and Other Applicable Regulations or Laws.** If there is a conflict between this Agreement and another law or regulation, we will seek a legal opinion to determine which provision applies.

APPROVED BY AN AUTHORIZED REPRESENTATIVE OF:

Authorized Representative (Please Print)

Name (Please Print)

Title (Please Print)

Signature

Date

APPROVED BY THE UNITED STATES DEPARTMENT OF AGRICULTURE, OFFICE OF THE CHIEF ECONOMIST:

Name (Please Print)

Title (Please Print)

Signature

Date