

**CITY OF EL PASO, TEXAS
AGENDA ITEM
DEPARTMENT HEAD'S SUMMARY FORM**

AGENDA DATE: February 3, 2026

CONTACT PERSON(S) NAME AND PHONE NUMBER: Fernando Berjano (915) 337-2517

DISTRICT(S) AFFECTED: All Districts

STRATEGIC GOAL: Goal 8 – Nurture and Promote a Healthy, Sustainable Community

SUBGOAL: Develop and implement a comprehensive climate action plan

SUBJECT: Solar Photovoltaic project to increase community resiliency

BACKGROUND / DISCUSSION:

The City received funds from Department of Energy (DOE) for the Energy Efficiency Conservation Block Grant (EECBG) program. The City of El Paso has identified clean energy generation and energy costs as priorities during the development of the Climate Action Plan. Community non-profit organizations and small businesses are key actors for the regional economy and social systems. Energy costs keep increasing and solar photovoltaic systems have the potential to alleviate energy burden and increase resilience.

The City released a Notice for Funding Availability (NOFA) for project management support for the implementation of the program and Solar United Neighbors submitted a satisfactory application to render those services. The City recommends entering into a Subrecipient agreement with Solar United Neighbors.

PRIOR COUNCIL ACTION:

On April 22, 2024 Council approved that the City Manager or his designee is authorized to sign the documents related to the Department of Energy - Energy Efficiency Conservation Block Grant, and any agreements or verifications required to submit an application for this grant.

AMOUNT AND SOURCE OF FUNDING:

\$591,790.80. Grant from the Department of Energy

HAVE ALL AFFECTED DEPARTMENTS BEEN NOTIFIED? X YES NO

PRIMARY DEPARTMENT: City Manager's Office – Strategic Partnerships – Ian Voglewede

SECONDARY DEPARTMENT: NA

*****REQUIRED AUTHORIZATION*****

LEGAL: (if required) _____ **FINANCE:** (if required) _____

DEPARTMENT HEAD: Stephen Ian Voglewede

APPROVED FOR AGENDA:

CITY MANAGER: _____

DATE: _____

RESOLUTION

WHEREAS, the City received funds from Department of Energy (DOE) for the Energy Efficiency Conservation Block Grant (EECBG) program; and

WHEREAS, the City of El Paso has identified clean energy generation and energy costs as priorities during the development of the Climate Action Plan; and

WHEREAS, community non-profit organizations and small businesses are key actors for the regional economy and social systems; and

WHEREAS, energy costs keep increasing and solar photovoltaic systems have the potential to alleviate energy burden and increase resilience; and

WHEREAS, the City released a Notice for Funding Availability (NOFA) for project management support for the implementation of the program and Solar United Neighbors submitted a satisfactory application to render those services; and

WHEREAS, the City recommends entering into a Subrecipient agreement with Solar United Neighbors; and

THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the City Manager, or designee, be authorized to sign an agreement between the **CITY OF EL PASO**, and **SOLAR UNITED NEIGHBORS**, a non-profit 501(c)(3) organization, to manage and coordinate the EECBG Program to provide solar photovoltaic installations to not-for-profit organizations and small businesses as defined and approved by the Department of Energy; and further, that the City Manager, or designee, be authorized to effectuate any budget transfers and execute any contracts and/or related documents necessary to ensure that the funds are properly expended and the program executed.

APPROVED this _____ day of _____ 2026.


CITY OF EL PASO:

Renard U. Johnson
Mayor


ATTEST:

Laura D. Prine
City Clerk

APPROVED AS TO FORM:


Russell T. Abeln
Senior Assistant City Attorney

APPROVED AS TO CONTENT:


Stephen I. Voglewede
Director, Strategic and Legislative Affairs

THE STATE OF TEXAS)

COUNTY OF EL PASO)

SUBRECIPIENT AGREEMENT

This Subrecipient Agreement (“**Agreement**”) is made on _____, 2026 (“**Effective Date**”) and is between the City of El Paso, a municipal corporation under the laws of the State of Texas (the “**City**”) and Solar United Neighbors, (“**Subrecipient**”).

WHEREAS, the City received funds from Department of Energy (DOE) (“**Granting Agency**”) for the **Energy Efficiency Conservation Block Grant (EECBG)** program (“**Program Funds**”); and

WHEREAS, the Subrecipient has submitted an application for funds and the City’s Strategic and Legislative Affairs Department (SLA, the “**Department**”) has approved the application from Solar United Neighbors; and

The parties agree as follows:

1. **Funding Amount.** Provided the Subrecipient complies with all obligations under this Agreement, the City will provide Program Funds to the Subrecipient in the amount up to **\$591,790.80** (“**Sub-grant Amount**”). Notwithstanding anything to the contrary, the Subrecipient may only receive Sub-grant Amount disbursements for expenses considered to be “Allowable Expenses”. For purposes of this Agreement, the term “**Allowable Expenses**” means any expenses eligible for reimbursement under the Office of Management and Budget (OMB) Requirements, Program Funding Requirements, and/or Granting Agency Requirements. Subrecipient acknowledges and agrees that Allowable Expenses may change over time in accordance with Granting Agency clarifications and regulations. The Subrecipient should verify federal regulations and consult with the City for any questions regarding what expenses constitute Allowable Expenses. The Subrecipient acknowledges and agrees that the payment by the City of any Sub-grant Amount is contingent on the City receiving funds from the Granting Agency. Subrecipient understands that nothing in this Agreement obligates the City to provide the Subrecipient any funds under this Agreement if the City does not receive funds from the Granting Agency. The City will disburse the Sub-grant Amount on a reimbursement basis with disbursements taking place every four (4) months. Prior to the City being obligated to issue any Sub-grant Amount disbursements, the Subrecipient must submit an invoice, proof of incurred expenses, and any additional documentation as required in the Agreement. The City may withhold Sub-grant Amount disbursements from the Subrecipient if the Department Director reasonably believes that the Subrecipient (1) has not complied with all obligations under this Agreement, the OMB Requirements, the Program Funding Requirements, and/or Granting Agency Requirements, (2) the Subrecipient has breached any representations and warranties under this Agreement, (3) the submitted expenditures are not in accordance to the approved Program Budget as provided in this Agreement, (4) the expenses are not considered Allowable Expenses, (5) the expenses have not been

incurred, and/or (6) the proof of expenses provided by the Subrecipient are not adequate to confirm that the expenditure meets the requirements of this Agreement. Subrecipient will be able to request in advance the disbursement of funds up to **\$50,000.00** for contractual services pertaining to payments to selected solar installers in order to proceed with solar installations; any other expenditures do not qualify for advanced payments. Subrecipient acknowledges and agrees that the City will not reimburse the Subrecipient for expenses that are or will be reimbursed by another funding source, including but not limited to another federal, state, or local government agency. **Program Scope**. Subrecipient will comply with all the requirements and deadlines described in Attachment “A” attached to this Agreement (the “**Program Scope**”).

2. **Term**. Unless terminated sooner as allowed under this Agreement, this Agreement commences on the Effective Date and terminates on **September 30, 2026**.
3. **Budget**. The Subrecipient will adhere to the program budget attached to this Agreement as Attachment “B” (the “**Program Budget**”) and made a part hereof for all purposes. Unless allowed in the Program Scope, the Subrecipient will obtain the advance approval of the Department Director for any changes to the Program Budget, such changes including but not limited to increases in budget, decreases in the budget, and changes in budget category amounts. If the City determines that unexpended funds are present, then the City may adjust the Sub-grant Amount to remove such amounts at the City’s discretion.
4. **Insurance**. The Subrecipient will comply with all of the following insurance requirements for the full term of this Agreement. Any gaps in insurance coverage are considered a breach of the requirements of this Agreement.
 - a. **Commercial Liability Insurance**. The Subrecipient will procure Commercial Liability Insurance in the minimum amounts of \$1,000,000 per occurrence for bodily injury or wrongful death and \$1,000,000 for property damage. The Subrecipient will ensure that the liability insurance provides coverage for premises liability, operations liability, products and completed operations liability, personal and advertising injury, contractual liability, broad form property damage liability, and independent contractor liability. If the Subrecipient is performing services near any railroad or streetcar track, then the Subrecipient will provide liability insurance that provides railroad protective liability insurance in the amount of \$1,000,000 Bodily Injury/\$1,000,000 Property Damage Liability per occurrence
 - b. **Workers Compensation Insurance**. If required by law, the Subrecipient will procure workers’ compensation insurance as required by law.
 - c. With the exception of the worker’s compensation insurance, the Subrecipient will add the City as an additional insured to all insurance policies required under this Agreement.
 - d. The Subrecipient will procure all insurances with an endorsement that requires notification to the additional insured prior to any coverage changes or cancellations.

- e. The Subrecipient will obtain prior approval from the City for any deductibles.
 - f. The Subrecipient will procure all insurance from businesses authorized to do business in Texas. The issuer of any policy must have a certificate of authority to transact insurance business in the State of Texas. Each issuer must be responsible, reputable, and have financial capability consistent with the risks covered. The City may reject an issuer of an insurance policy in the City's sole discretion.
 - g. Each policy must contain an endorsement to the effect that the issuer waives any claim or right in the nature of subrogation to recover against the City, their elected and appointed officials, officers, agents, or employees.
 - h. Each policy must contain an endorsement that such policy is primary insurance to any other insurance available to the Additional Insured with respect to claims arising hereunder and that the insurance applies separately to each insured.
 - i. Prior to starting any activities under this Agreement, the Subrecipient will provide the City proof of compliance with all insurance requirements in this Agreement. Proof provided by the Subrecipient to the City must be in the form of a certificate of insurance accompanied by all endorsements. Following a written request by the City, the Subrecipient will provide the City a complete copy of all insurance policies required under this AGREEMENT.
5. **Indemnification.** THE SUBRECIPIENT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY AND THE CITY'S OFFICERS AND EMPLOYEES FROM ALL CLAIMS OF PROPERTY DAMAGE, PROPERTY LOSS, PERSONAL INJURY, DEATH, ILLNESS, INTELLECTUAL PROPERTY RIGHT INFRINGEMENT, REGULATORY COMPLIANCE ARISING FROM THE SUBRECIPIENTS AND/OR THE SUBRECIPIENT'S EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, INVITEES, OR LICENSEES ACTIONS OR OMISSIONS. THE OBLIGATION UNDER THIS SECTION REMAINS IN EFFECT FOR ALL CLAIMS ARISING DURING THE TERM OF THIS AGREEMENT.
6. **Release.** The Subrecipient releases the City and the City's officers, officials, and employees from all claims of property damage, property loss, injury, or death sustained by the Subrecipient while performing any activities related to this Agreement.
7. **Damage to City Property.** The Subrecipient will pay the costs of repairing any damages to City property (including the public right of way) caused by the Subrecipient or the Subrecipient's contractors, subcontractors, or agents. The Subrecipient will make payment for any damages within 30 calendar days of receiving an invoice from the City.

8. **Termination.**

- a. Non-Appropriation of Funds by the City. If the City fails to appropriate sufficient funds to carry out the obligations of the City under this Agreement, then the City may terminate this Agreement upon 30 calendar day notice to the Subrecipient.
- b. Cancellation of Funds by Granting Agency. If the Granting Agency cancels Program Funds or fails to provide the City with Program Funds, then the City may terminate this Agreement immediately following notification to the Subrecipient.
- c. For Cause. Either party may terminate this Agreement for cause following a 30-calendar day opportunity to cure. For purposes of this Agreement, “for cause” means a failure of a party to perform any obligations under this Agreement or breach of any representations and warranties made under this Agreement. If the City terminates this Agreement for cause, then the Subrecipient will pay the City the damages resulting from the termination for cause, which may include paying back all funds disbursed by the City to the Subrecipient, if appropriate.
- d. Application. The City may terminate this Agreement if the City determines that the Subrecipient submitted false or inaccurate information in the Subrecipient application for funds. The Subrecipient will repay to the City any funds received by the Subrecipient under this Agreement in violation of any Granting Agency requirements.
- e. The Subrecipient may terminate this Agreement by sending to the City written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the City determines in the case of partial termination that the reduced or modified portion of the Sub-grant Amount will not accomplish the purposes for which the federal award was made, the City may terminate the Sub-Grant Amount in its entirety.
- f. Close out. Regardless of the reason or method of termination of this Agreement, the Subrecipient will remain responsible for complying with all close out procedures required under the OMB Requirements and the Program Funding Requirements.
- g. Termination for convenience. In accordance with 2 Code of Federal Regulations (CFR) Part 200-Appendix II, the City may terminate this Agreement for any reason upon advance written notice to the Subrecipient. The City will allow the Subrecipient 15 calendar days from the date of receipt of the termination notice to stop all services under this Agreement. The Subrecipient will cease all services under the Agreement by the end of the 15 calendar day period allowed under the termination notice. Upon termination, the Subrecipient will submit a final statement of Allowable Expenses incurred up to the end of the 15 calendar day period specified in the termination notice along with proof of such expenses. Subrecipient will be entitled to any Allowable Expenses incurred up to the end of the 15 calendar day period specified in the termination notice provided that the Subrecipient submits all proof and documents required under this Agreement and the Subrecipient is in compliance with all requirements under this Agreement.

9. **Audit and Inspections.** Subrecipient will keep all records related to this Agreement for a period of five (5) years after September 30, 2026. Until termination of this Agreement, Subrecipient will allow the City, the Granting Agency, federal Inspectors General, and/or the Comptroller of the United States to inspect all records reasonably related to this Agreement within 7 calendar days from request in order to make audits, examinations, excerpts, and transcripts. The Subrecipient will provide copies of any records requested at the Subrecipient's expense to the requesting party. Further, the Subrecipient will allow timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents. The Subrecipient will comply with any additional audit requirements listed on the Program Scope.
10. **Liability for Funds.** The Subrecipient will repay to the City any funds that the Subrecipient accepts or disburses under this Agreement in violation of this Agreement, the OMB Requirements, the Program Funding Requirements, or the Granting Agency Requirements.
11. **Compliance with Federal Regulations.** The Subrecipient will comply with all requirements of Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards codified under Title 2 of the Code of Federal Regulations part 200 as may be amended, including all appendixes ("**OMB Requirements**"). The Subrecipient understands that Attachment "C" is only a portion of the OMB requirements and that the Subrecipient must refer to Title 2 of the Code of Federal Regulations part 200 for all requirements. Further, the Subrecipient understands that the City must also comply with the OMB requirements, and the City depends on the Subrecipient's cooperation in order to comply with such OMB requirements. As such, the Subrecipient will perform any obligations reasonably requested by the City that are necessary to ensure that the City complies with the OMB requirements.
- a. The Subrecipient will also comply with all Program Fund requirements listed under 2CFR par 200 as amended by 2CFR part 910 ("**Program Funding Requirements**"). In addition, the Subrecipient will perform any obligations reasonably requested by the City that are necessary to ensure that the City complies with Program Funding Requirements, including the National Policy Requirements (November 12, 2020) and Public Law 117-54, also known as the Bipartisan Infrastructure Law (BIL).
 - b. The Subrecipient will also comply with all requirements in Attachment "D" (referred to as the "**Granting Agency Requirements**"). Subrecipient understands that the Granting Agency often updates the Granting Agency Requirements and issues new requirements pertaining to the Program Funding. All updates to the Granting Agency Requirements made by the Granting Agency become part of this Agreement as of the date of the update. All new requirements and guidance issued by the Granting Agency pertaining to the Program Funding will also become part of Attachment "D" and this Agreement as of the new publication date.

12. **Monitoring**. The Subrecipient will allow the City reasonable access to inspect the Subrecipient's Offices and facilities subject to this Agreement to ensure compliance with local, state, and federal requirements. The City will provide the Subrecipient reasonable notice prior to a visit. Following a visit, the City may provide the Subrecipient with a report regarding the findings of the visit. If the City provides the Subrecipient with a report, then the Subrecipient will correct any findings and provide a written response to the City addressing the City's findings. The City, DOE or their designees shall have a right to access, monitor or request copying, mailing, or electronic transmission of Subrecipient's records that are related to this Agreement. Monitoring reports will include a written report to Subrecipient documenting findings and concerns that will require a written response to the City. An acceptable response must be received by the City within **seven (7) days** from the Subrecipient's receipt of the monitoring report or audit review letter. Failure of the Subrecipient to take all actions necessary to resolve and close monitoring or audit findings within **thirty (30) days** of the monitoring report or audit review letter shall be considered a breach of this Contract. The Director may grant additional time beyond the original due date provided by compliance staff to comply with the terms of this Agreement. Additional time beyond the original due date can only be granted for reasons the Director may judge to be extenuating circumstances.
13. **Post Close out**. As required under the OMB Requirements, the closeout of a Federal award does not affect any of the following:
- a. The right of the Granting Agency or the City to disallow costs and recover from the Subrecipient funds on the basis of a later audit or other review. To the extent allowed by the OMB requirements and the Program Funding Requirements, the Subrecipient will repay the City any funds determined to be disallowed costs even if performance obligations or work has been completed.
14. **Reversion of Assets**. The Subrecipient will transfer any funds at hand to the City at the time of expiration or termination of this Agreement. The Subrecipient will transfer such funds within 10 calendar days of the expiration or termination of the Agreement.
15. **Protected Health Information**. If applicable by law, the subrecipient will execute and attach to this agreement a HIPAA Business Associate Agreement.
16. **Privacy Requirements**. The Subrecipient shall establish data privacy and security requirements to protect client information collected while providing services under this Agreement. **Subrecipient shall submit to the City policies and procedures established to meet this requirement within 30 calendar days of execution of this Agreement.**

17. **Representations and Warranties.** The Subrecipient represents and warrants that all information submitted to the City, including the initial application for funds, is true and correct. Further, the Subrecipient represents and warrants that the Subrecipient is in good legal standing with the laws of the Subrecipient's state of incorporation, the Subrecipient is legally authorized to perform business in Texas, and the person's signing the Agreement on behalf of the Subrecipient are authorized to sign this Agreement. If Subrecipient is doing business under an assumed name, a copy of the "Assumed Name Certificate" filed with the El Paso County Clerk shall be submitted to the City prior to the execution of this agreement. The Subrecipient represents that the Subrecipient has not had any allegations or cases made against the Subrecipient related to fraud or bribery, including at a criminal, civil, or administrative level.
18. **Additional Requirements.** The Attachments listed in this section and the laws and requirements referenced in the Attachments are incorporated into this Agreement in full and are considered to be an essential part of this Agreement. The Subrecipient will comply with all laws referenced in the Attachments as well as all the requirements listed in the Attachments incorporated into this Agreement. If any conflicts exist between the Attachment and this Agreement, then the most stringent requirement governs. Further, the parties may exercise any rights afforded under the laws referenced in the Attachments. All laws required under the Attachments to be included as part of this Agreement are incorporated and are considered to be part of this Agreement.
- a. Attachment "A" - Program Scope
 - b. Attachment "B" - Program Budget
 - c. Attachment "C" - 2 CFR Part 200 Contract Requirements
 - d. Attachment "D" – Granting Agency Requirements
 - e. Attachment "E" - Special terms and Conditions Modifications
 - f. Attachment "E" – Dept. to provide only if needed

SLA will not execute new contract agreements with the Subrecipient unless Subrecipient is in compliance with all existing contract agreements with the City. The City may withhold reimbursement under any and all existing grant agreements with the Subrecipient if Subrecipient is not in compliance with any existing grant agreement. The compliance status of existing contract agreements is determined solely by SLA.

ADA Sensitivity Training – Subrecipient understands that by signing this Agreement, they agree to take part and complete an ADA Sensitivity Training at least one a year for the entire service period of this Agreement. Such training shall be provided by an entity approved by the City. The City may request proof of that such training was completed.

19. **Copyrights, Licenses, and Patents.** If this Contract results in a copyrightable material, the City's approval must be obtained to copyright the work. Additionally, the City reserves a royalty fee along with a nonexclusive and irrevocable right to reproduce, publish, or otherwise use and to authorize others to use the work for government purposes. Any discovery or invention arising out of or developed in the course of the services aided by this Agreement shall be promptly and fully reported to the City for a determination as to whether patent protection on such invention or discovery shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered, in order to protect the public interest. Nothing in this Section relieves the contractor from complying with the OMB Requirements regarding intellectual property.

20. **General Provisions.**

- a. **Subcontracting.** Unless allowed under the Program Scope, the Subrecipient may only subcontract activities under this Agreement with the prior written consent of the City.
- b. **Definitions/Recitals.** A defined term under this Agreement appears in **boldface** print when first defined. All Recitals in this Agreement are incorporated into and made a part of this Agreement.
- c. **Discrimination Prohibited.** Subrecipient shall comply with all laws prohibiting discrimination as further specified in Program Scope and the applicable local, state, and federal requirements. Subrecipient must file the assurance required under City of El Paso Ordinance 9779, prohibiting discrimination against disabled persons. Failure to do so in any manner which impairs the quality of performance hereunder, or affects the administration of the funds provided hereunder, shall constitute a breach of this Agreement. Subrecipient covenants that during the term of this Agreement, the Subrecipient, its associates, officers, board or committee members, and/or employees shall have no interest, direct or indirect, which will conflict in any manner with the performance of the services under this Agreement and that none of its paid personnel shall be employees of the City or have any contractual relationship with the City.
- d. **Compliance with Laws.** Subrecipient will comply with all applicable laws while performing activities under this Agreement. Subrecipient will obtain all licenses and pay all fees or other charges that may be required to perform the activities under this Agreement, if applicable.
- e. **Subrecipient's Composition.** Subrecipient shall notify the City in writing within thirty (30) calendar days in the event of any change in Subrecipient's ownership, organization, control and management, and non-profit tax status. Subrecipient shall, at least annually, submit to the City a list of its current members and board of directors with their appropriate titles. The City reserves the right to terminate this Agreement if the composition of the Subrecipient's organization changes in a

manner that would make the Subrecipient ineligible for funds under program requirements.

- f. Independent Contractor Relationship. Nothing in this Agreement creates an employer-employee relationship between the parties. The City is not subject to any obligations or liabilities of the Subrecipient incurred in the performance of this Agreement.
- g. Confidentiality. The City will handle all release of information obtained under this Agreement as required under the Texas Public Information Act. The Subrecipient agrees to the release of this Agreement pursuant to a request made under the Texas Public Information Act. This clause survives the completion or termination of this Agreement.
- h. Successors and Assigns. This Agreement is binding on the City, the Subrecipient, and the Subrecipient's successors and assigns. Neither party may assign, sublet, or transfer its interest or obligations in this Agreement without the written consent of the other.
- i. Venue. This Agreement is entered in the City and County of El Paso, Texas. The venue for any dispute pertaining to this Agreement is in El Paso County, Texas.
- j. Governing Law. This Agreement is governed by Texas law.
- k. Captions. The captions of this Agreement are for information purposes only and in no way affect the substantive terms or conditions of this Agreement.
- l. Severability. Should any section, paragraph, or other provision of this Agreement be found invalid, such invalidity does not affect the remaining provisions of this Agreement.
- m. Notices. The parties will send all notices required or allowed under this Agreement, in writing, by certified mail, or in person, to the addresses described in this Section. All notices are deemed received on the date of delivery in person or 3 calendar days following the postmark date on the notice.

To the City: Strategic and Legislative Affairs Department
Attn: Department Director
300 N. Campbell St.
El Paso, Texas 79901

With a Copy to: City of El Paso
Attn: City Manager
300 N. Campbell St.
El Paso, Texas 79901

Subrecipient: Name
Attn:
Address:
City/State/ZIP:

Either party may change the address above by sending a written notification to the other party.

- n. No third-party beneficiaries. This Agreement is entered for the benefit of the City and the Subrecipient only. No third party has any rights to enforce any obligations or rights under this Agreement.
- o. Governmental Function. The parties agree that the City is entering this Agreement in the exercise of its governmental functions under the Texas Tort Claims Act. The parties also agree that the City is entering into this Agreement as a governmental entity performing a governmental function.
- p. Entire Agreement. This Agreement constitutes the entire agreement by the parties.
- q. Time of the Essence. Time is of the essence with respect to the rights and obligations of the parties as described herein.
- r. Provision of Services. Subrecipient shall provide services as described on the Program Scope attached to this Agreement as Attachment "A". In the event that the Subrecipient reasonably believes services need to pause or stop during the term of this agreement, Subrecipient must provide notice and seek prior approval from the City in writing at least thirty (30) calendar days in advance to pause or stop services along with a fully detailed plan to resume services. Failure to do so may result in a breach of this Agreement and, thus, may lead to a reduction of the sub-grant amount or termination of this Agreement if the Department Director reasonably believes that the Subrecipient has failed to comply with the terms of this clause.

(Signatures on the following page)

[Signature page for the City of El Paso]

CITY OF EL PASO:

Dionne Mack
City Manager

APPROVED AS TO FORM:

Russell T. Abeln

Russell T. Abeln
Senior Assistant City Attorney

APPROVED AS TO CONTENT:

Omar L. Martinez signed on behalf of

Stephen Ian Voglewede
Director

ACKNOWLEDGEMENT

THE STATE OF TEXAS §
§
COUNTY OF EL PASO §

This instrument was acknowledged before me on this ____ day of _____, 2026
by **Dionne Mack, City Manager** of the **City of El Paso, Texas**.

Notary Public, State of Texas

My commission expires:

[Signature page for Subrecipient]

SUBRECIPIENT:

Name: _____

Title: _____

ACKNOWLEDGEMENT

THE STATE OF _____ §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this _____ day of _____, 2026,
by _____, as _____ of _____.

Notary Public, State of _____

My commission expires:

ATTACHMENT “A” Program Scope

Attachment A: Program Scope

Program name: 2025-2026 Energy Efficiency Conservation Block Grant – EECBG

Subrecipient: Solar United Neighbors (SUN)

Subrecipient shall be responsible for ensuring that the expenditure of funds comply with the guidance and regulations issued by the Department of Energy (DOE) for the Energy Efficiency Conservation Block Grant Program and any other applicable federal regulations.

This Program Scope is attached to and made part of the Subrecipient Agreement (the “Agreement”) between the City of El Paso (the “City”) and Subrecipient and shall be according to the following terms and conditions:

1. Use of the Funds. Subrecipient shall provide program management services to eligible organizations for the installation of solar photo-voltaic systems. Subrecipient shall provide services listed under this Agreement for a period that begins on the date Effective Date and ends on September 30, 2026. The Director of Strategic and Legislative Affairs or his designee will have the authority to extend the term of this Agreement. Subrecipient must obtain approval from the City in writing prior to pausing or stopping services. Such approval must be requested in writing at least thirty (30) calendar days prior to desired stop date.
2. Program Budget. Services under this Agreement shall be provided within the monetary limits in Attachment B, “Program Budget”.
3. Outcome Statement. At least 6 and up to 16 eligible organizations shall receive access to solar photo-voltaic systems through the provision management services and other services as needed. The final selection of organizations receiving solar photo-voltaic systems will be determined by the City of El Paso Climate, Sustainability, and Energy Program staff. Project management services will consist of:
 - (a) Drafting of Request for Proposal (RFP) for solar installers; (b) Preliminary Screening of applicants' roofs via Google Earth and/or Bing Maps; (c) issuing RFP for solar installers; (d) assistance with proposal evaluation; (e) assistance to final recipients of solar PV systems with tracking of installer progress, work proposal, and installations; (f) make payments to solar installers, and (g) overall streamlining of scheduling, contract signing, and customer relationship management process. Subrecipient shall provide services described in this Agreement in accordance with this Program Scope and shall achieve the following objectives: (a) schedule program information sessions and marketing campaign; (b) hold information sessions and secure at least 6 participants ;(c) roofs pre-assessments; (d) issue installer RFP and assist proposals' evaluation; (e) prepare installer agreement, contact winning installer and unselected installers, obtain signed installer

agreement; (f) site visits, program coordination with recipients, installer and the City; The outcomes will be tracked on an excel database.

Subrecipient shall provide project management and support to at least 6 and up to 16 installations under this Agreement. The Outcome Statement constitutes the performance target for the Agreement. In no event shall compensation to the Subrecipient exceed the lesser of the Subrecipient's costs attributable to the work performed as stated herein or the sum of \$591,790.80.

4. Program Terms.

- a. Policies and Procedures. Subrecipient shall maintain policies and procedures to determine whether the assistance provided is necessary and reasonable. Subrecipient shall provide the City its policies and procedures within 30 calendar days of execution of this Agreement. Subrecipient's policies and procedures shall include application procedures, procedures to determine household eligibility, procedures to ensure compliance with the Program's privacy requirements, policies and procedures to avoid duplication of benefits and fraud, and procedures to indicate under what circumstances self-attestation forms will be used when determining eligibility. Subrecipient shall make reasonable efforts to obtain the cooperation of utility providers to accept payments from the Program as required by the Program's guidance. Subrecipient shall ensure that proper documentation acceptable to the City is maintained on file to ensure all costs incurred are eligible. Subrecipient shall provide services under this Agreement to eligible clients only.
- b. Privacy Requirements. Subrecipient shall establish data privacy and security requirements to protect client information collected while providing services under this Agreement. Subrecipient shall submit to the City policies and procedures established to meet this requirement within 30 calendar days of execution of this Agreement. Policies and Procedures shall comply with the following requirements:
 - a. In general:
 - Subrecipient shall include appropriate measures to ensure that the privacy of the clients (non-profits, small businesses and solar installers) is protected; and
 - Provide that the information, including any personally identifiable information, is collected and used for the purpose of submitting reports as required under this Agreement; and
 - Provide confidentiality protections for data collected about any individuals who are survivors of intimate partner violence, sexual assault, or stalking.
 - b. Statistical Research:
 - Subrecipient may provide full and unredacted information, including personally identifiable information for statistical research purposes in accordance with existing law; and

- Subrecipient may collect and make available for statistical research, at the census tract level, information collected while providing services as described in this Agreement.
- c. Duplication of Benefits. Subrecipient shall make reasonable efforts to verify that the assistance provided under this Agreement does not duplicate any other assistance, including federal, state, or local assistance provided for the same services. Subrecipient may rely on a self-attestation form signed by the applicant to meet this requirement.
- d. ADA Sensitivity Training – Subrecipient understands that by signing this Agreement, they agree to take part and complete an ADA Sensitivity Training at least one a year for the entire service period of this Agreement. Such training shall be provided by an entity approved by the City. The City may request proof of that such training was completed.
- e. All Subrecipients of grant awards must have a minimum of 3-months' liquidity throughout the service period of the Agreement and must submit written confirmation of a Contingency Fund Plan.
- f. Sam.gov - required for all applicants of grant awards by assessing financial health and stability of vendors, to include: past performance, integrity and compliance history.

5. Eligibility Requirements. Beneficiaries of the services are those that meet (a) **or** (b) requirements below **and** (c), (d) and, (e) requirements:

- a. Registered non-profit organization serving the community within the city limits of El Paso, Texas; or
- b. Registered SBE (small business enterprise) within the City limits of El Paso, Texas;
- c. Organization owns and occupies the facility or building for which the solar panels application under EECBG was made; and
- d. Organization is in good standing with the City of El Paso, Texas; and
- e. Facility/building is deemed in good condition for the installation of solar photovoltaic panels including, but not limited to, roof condition, structural condition of the building/facility, non-shaded roof, and good orientation (i.e. south or east facing roof).

Subrecipient shall maintain documentation establishing that this service is used only by eligible clients as described in this Agreement. Subrecipient shall maintain complete program files and the following documentation for each entity served under this Agreement. Program files shall be made available to the City, and its designees upon request:

- a. All applicable policies and procedures followed by the Subrecipient to perform the services described under this Agreement.

6. Reporting Requirements.

- a. Reports. Monthly reports shall be submitted to the City every 4 months (3 reports total) by the 20th day of each month, with the exception of the close-out report, which is due on or before October 10, 2026. Other

required reports shall be submitted as noted. After verification and review by the City, Subrecipient shall be paid for services provided in accordance with this Agreement.

Attachment F1: Reimbursement Report

Attachment F1-A: Supporting Worksheet

Attachment F4: Employee Monthly Time Report

Attachment F5: Budget Revision Report (due as needed)

Attachment F7: Outcome Report

Failure to achieve performance target may result in a proportional reduction of the maximum allowable reimbursement. No additional reimbursements shall be given for exceeding performance targets of this Agreement. If at any time during the term of this Agreement, Subrecipient's expenditures exceed performance under this Agreement, the City may withhold reimbursements until the gap between expenditures and performance is closed.

The City's Department of Strategic and Legislative Affairs shall determine whether services are satisfactorily provided. All required reports shall be submitted to the City in accordance with this Agreement. Programmatic and financial reports shall be submitted to the City in a complete and accurate manner, on the 20th day of each month, every four months. The close-out report shall be submitted on or before 15 business days of the month following submission of the final reimbursement report. The City will sample 15% of the total amount submitted on each request for reimbursement. Other required reports shall be submitted as noted. Programmatic reports shall be submitted to the City by the 20th of each month, except for the final Programmatic reports which are due on October 10, 2026.

Lack of due diligence, resulting in delayed draft reviews, signatures or submitting incomplete documentation could result in a break of the fundamental obligation of the Agreement and disrupt/hinder the Agreement execution, leading to potential Agreement conflicts.

- b. b. De-Identified Client Data. In addition to programmatic and financial reports required under the terms of this Agreement, the City of El Paso may request additional de-identified client data related to services provided under this Agreement as permitted by law. Information collected will include but is not limited to, client demographic information, positive and negative program exits, and other statistical information as requested by the City. Subrecipient shall submit the required data to the City of El Paso. The City shall collect data only as permitted by law and with prior client consent. The data collected by the City will be shared with an external service provider to analyze and produce area reports and maps for the use of the City during the planning and grant award process.

The City shall ensure that the external service provider is contractually obligated to comply with the Federal Act on Data Protection. The City shall also ensure that clients' health information or de-identified personal identifiable information is protected by HIPAA and other applicable laws and that such information cannot be used to link to a person's identity under any circumstance.

7. Privacy Requirements. Subrecipient shall establish data privacy and security requirements to protect client information collected while providing services under this Agreement. Subrecipient shall submit to the City policies and procedures established to meet this requirement within 30 calendar days of execution of this Agreement. Policies and Procedures shall comply with the following requirements:
 - a. In general:
 - Subrecipient shall include appropriate measures to ensure that the privacy of the clients (non-profit, small business and solar installers) is protected; and
 - Provide that the information, including any personally identifiable information, is collected and used for the purpose of submitting reports as required under this Agreement; and
 - Provide confidentiality protections for data collected about any individuals who are survivors of inmate partner violence, sexual assault, or stalking.
 - b. Statistical Research:
 - Subrecipient may provide full and unredacted information, including personally identifiable information for statistical research purposes in accordance with existing law; and
 - Subrecipient may collect and make available for statistical research, at the census tract level, information collected while providing services as described in this Agreement.
8. Accounting Records. Accounting records required to be maintained in the Subrecipient's files for the term of this Agreement in relation to the requisition for payment under this Agreement include, but are not limited to:
 - a. Balance sheet (both monthly and year-to-date), submitted annually;
 - b. Income Statement, as applicable;
 - c. General Ledger, as applicable;
 - d. Payroll Check Register, as applicable; and
 - e. Spreadsheet detailing amounts requested for reimbursement.
9. Program Budget Revisions and Transfer of Funds. Subrecipient may request a budget revision to transfer funds between existing budget categories as contained in the Program Budget (but not between Program Budget components), subject to the approval of the Director, provided that:

- a. The dollar amount of all transfers among existing budget categories is equal to or less than ten percent (10%) of the total amount of this Agreement; or
- b. The transfer of funds does not change the scope or objective(s) of the Program funded under this Agreement and transfer of funds occurs between existing budget line items and categories.

Subrecipient shall submit a revised budget along with supporting documentation explaining the need for a Program Budget amendment. Program Budget amendments shall be at be approved at the Director's discretion.

- 10. Audit Requirements. Subrecipient who expend \$750,000 or more in a year in Federal awards shall submit to the City a single audit of its activities conducted by an independent auditor acceptable to the City. Such a single audit, along with the corresponding management letter and Subrecipient's responses thereto, shall be submitted within nine months after the end of the Subrecipient's fiscal year.

No audit shall be required if Subrecipient expends less than \$750,000 in a year in Federal Awards. However, Subrecipient shall still submit to the City, on an annual basis or upon request, an external audit of their financial statements or the following documents in order to demonstrate fiscal responsibility to the City:

- a. Most current financial statements;
 - b. Current year's operating budget; and
 - c. Narrative of internal controls (financial duties)
- 11. Subrecipient shall comply with all the laws and requirements under the Attachments included in this Agreement. The City shall be required to provide updates on new guidance and updates issued by the Granting Agency to the Subrecipient. New guidance and updates issued by the Granting Agency shall be immediately incorporated into this Agreement.
- 12. If there is any conflict between this Attachment and the Agreement, then the most stringent terms will govern.

**ATTACHMENT “B”
Program Budget**

Attachment B: BUDGET
Agency Name: Solar United
Neighbors

Line Item Expense Category	Budget Year 2025-2026		EECBG Request
	Total	Budget	
Salaries		\$53,054.68	\$43,158.48
Fringe benefits		\$13,228.04	\$13,228.04
Contract services		\$522,965.63	\$522,965.63
Rent			
Communications			
Utilities & occupancy expenses			
Equipment rental & maintenance			
Equipment purchases			
Mileage reimbursements			
Transportation- Maintenance of Company Vehicle			
Postage & shipping			
Printing & publications			
Supplies		\$1,000.00	\$1,000.00
Local conferences & meetings			
Insurance			
Travel - long distance		\$2,000.00	\$2,000.00
Other Expenses			\$3,000.00
Indirect Cost		\$6,438.65	\$6,438.65
Total Project Expenses		\$598,687.00	\$591,790.80

ATTACHMENT “C”

2 CFR Part 200 Contract Requirements

ATTACHMENT “C”

2 C.F.R. § 200.326 and 2 C.F.R. Part 200, Appendix II, Required Contract Clauses

1. Remedies.

- A. Contracts for more than the simplified acquisition threshold (\$250,000) must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate. See 2 C.F.R. Part 200, Appendix II, ¶ A. All remedies are stipulated in the Agreement.

2. Termination for Cause and Convenience.

- A. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement. See 2 C.F.R. Part 200, Appendix II, ¶ B. The Termination for Cause and Convenience is in the Agreement.

3. Equal Employment Opportunity.

- A. Except as otherwise provided under 41 CFR Part 60, if this Agreement meets the definition of a “federally assisted construction contract” under 41 CFR Part 60 – 1.3, then Subrecipient must comply with the following:
 - (1) The Subrecipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:
 - a. During the performance of this contract, the contractor agrees as follows:
 - i. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- ii. Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- iii. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- iv. The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- v. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- vi. The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- vii. The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- viii. In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said

rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- ix. The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:
- x. Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

- (2) The Subrecipient further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the Subrecipient so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.
- (3) The Subrecipient agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.
- (4) The Subrecipient further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not

demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Subrecipient agrees that if it fails or refuses to comply with these undertakings, the City or the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the Subrecipient under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

4. Davis Bacon Act and Copeland Anti-Kickback Act.

- A. If this Agreement constitutes a prime construction contract in excess of \$2,000, then Subrecipient will comply with all requirements of the Davis-Bacon Act as supplemented by Department of Labor regulations.
- B. In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The Subrecipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The Subrecipient must report all suspected or reported violations to the Federal awarding agency.
- C. The Subrecipient will include in contracts required under this Section to include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The Subrecipient must report all suspected or reported violations to the Federal awarding agency.

5. Contract Work Hours and Safety Standards Act.

- A. If this Agreement is in excess of \$100,000 and involves the employment of mechanics or laborers, then the Subrecipient must comply with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5).
- B. Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week.
- C. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- D. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- E. Withholding for unpaid wages and liquidated damages. The Federal Granting Agency or the City shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and

liquidated damages as provided in the clause set forth in paragraph (2) of this section.

- F. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section."

6. Rights to Inventions Made Under a Contract or Agreement.

- A. If this Agreement meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," , then the Subrecipient will comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

7. Clean Air Act (42 U.S.C. 7401–7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251–1387), as amended.

- A. If this Agreement is in excess of \$150,000 then the Subrecipient will comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401–7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251–1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

8. Debarment and Suspension (Executive Orders 12549 and 12689)

- A. A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- B. The Subrecipient represents and warrants that the Subrecipient is not listed in SAM. The Subrecipient will not enter into agreements under this Agreement with parties listed in SAM.

9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)

- A. Subrecipient will comply with 31 U.S.C. 1352. Subrecipient will file with the City a certification regarding lobbying.
- B. Subrecipient will require Contractors to comply with 31 U.S.C. 1352. Subrecipient will require Contractors that apply or bid for an award exceeding \$100,000 to file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

10. Procurement of recovered materials.

- A. If applicable, Subrecipient will comply with 2 C.F.R. § 200.323.
- B. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

11. Prohibition on certain telecommunications and video surveillance services or equipment.

- A. If applicable, subrecipient will comply with 2 C.F.R. § 200.216
- B. Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:
 - (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services or systems that uses covered telecommunications

equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in [Public Law 115-232](#), section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

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

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

D. See Public Law 115-232, section 889 for additional information

E. See also [§ 200.471](#).

12. Domestic Preferences for Procurements.

A. If applicable, Subrecipient will comply with 2 C.F.R. § 200.322

B. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(1) For Purposes of this section:

- “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
- “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-

based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

13. DHS Seal, Logo, and Flags.

- A. The Subrecipient shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific federal awarding agency pre- approval.

14. Compliance with Federal Law, Regulations, and Executive Orders.

- A. This is an acknowledgement that FEMA financial assistance, CARES Funds, or other federal funds will be used to fund the contract only. The Subrecipient will comply will all applicable federal law, regulations, executive orders, federal awarding agency policies, procedures, and directives."

15. No Obligation by Federal Government.

- A. The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to subrecipient, contractor, or any other party pertaining to any matter resulting from the contract.

16. Program Fraud and False or Fraudulent Statements or Related Acts.

- A. The Subrecipient acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Subrecipient's actions pertaining to this contract

ATTACHMENT “D”
Granting Agency Requirements

Special Terms and Conditions

City of El Paso ("Recipient"), which is identified in Block 5 of the Assistance Agreement, and the Office of State and Community Energy Programs ("SCEP"), and Energy Efficiency and Conservation Block Grant Program ("EECBG"), an office within the United States Department of Energy ("DOE"), enter into this Award, referenced above, to achieve the project objectives and the technical milestones and deliverables stated in Attachment 1 to this Award.

This Award consists of the following documents, including all terms and conditions therein:

	Assistance Agreement
	Special Terms and Conditions
Attachment 1	Activity File
Attachment 2	Federal Assistance Reporting Checklist and Instructions
Attachment 3	Budget Information SF-424A
Attachment 4	Intellectual Property Provisions
Attachment 5	Energy Efficiency and Conservation Strategy

The following are incorporated into this Award by reference:

- DOE Assistance Regulations, 2 CFR part 200 as amended by 2 CFR part 910 at <http://www.eCFR.gov>.
- National Policy Requirements (November 12, 2020) at <http://www.nsf.gov/awards/managing/rtc.jsp>.
- The Recipient's application/proposal as approved by SCEP.
- Public Law 117-58, also known as the Bipartisan Infrastructure Law (BIL).

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Subpart A. General Provisions

Term 1. Legal Authority and Effect

A DOE financial assistance award is valid only if it is in writing and is signed, either in writing or electronically, by a DOE Contracting Officer.

The Recipient may accept or reject the Award. A request to draw down DOE funds or acknowledgement of award documents by the Recipient's authorized representative through electronic systems used by DOE, specifically FedConnect, constitutes the Recipient's acceptance of the terms and conditions of this Award. Acknowledgement via FedConnect by the Recipient's authorized representative constitutes the Recipient's electronic signature.

Term 2. Flow Down Requirement

The Recipient agrees to apply the terms and conditions of this Award, including the Intellectual Property Provisions, to all subrecipients (and contractors, as appropriate). See, 2 CFR 200.101(b)(2), 2 CFR 200.327, and 2 CFR 200.332.

Term 3. Compliance with Federal, State, and Municipal Law

The Recipient is required to comply with applicable Federal, state, and local laws and regulations for all work performed under this Award. The Recipient is required to obtain all necessary Federal, state, and local permits, authorizations, and approvals for all work performed under this Award.

Term 4. Inconsistency with Federal Law

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this Award must be referred to the DOE Award Administrator for guidance.

Term 5. Federal Stewardship

SCEP will exercise normal Federal stewardship in overseeing the project activities performed under this Award. Stewardship activities include, but are not limited to, conducting site visits; reviewing performance and financial reports; providing technical assistance and/or temporary intervention in unusual circumstances to address deficiencies that develop during the project; assuring compliance with terms and conditions; and reviewing technical performance after project completion to ensure that the project objectives have been accomplished.

Term 6. Foreign National Participation

If the Recipient (including any of its subrecipients and contractors) anticipates involving foreign nationals in the performance of the Award, the Recipient must, upon DOE's request, provide DOE with specific information about each foreign national to ensure compliance with the requirements for participation and access approval. The volume and type of information required may depend on various factors associated with the Award. The DOE Contracting

Officer will notify the Recipient if this information is required.

DOE may elect to deny a foreign national's participation in the Award. Likewise, DOE may elect to deny a foreign national's access to a DOE sites, information, technologies, equipment, programs or personnel.

Term 7. Post-Award Due Diligence Reviews

During the life of the Award, DOE may conduct ongoing due diligence reviews, through Government resources, to identify potential risks of undue foreign influence. In the event, a risk is identified, DOE may require risk mitigation measures, including but not limited to, requiring an individual or entity not participate in the Award.

Term 8. NEPA Requirements

DOE must comply with the National Environmental Policy Act (NEPA) prior to authorizing the use of Federal funds. Based on all information provided by the Recipient, SCEP has made a NEPA determination by issuing a categorical exclusion (CX) for all activities listed in the Activity File approved by the Contracting Officer and the DOE NEPA Determination. The Recipient is thereby authorized to use Federal funds for the defined project activities, subject the Recipient's compliance with the conditions stated below and except where such activity is subject to a restriction set forth elsewhere in this Award.

Condition(s):

1. This NEPA Determination only applies to activities funded by the Administrative and Legal Requirements Document (ALRD) for the EECBG Program Formula Infrastructure Investment and Jobs Act (EECBG Formula - IIJA) which are awarded to non-tribal recipients proposing projects with potential ground disturbing activities within states that have a DOE executed Historic Preservation Programmatic Agreement.
2. Activities not listed under "Blueprints and additional activities" within this NEPA determination are subject to additional NEPA review and approval by DOE. For activities requiring additional NEPA review, Recipients must complete the environmental questionnaire (EQ-1) found at <https://www.eere-pmc.energy.gov/NEPA.aspx> and receive notification from DOE that the NEPA review has been completed and approved by the Contracting Officer prior to initiating the project or activities.
3. Activities proposed on tribal lands or tribal properties would be restricted to homes/buildings less than forty-five (45) years old and without ground disturbance. Recipients must contact their DOE Project Officer for a Historic Preservation Worksheet to request a review of activities that are listed below on tribal homes/buildings forty-five (45) years and older and/or ground disturbing activities. The DOE NEPA team must review the Historic Preservation Worksheet and notify the Recipient's DOE Project Officer before activities listed on the Historic Preservation Worksheet may begin.
4. This authorization does not include activities where the following elements exist:

extraordinary circumstances; cumulative impacts or connected actions that may lead to significant effects on the human environment; or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to a particular project.

5. The Recipient must identify and promptly notify DOE of extraordinary circumstances, cumulative impacts or connected actions that may lead to significant effects on the human environment, or any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to project activities.
6. Recipients must have a DOE executed Historic Preservation Programmatic Agreement and adhere to the terms and restrictions of its DOE executed Historic Preservation Programmatic Agreement. DOE executed Historic Preservation Programmatic Agreements are available at <https://www.energy.gov/node/812599>.
7. Recipients are responsible for reviewing the online NEPA and Historic preservation training at www.energy.gov/node/4816816 and contacting EECBG.NEPA@ee.doe.gov with any EECBG NEPA or historic preservation questions.
8. Recipients are required to submit an annual Historic Preservation Report in the Performance and Accountability for Grants in Energy system (PAGE) at <https://www.page.energy.gov/default.aspx>.
9. Recipients are required to submit quarterly reports in the form of a NEPA Log. Sample NEPA Logs can be found at: www.energy.gov/node/4816816. NEPA Logs must be submitted to EECBG.NEPA@ee.doe.gov and your DOE Project Officer.
10. Most activities listed under "Blueprints and additional activities" within this NEPA determination are more restrictive than the Categorical Exclusion. The restrictions included in the "Blueprints and additional activities" must be followed.
11. This authorization excludes any activities that are otherwise subject to a restriction set forth elsewhere in the Award.

This authorization is specific to the project activities and locations as described in the Activity File approved by the Contracting Officer and the DOE NEPA Determination.

If the Recipient later intends to add to or modify the activities or locations as described in the approved Activity File and the DOE NEPA Determination, those new activities/locations or modified activities/locations are subject to additional NEPA review and are not authorized for Federal funding until the Contracting Officer provides written authorization on those additions or modifications. Should the Recipient elect to undertake activities or change locations prior to written authorization from the Contracting Officer, the Recipient does so at risk of not receiving Federal funding for those activities, and such costs may not be recognized as allowable cost share.

Term 9. Performance of Work in United States

A. Requirement

All work performed under this Award must be performed in the United States unless the Contracting Officer provides a waiver. This requirement does not apply to the purchase of supplies and equipment; however, the Recipient should make every effort to purchase supplies and equipment within the United States. The Recipient must flow down this requirement to its subrecipients.

B. Failure to Comply

If the Recipient fails to comply with the Performance of Work in the United States requirement, the Contracting Officer may deny reimbursement for the work conducted outside the United States and such costs may not be recognized as allowable Recipient cost share of if the work is performed by the Recipient, subrecipients, contractors or other project partners.

C. Waiver for Work Outside the U.S.

All work performed under this Award must be performed in the United States. However, the Contracting Officer may approve the Recipient to perform a portion of the work outside the United States under limited circumstances. The Recipient must obtain a waiver from the Contracting Officer prior to conducting any work outside the U.S. To request a waiver, the Recipient must submit a written waiver request to the Contracting Officer, which includes the information as required in the FOA that the Award was selected under.

For the rationale, the Recipient must demonstrate to the satisfaction of the Contracting Officer that the performance of work outside the United States would further the purposes of the FOA that the Award was selected under and is in the economic interests of the United States. The Contracting Officer may require additional information before considering such request.

Term 10. Notice Regarding the Purchase of American-Made Equipment and Products – Sense of Congress

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this Award should be American-made.

Term 11. Reporting Requirements

The reporting requirements for this Award are identified on the Federal Assistance Reporting Checklist, attached to this Award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the Award. Noncompliance may result in withholding of future payments, suspension, or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by federal agencies.

Term 12. Lobbying

By accepting funds under this Award, the Recipient agrees that none of the funds obligated on

the Award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. § 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

Term 13. Publications

The Recipient is required to include the following acknowledgement in publications arising out of, or relating to, work performed under this Award, whether copyrighted or not:

- *Acknowledgment:* “This material is based upon work supported by the U.S. Department of Energy’s Office of State and Community Energy Programs (SCEP) under the Energy Efficiency and Conservation Block Grant Program (EECBG) Award Number DE-SE0000591.”
- *Full Legal Disclaimer:* “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

Abridged Legal Disclaimer: “The views expressed herein do not necessarily represent the views of the U.S. Department of Energy or the United States Government.”

Recipients should make every effort to include the full Legal Disclaimer. However, in the event that recipients are constrained by formatting and/or page limitations set by the publisher, the abridged Legal Disclaimer is an acceptable alternative.

Term 14. No-Cost Extension

As provided in 2 CFR 200.308, the Recipient must provide the Contracting Officer with notice in advance if it intends to utilize a one-time, no-cost extension of this Award. The notification must include the supporting reasons and the revised period of performance. The Recipient must submit this notification in writing to the Contracting Officer and DOE Technology Manager/ Project Officer at least 30 days before the end of the current budget period.

Any no-cost extension will not alter the project scope, milestones, deliverables, or budget of this Award.

Term 15. Property Standards

The complete text of the Property Standards can be found at 2 CFR 200.310 through 200.316. Also see 2 CFR 910.360 for additional requirements for real property and equipment for For-Profit recipients.

Term 16. Insurance Coverage

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds. Also see 2 CFR 910.360(d) for additional requirements for real property and equipment for For-Profit recipients.

Term 17. Real Property

Subject to the conditions set forth in 2 CFR 200.311, title to real property acquired or improved under a Federal award will conditionally vest upon acquisition in the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.311 before disposing of the property.

Except as otherwise provided by Federal statutes or by the Federal awarding agency, real property will be used for the originally authorized purpose as long as needed for that purpose. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity. The instructions must provide for one of the following alternatives: (1) retain title after compensating DOE as described in 2 CFR 200.311(c)(1); (2) Sell the property and compensate DOE as specified in 2 CFR 200.311(c)(2); or (3) transfer title to DOE or to a third party designated/approved by DOE as specified in 2 CFR 200.311(c)(3).

See 2 CFR 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award. Also see 2 CFR 910.360 for additional requirements for real property for For-Profit recipients.

Term 18. Equipment

Subject to the conditions provided in 2 CFR 200.313, title to equipment (property) acquired under a Federal award will conditionally vest upon acquisition with the non-Federal entity. The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR 200.313 before disposing of the property.

A state must use equipment acquired under a Federal award by the state in accordance with state laws and procedures.

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal award. When no longer needed for the originally authorized purpose,

the equipment may be used by programs supported by DOE in the priority order specified in 2 CFR 200.313(c)(1)(i) and (ii).

Management requirements, including inventory and control systems, for equipment are provided in 2 CFR 200.313(d).

When equipment acquired under a Federal award is no longer needed, the non-Federal entity must obtain disposition instructions from DOE or pass-through entity.

Disposition will be made as follows: (1) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to DOE; (2) Non-Federal entity may retain title or sell the equipment after compensating DOE as described in 2 CFR 200.313(e)(2); or (3) transfer title to DOE or to an eligible third party as specified in 2 CFR 200.313(e)(3).

See 2 CFR 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR 910.360 for additional requirements for equipment for For-Profit recipients. See also 2 CFR 200.439 Equipment and other capital expenditures.

Term 19. Supplies

See 2 CFR 200.314 for requirements pertaining to supplies acquired under a Federal award. See also 2 CFR 200.453 Materials and supplies costs, including costs of computing devices.

Term 20. Continued Use of Real Property and Equipment

Real property and equipment purchased with project funds (federal share and recipient cost share) under this Award are subject to the requirements at 2 CFR 200.311, 200.313, and 200.316 (non-Federal entities, except for-profit entities) and 2 CFR 910.360 (for-profit entities). The Recipient may continue to use the real property and equipment after the conclusion of the award period of performance so long as the Recipient:

- a. continues to use the property for the authorized project purposes;
- b. complies with the applicable reporting requirements and regulatory property standards;
- c. as applicable to for-profit entities, UCC filing statements are maintained; and
- d. submits a written Request for Continued Use for DOE authorization, which is approved by the DOE Contracting Officer.

The Recipient must request authorization from the Contracting Officer to continue to use the property for the authorized project purposes beyond the award period of performance ("Request for Continued Use"). The Recipient's written Request for Continued Use must identify the property and include: a summary of how the property will be used (must align with the authorized project purposes); a proposed use period (e.g., perpetuity, until fully depreciated, or a calendar date where the Recipient expects to submit disposition instructions);

acknowledgement that the recipient shall not sell or encumber the property or permit any encumbrance without prior written DOE approval; current fair market value of the property; and an Estimated Useful Life or depreciation schedule for equipment.

When the property is no longer needed for authorized project purposes, the Recipient must request disposition instructions from DOE. For-profit entity disposition requirements are set forth at 2 CFR 910.360. Property disposition requirements for other non-federal entities are set forth in 2 CFR 200.310 – 200.316.

Term 21. Property Trust Relationship

Real property, equipment, and intangible property, that are acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. See 2 CFR 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

Term 22. Record Retention

Consistent with 2 CFR 200.334 through 200.338, the Recipient is required to retain records relating to this Award.

Term 23. Audits

A. Government-Initiated Audits

The Recipient must provide any information, documents, site access, or other assistance requested by SCEP, DOE or Federal auditing agencies (e.g., DOE Inspector General, Government Accountability Office) for the purpose of audits and investigations. Such assistance may include, but is not limited to, reasonable access to the Recipient's records relating to this Award.

Consistent with 2 CFR part 200 as amended by 2 CFR part 910, DOE may audit the Recipient's financial records or administrative records relating to this Award at any time. Government-initiated audits are generally paid for by DOE.

DOE may conduct a final audit at the end of the project period (or the termination of the Award, if applicable). Upon completion of the audit, the Recipient is required to refund to DOE any payments for costs that were determined to be unallowable. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

DOE will provide reasonable advance notice of audits and will minimize interference with ongoing work, to the maximum extent practicable.

B. Annual Independent Audits (Single Audit or Compliance Audit)

The Recipient must comply with the annual independent audit requirements in 2 CFR 200.500 through .521 for institutions of higher education, nonprofit organizations, and state and local governments (Single audit), and 2 CFR 910.500 through .521 for for-profit entities (Compliance audit).

The annual independent audits are separate from Government-initiated audits discussed in part A. of this Term and must be paid for by the Recipient. To minimize expense, the Recipient may have a Compliance audit in conjunction with its annual audit of financial statements. The financial statement audit is **not** a substitute for the Compliance audit. If the audit (Single audit or Compliance audit, depending on Recipient entity type) has not been performed or completed prior to the closeout of the award, DOE may impose one or more of the actions outlined in 2 CFR 200.339, Remedies for Noncompliance.

Term 24. Reserved

Subpart B. Financial Provisions

Term 25. Maximum Obligation

The maximum obligation of DOE for this Award is the total “Funds Obligated” stated in Block 13 of the Assistance Agreement to this Award.

Term 26. Refund Obligation

The Recipient must refund any excess payments received from SCEP, including any costs determined unallowable by the Contracting Officer. Upon the end of the project period (or the termination of the Award, if applicable), the Recipient must refund to SCEP the difference between (1) the total payments received from SCEP, and (2) the Federal share of the costs incurred. Refund obligations under this Term do not supersede the annual reconciliation or true up process if specified under the Indirect Cost Term.

Term 27. Allowable Costs

SCEP determines the allowability of costs through reference to 2 CFR part 200 as amended by 2 CFR part 910. All project costs must be allowable, allocable, and reasonable. The Recipient must document and maintain records of all project costs, including, but not limited to, the costs paid by Federal funds, costs claimed by its subrecipients and project costs that the Recipient claims as cost sharing, including in-kind contributions. The Recipient is responsible for maintaining records adequate to demonstrate that costs claimed have been incurred, are reasonable, allowable and allocable, and comply with the cost principles. Upon request, the Recipient is required to provide such records to SCEP. Such records are subject to audit. Failure to provide SCEP adequate supporting documentation may result in a determination by the Contracting Officer that those costs are unallowable.

The Recipient is required to obtain the prior written approval of the Contracting Officer for any foreign travel costs.

Term 28. Indirect Costs

A. Indirect Cost Allocation:

The budget for this Award does not include an allocation of segregated indirect billing rates. Therefore, indirect charges shall not be charged under allocated billing rates, nor shall reimbursement be requested for this project for segregated indirect cost billing rates, nor shall any indirect charges for this project be allocated to any other Federally sponsored project. The Recipient cannot claim indirect costs separately as cost share.

B. Fringe Cost Allocation:

Fringe benefit costs have been allocated to this award under a segregated fringe billing rate. The fringe costs were found to be reasonable, allocable, and allowable as reflected in the budget. Fringe elements apply to both direct and indirect labor. Under a segregated cost pool, the fringe billing rate shall be treated as an indirect cost expenditure and must be reconciled annually.

C. Subrecipient Indirect Costs (If Applicable):

The Recipient must ensure its subrecipient's indirect costs are appropriately managed, have been found to be allowable, and comply with the requirements of this Award and 2 CFR Part 200 as amended by 2 CFR Part 910.

D. Indirect Cost Stipulations:

i. Modification to Indirect Cost Billing Rates

SCEP will not modify this Award solely to provide additional funds to cover increases in the Recipient's indirect cost billing rate(s). Adjustments to the indirect cost billing rates must be approved by the Recipient's Cognizant Agency or Cognizant Federal Agency Official.

The Recipient must provide a copy of an updated NICRA or indirect rate proposal to the DOE Award Administrator in order to increase indirect cost billing rates. If the Contracting Officer provides prior written approval, the Recipient may incur an increase in the indirect cost billing rates. Reimbursement will be limited by the budgeted dollar amount for indirect costs for each budget period as shown in Attachment 3 to this Award.

ii. Award Closeout

The closeout of the DOE award does not affect (1) the right of the DOE to disallow costs and recover funds on the basis of a later audit or other review; (2) the requirement for the Recipient to return any funds due as a result of later refunds, corrections or other transactions including final indirect cost billing rate adjustments; and (3) the ability of the DOE to make financial adjustments to a previously closed award resolving indirect cost payments and making final payments.

Term 29. Decontamination and/or Decommissioning (D&D) Costs

Notwithstanding any other provisions of this Award, the Government shall not be responsible for or have any obligation to the Recipient for (1) Decontamination and/or Decommissioning (D&D) of any of the Recipient's facilities, or (2) any costs which may be incurred by the Recipient in connection with the D&D of any of its facilities due to the performance of the work under this Award, whether said work was performed prior to or subsequent to the effective date of the Award.

Term 30. Use of Program Income

If the Recipient earns program income during the project period as a result of this Award, the Recipient must add the program income to the funds committed to the Award and used to further eligible project objectives.

Term 31. Payment Procedures

A. Method of Payment

Payment will be made by reimbursement through the Department of Treasury's ASAP system.

B. Requesting Reimbursement

Requests for reimbursements must be made through the ASAP system.

C. Adjusting Payment Requests for Available Cash

The Recipient must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from SCEP.

D. Payments

All payments are made by electronic funds transfer to the bank account identified on the Bank Information Form that the Recipient filed with the U.S. Department of Treasury.

E. Unauthorized Drawdown of Federal Funds

For each budget period, the Recipient may not spend more than the Federal share authorized to that particular budget period, without specific written approval from the Contracting Officer. The Recipient must immediately refund SCEP any amounts spent or drawn down in excess of the authorized amount for a budget period. The Recipient and subrecipients shall promptly, but at least quarterly, remit to DOE interest earned on advances drawn in excess of disbursement needs, and shall comply with the procedure for remitting interest earned to the Federal government per 2 CFR 200.305, as applicable.

Term 32. Budget Changes

A. Budget Changes Generally

The Contracting Officer has reviewed and approved the SF-424A in Attachment 3 to this Award.

Any increase in the total project cost, whether DOE share or Cost Share, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award, must be approved in advance and in writing by the Contracting Officer.

Any change that alters the project scope, milestones or deliverables requires prior written approval of the Contracting Officer. SCEP may deny reimbursement for any failure to comply with the requirements in this term.

B. Transfers of Funds Among Direct Cost Categories

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds among direct cost categories where the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award.

The Recipient is required to notify the DOE Technology Manager/Project Officer of any transfer of funds among direct cost categories where the cumulative amount of such transfers is equal to or below 10 percent of the total project cost, which is stated as "Total" in Block 12 to the Assistance Agreement of this Award.

C. Transfer of Funds Between Direct and Indirect Cost Categories

The Recipient is required to obtain the prior written approval of the Contracting Officer for any transfer of funds between direct and indirect cost categories. If the Recipient's actual allowable indirect costs are less than those budgeted in Attachment 3 to this Award, the Recipient may use the difference to pay additional allowable direct costs during the project period so long as the total difference is less than 10% of total project costs and the difference is reflected in actual requests for reimbursement to DOE.

Subpart C. Miscellaneous Provisions

Term 33. Environmental, Safety and Health Performance of Work at DOE Facilities

With respect to the performance of any portion of the work under this Award which is performed at a DOE -owned or controlled site, the Recipient agrees to comply with all State and Federal Environmental, Safety and Health (ES&H) regulations and with all other ES&H requirements of the operator of such site.

Prior to the performance on any work at a DOE-owned or controlled site, the Recipient shall contact the site facility manager for information on DOE and site-specific ES&H requirements.

The Recipient is required apply this provision to its subrecipients and contractors.

Term 34. Reporting Subawards and Executive Compensation

A. Reporting of first-tier subawards

- i. *Applicability.* Unless the Recipient is exempt as provided in paragraph D. of this award term, the Recipient must report each action that equals or exceeds \$30,000 in federal funds for a subaward to an entity (see definitions in paragraph E. of this award term).
- ii. *Where and when to report.*
 1. The Recipient must report each obligating action described in paragraph A.i. of this award term to <https://www.fsrs.gov>.
 2. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7 the obligation must be reported no later than December 31.)
- iii. *What to report.* The Recipient must report the information about each obligating action that the submission instructions posted at <https://www.fsrs.gov> specify.

B. Reporting Total Compensation of Recipient Executives

- i. *Applicability and what to report.* The Recipient must report total compensation for each of its five most highly compensated executives for the

preceding completed fiscal year, if:

1. The total federal funding authorized to date under this Award equals or exceeds \$30,000 as defined in 2 CFR 170.320;
 2. In the preceding fiscal year, the Recipient received;
 - a. 80 percent or more of the Recipient's annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - b. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards).
 3. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>).
- ii. *Where and when to report.* The Recipient must report executive total compensation described in paragraph B.i. of this award term:
1. As part of the Recipient's registration profile at <https://www.sam.gov>.
 2. By the end of the month following the month in which this award is made, and annually thereafter.

C. Reporting of Total Compensation of Subrecipient Executives

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

- a. 80 percent or more of its annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - b. \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts), and federal financial assistance subject to the Transparency Act (and subawards).
2. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>).
- ii. *Where and when to report.* The Recipient must report subrecipient executive total compensation described in paragraph C.i. of this award term:
 1. To the recipient.
 2. By the end of the month following the month during which the Recipient makes the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and 31), the Recipient must report any required compensation information of the subrecipient by November 30 of that year.

D. Exemptions

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

- i. Subawards; and
- ii. The total compensation of the five most highly compensated executives of any subrecipient.

E. Definitions

For purposes of this Award term:

- i. Entity means all of the following, as defined in 2 CFR Part 25:

1. A Governmental organization, which is a State, local government, or Indian tribe.
 2. A foreign public entity.
 3. A domestic or foreign nonprofit organization.
 4. A domestic or foreign for-profit organization.
 5. A federal agency, but only as a subrecipient under an award or subaward to a non-federal entity.
- ii. Executive means officers, managing partners, or any other employees in management positions.
- iii. Subaward:
1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this award and that the recipient awards to an eligible subrecipient.
 2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
 3. A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.
- iv. Subrecipient means an entity that:
1. Receives a subaward from the Recipient under this award; and
 2. Is accountable to the Recipient for the use of the federal funds provided by the subaward.
- v. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
1. Salary and bonus.
 2. Awards of stock, stock options, and stock appreciation rights. Use the

dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.

3. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives and are available generally to all salaried employees.
4. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
5. Above-market earnings on deferred compensation which is not tax-qualified.
6. Other compensation, if the aggregate value of all such other compensation (*e.g.*, severance, termination payments, value of life insurance paid on behalf of the employee, prerequisites or property) for the executive exceeds \$10,000.

Term 35. System for Award Management and Universal Identifier Requirements

A. Requirement for Registration in the System for Award Management (SAM)

Unless the Recipient is exempted from this requirement under 2 CFR 25.110, the Recipient must maintain the currency of its information in SAM until the Recipient submits the final financial report required under this Award or receive the final payment, whichever is later. This requires that the Recipient reviews and updates the information at least annually after the initial registration, and more frequently if required by changes in its information or another award term.

B. Unique Entity Identifier (UEI)

SAM automatically assigns a UEI to all active SAM.gov registered entities. Entities no longer have to go to a third-party website to obtain their identifier. This information is displayed on SAM.gov.

If the Recipient is authorized to make subawards under this Award, the Recipient:

- i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its UEI number to the Recipient.

- ii. May not make a subaward to an entity unless the entity has provided its UEI number to the Recipient.

C. Definitions

For purposes of this award term:

- i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
- ii. Unique Entity Identifier (UEI) is the 12-character, alpha-numeric identifier that will be assigned by SAM.gov upon registration.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:
 - 1. A Governmental organization, which is a State, local government, or Indian Tribe.
 - 2. A foreign public entity.
 - 3. A domestic or foreign nonprofit organization.
 - 4. A domestic or foreign for-profit organization.
 - 5. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- iv. Subaward:
 - 1. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
 - 2. The term does not include the Recipient's procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.501 Audit requirements, (f) *Subrecipients and Contractors* and/or 2 CFR 910.501 Audit requirements, (f) *Subrecipients and Contractors*).
 - 3. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.
- v. Subrecipient means an entity that:

1. Receives a subaward from the Recipient under this Award; and
2. Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

Term 36. Nondisclosure and Confidentiality Agreements Assurances

- A. By entering into this agreement, the Recipient attests that it **does not and will not** require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
- B. The Recipient further attests that it **does not and will not** use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:
 - i. *“These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling.”*
 - ii. The limitation above shall 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.

Notwithstanding provision listed in paragraph (a), a nondisclosure or confidentiality policy form or agreement that is to be executed by a person connected with the conduct of an intelligence or intelligence-related activity, other than an employee or officer of the United States Government, may contain provisions appropriate to the particular activity for which such document is to be used. Such form or agreement shall, at a minimum, require that the person will not disclose any classified information received in the course of such activity unless specifically authorized to do so by the United States Government. Such nondisclosure or confidentiality forms shall also make it clear that they do not bar disclosures to Congress, or to an authorized official of an executive agency or the Department of Justice, that are essential to reporting a substantial violation of law.

Term 37. Subrecipient Change Notification

Except for subrecipients specifically proposed as part of the Recipient's Application for award, the Recipient must notify the Contracting Officer and Project Manager in writing 30 days prior to the execution of new or modified subrecipient agreements, including naming any To Be Determined subrecipients. This notification does not constitute a waiver of the prior approval requirements outlined in 2 CFR part 200 as amended by 2 CFR part 910, nor does it relieve the Recipient from its obligation to comply with applicable Federal statutes, regulations, and executive orders.

In order to satisfy this notification requirement, the Recipient documentation must, as a minimum, include the following:

- A description of the research to be performed, the service to be provided, or the equipment to be purchased.
- Cost share commitment letter if the subrecipient is providing cost share to the Award.
- An assurance that the process undertaken by the Recipient to solicit the subrecipient complies with their written procurement procedures as outlined in 2 CFR 200.317 through 200.327.
- An assurance that no planned, actual or apparent conflict of interest exists between the Recipient and the selected subrecipient and that the Recipient's written standards of conduct were followed.¹
- A completed Environmental Questionnaire, if applicable.
- An assurance that the subrecipient is not a debarred or suspended entity.
- An assurance that all required award provisions will be flowed down in the resulting subrecipient agreement.

The Recipient is responsible for making a final determination to award or modify subrecipient agreements under this agreement, but the Recipient may not proceed with the subrecipient agreement until the Contracting Officer determines, and provides the Recipient written notification, that the information provided is adequate.

Should the Recipient not receive a written notification of adequacy from the Contracting Officer within 30 days of the submission of the subrecipient documentation stipulated above, the Recipient may proceed to award or modify the proposed subrecipient agreement.

¹ It is DOE's position that the existence of a "covered relationship" as defined in 5 CFR 2635.502(a)&(b) between a member of the Recipient's owners or senior management and a member of a subrecipient's owners or senior management creates at a minimum an apparent conflict of interest that would require the Recipient to notify the Contracting Officer and provide detailed information and justification (including, for example, mitigation measures) as to why the subrecipient agreement does not create an actual conflict of interest. The Recipient must also notify the Contracting Officer of any new subrecipient agreement with: (1) an entity that is owned or otherwise controlled by the Recipient; or (2) an entity that is owned or otherwise controlled by another entity that also owns or otherwise controls the Recipient, as it is DOE's position that these situations also create at a minimum an apparent conflict of interest.

Term 38. Conference Spending

The Recipient shall not expend any funds on a conference not directly and programmatically related to the purpose for which the grant was awarded that would defray the cost to the United States Government of a conference held by any Executive branch department, agency, board, commission, or office for which the cost to the United States Government would otherwise exceed \$20,000, thereby circumventing the required notification by the head of any such Executive Branch department, agency, board, commission, or office to the Inspector General (or senior ethics official for any entity without an Inspector General), of the date, location, and number of employees attending such conference.

Term 39. Recipient Integrity and Performance Matters

A. General Reporting Requirement

If the total value of your currently active Financial Assistance awards, grants, 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 term. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

B. Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five-year period; and
- iii. Is one of the following:
 1. A criminal proceeding that resulted in a conviction, as defined in paragraph E of this award term and condition;
 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 paragraph E of this term, 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
 4. Any other criminal, civil, or administrative proceeding if:

- a. It could have led to an outcome described in paragraph B.iii.1, 2, or 3 of this term;
- b. It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
- c. The requirement in this term to disclose information about the proceeding does not conflict with applicable laws and regulations.

C. Reporting Procedures

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

D. Reporting Frequency

During any period of time when you are subject to the requirement in paragraph A of this term, 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, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

E. Definitions

For purposes of this term:

- i. 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 Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. 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*.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements and procurement contracts includes—
 - 1. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and

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

Term 40. Export Control

The United States government regulates the transfer of information, commodities, technology, and software considered to be strategically important to the U.S. to protect national security, foreign policy, and economic interests without imposing undue regulatory burdens on legitimate international trade. There is a network of Federal agencies and regulations that govern exports that are collectively referred to as “Export Controls.” The Recipient is responsible for ensuring compliance with all applicable United States Export Control laws and regulations relating to any work performed under a resulting award.

The Recipient must immediately report to DOE any export control violations related to the project funded under this award, at the recipient or subrecipient level, and provide the corrective action(s) to prevent future violations.

Term 41. Interim Conflict of Interest Policy for Financial Assistance

The DOE interim Conflict of Interest Policy for Financial Assistance (COI Policy) can be found at <https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirements-financial-assistance>. This policy is applicable to all non-federal entities applying for, or that receive, DOE funding by means of a financial assistance award (e.g., a grant, cooperative agreement, or technology investment agreement) and, through the implementation of this policy by the entity, to each Investigator who is planning to participate in, or is participating in, the project funded wholly or in part under this Award. The term “Investigator” means the PI and any other person, regardless of title or position, who is responsible for the purpose, design, conduct, or reporting of a project funded by DOE or proposed for funding by DOE.

The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-federal entities, with the exception of DOE National Laboratories. Further, the Recipient must identify all financial conflicts of interests (FCOI), i.e., managed and unmanaged/unmanageable, in its initial and ongoing FCOI reports.

Prior to award, the Recipient was required to: 1) ensure all Investigators on this Award completed their significant financial disclosures; 2) review the disclosures; 3) determine whether a FCOI exists; 4) develop and implement a management plan for FCOIs; and 5) provide DOE with an initial FCOI report that includes all FCOIs (i.e., managed and unmanaged/unmanageable). Within 180 days of the date of the Award, the Recipient must be in full compliance with the other requirements set forth in DOE’s interim COI Policy.

Term 42. Organizational Conflict of Interest

Organizational conflicts of interest are those where, because of relationships with a parent company, affiliate, or subsidiary organization, the Recipient is unable or appears to be unable to

be impartial in conducting procurement action involving a related organization (2 CFR 200.318(c)(2)).

The Recipient must disclose in writing any potential or actual organizational conflict of interest to the DOE Contracting Officer. The Recipient must provide the disclosure prior to engaging in a procurement or transaction using project funds with a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe. For a list of the information that must be included the disclosure, see Section VI. of the DOE interim Conflict of Interest Policy for Financial Assistance at <https://www.energy.gov/management/departments-energy-interim-conflict-interest-policy-requirements-financial-assistance>.

If the effects of the potential or actual organizational conflict of interest cannot be avoided, neutralized, or mitigated, the Recipient must procure goods and services from other sources when using project funds. Otherwise, DOE may terminate the Award in accordance with 2 CFR 200.340 unless continued performance is determined to be in the best interest of the Federal government.

The Recipient must flow down the requirements of the interim COI Policy to any subrecipient non-Federal entities, with the exception of DOE National Laboratories. The Recipient is responsible for ensuring subrecipient compliance with this term.

If the Recipient has a parent, affiliate, or subsidiary organization that is not a state, local government, or Indian tribe, the Recipient must maintain written standards of conduct covering organizational conflicts of interest.

Term 43. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment

As set forth in 2 CFR 200.216, recipients and subrecipients are prohibited from obligating or expending project funds (Federal and non-Federal funds) to:

- (1) Procure or obtain;
 - (2) Extend or renew a contract to procure or obtain; or
 - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video

surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.

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

Term 44. Human Subjects Research

Research involving human subjects, biospecimens, or identifiable private information conducted with Department of Energy (DOE) funding is subject to the requirements of DOE Order 443.1C, *Protection of Human Research Subjects*, 45 CFR Part 46, *Protection of Human Subjects (subpart A which is referred to as the "Common Rule")*, and 10 CFR Part 745, *Protection of Human Subjects*.

Federal regulation and the DOE Order require review by an Institutional Review Board (IRB) of all proposed human subjects research projects. The IRB is an interdisciplinary ethics board responsible for ensuring that the proposed research is sound and justifies the use of human subjects or their data; the potential risks to human subjects have been minimized; participation is voluntary; and clear and accurate information about the study, the benefits and risks of participating, and how individuals' data/specimens will be protected/used, is provided to potential participants for their use in determining whether or not to participate.

The Recipient shall provide the Federal Wide Assurance number identified in item 1 below and the certification identified in item 2 below to DOE prior to initiation of any project that will involve interactions with humans in some way (e.g., through surveys); analysis of their identifiable data (e.g., demographic data and energy use over time); asking individuals to test devices, products, or materials developed through research; and/or testing of commercially available devices in buildings/homes in which humans will be present. *Note:* This list of examples is illustrative and not all inclusive.

No DOE funded research activity involving human subjects, biospecimens, or identifiable private information shall be conducted without:

- 1) A registration and a Federal Wide Assurance of compliance accepted by the Office of Human Research Protection (OHRP) in the Department of Health and Human Services; and
- 2) Certification that the research has been reviewed and approved by an Institutional Review Board (IRB) provided for in the assurance. IRB review may be accomplished by the awardee's institutional IRB; by the Central DOE IRB; or if collaborating with one of the DOE national laboratories, by the DOE national laboratory IRB.

The Recipient is responsible for ensuring all subrecipients comply and for reporting information on the project annually to the DOE Human Subjects Research Database (HSRD) at <https://science.osti.gov/HumanSubjects/Human-Subjects-Database/home>. *Note:* If a DOE IRB is used, no end of year reporting will be needed.

Additional information on the DOE Human Subjects Research Program can be found at: <https://science.osti.gov/ber/human-subjects>

Term 45. Fraud, Waste and Abuse

The mission of the DOE Office of Inspector General (OIG) is to strengthen the integrity, economy and efficiency of DOE's programs and operations including deterring and detecting fraud, waste, abuse and mismanagement. The OIG accomplishes this mission primarily through investigations, audits, and inspections of Department of Energy activities to include grants, cooperative agreements, loans, and contracts. The OIG maintains a Hotline for reporting allegations of fraud, waste, abuse, or mismanagement. To report such allegations, please visit <https://www.energy.gov/ig/ig-hotline>.

Additionally, the Recipient must be cognizant of the requirements of 2 CFR § 200.113 Mandatory disclosures, which states:

The non-Federal entity or applicant for a Federal award must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that have received a Federal award including the term and condition outlined in appendix XII of 2 CFR Part 200 are required to report certain civil, criminal, or administrative proceedings to SAM (currently FAPIIS). Failure to make required disclosures can result in any of the remedies described in § 200.339. (See also 2 CFR part 180, 31 U.S.C. 3321, and 41 U.S.C. 2313.)

Term 46. Buy American Requirement for Infrastructure Projects

A. Definitions

Components are defined as the articles, materials, or supplies incorporated directly into the end manufactured product(s).

Construction Materials are an article, material, or supply—other than an item primarily of iron or steel; a manufactured product; cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives—that is used in an infrastructure project and is or consists primarily of non-ferrous metals, plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables), glass (including optic glass), lumber, drywall, coatings (paints and stains), optical fiber, clay brick; composite building materials; or engineered wood products.

Domestic Content Procurement Preference Requirement- means a requirement that no amounts made available through a program for federal financial assistance may be obligated for an infrastructure project unless—

- (A) all iron and steel used in the project are produced in the United States;
- (B) the manufactured products used in the project are produced in the United States; or
- (C) the construction materials used in the project are produced in the United States.

Also referred to as the **Buy America Requirement**.

Infrastructure includes, at a minimum, the structures, facilities, and equipment located in the United States, 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 generation, transportation, and distribution of energy - including electric vehicle (EV) charging.

The term “infrastructure” should be interpreted broadly, and the definition provided above should be considered as illustrative and not exhaustive.

Manufactured Products are items used for an infrastructure project made up of components that are not primarily of iron or steel; construction materials; cement and cementitious materials’

aggregates such as stone, sand, or gravel; or aggregate binding agents or additives.

Primarily of iron or steel means greater than 50% iron or steel, measured by cost.

Project- means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Public- The Buy America Requirement does not apply to non-public infrastructure. For purposes of this guidance, infrastructure should be considered “public” if it is: (1) publicly owned or (2) privately owned but utilized primarily for a public purpose. Infrastructure should be considered to be “utilized primarily for a public purpose” if it is privately operated on behalf of the public or is a place of public accommodation.

B. Buy America Requirement

None of the funds provided under this Award (federal share or recipient cost-share) may be used for a project for infrastructure unless:

1. All iron and steel used in the project is 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 for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; 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 Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently

affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement 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.

Recipients are responsible for administering their award in accordance with the terms and conditions, including the Buy America Requirement. The recipient must ensure that the Buy America Requirement flows down to all subawards and that the subawardees and subrecipients comply with the Buy America Requirement. The Buy America Requirement term and condition must be included all sub-awards, contracts, subcontracts, and purchase orders for work performed under the infrastructure project.

C. Certification of Compliance

The Recipient must certify or provide equivalent documentation for proof of compliance that a good faith effort was made to solicit bids for domestic products used in the infrastructure project under this Award.

The Recipient must also maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States. The certification or proof of compliance must be provided by the suppliers or manufacturers of the iron, steel, manufactured products and construction materials and flow up from all subawardees, contractors and contractors to the Recipient. The Recipient must keep these certifications with the award/project files and be able to produce them upon request from DOE, auditors or Office of Inspector General.

D. Waivers

When necessary, the Recipient may apply for, and DOE may grant, a waiver from the Buy America Requirement. Requests to waive the application of the Buy America Requirement must be in writing to the Contracting Officer. Waiver requests are subject to review by DOE and the Office of Management and Budget, as well as a public comment period of no less than 15 calendar days.

Waivers must be based on one of the following justifications:

1. Public Interest- Applying the Buy America Requirement would be inconsistent with the public interest;
2. Non-Availability- 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. Unreasonable Cost- 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.

Requests to waive the Buy America Requirement must include the following:

- Waiver type (Public Interest, Non-Availability, or Unreasonable Cost);
- Recipient name and Unique Entity Identifier (UEI);
- Award information (Federal Award Identification Number, Assistance Listing number);
- A brief description of the project, its location, and the specific infrastructure involved;
- Total estimated project cost, with estimated federal share and recipient cost share breakdowns;
- Total estimated infrastructure costs, with estimated federal share and recipient cost share breakdowns;
- List and description of iron or steel item(s), manufactured goods, and/or construction material(s) the recipient seeks to waive from the Buy America Preference, including name, cost, quantity(ies), country(ies) of origin, and relevant Product Service Codes (PSC) and North American Industry Classification System (NAICS) codes for each;
- A detailed justification as to how the non-domestic item(s) is/are essential the project;
- A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and non-proprietary communications with potential suppliers;

- A justification statement—based on one of the applicable justifications outlined above—as to why the listed items cannot be procured domestically, including the due diligence performed (e.g., market research, industry outreach, cost analysis, cost-benefit analysis) by the recipient to attempt to avoid the need for a waiver. This justification may cite, if applicable, the absence of any Buy America-compliant bids received for domestic products in response to a solicitation; and
- Anticipated impact to the project if no waiver is issued.

The Recipient should consider using the following principles as minimum requirements contained in their waiver request:

- Time-limited: Consider a waiver constrained principally by a length of time, rather than by the specific project/award to which it applies. Waivers of this type may be appropriate, for example, when an item that is “non-available” is widely used in the project. When requesting such a waiver, the Recipient should identify a reasonable, definite time frame (e.g., no more than one to two years) designed so that the waiver is reviewed to ensure the condition for the waiver (“non-availability”) has not changed (e.g., domestic supplies have become more available).
- Targeted: Waiver requests should apply only to the item(s), product(s), or material(s) or category(ies) of item(s), product(s), or material(s) as necessary and justified. Waivers should not be overly broad as this will undermine domestic preference policies.
- Conditional: The Recipient may request a waiver with specific conditions that support the policies of IIJA/BABA and Executive Order 14017.

DOE may request, and the Recipient must provide, additional information for consideration of this waiver. DOE may reject or grant waivers in whole or in part depending on its review, analysis, and/or feedback from OMB or the public. DOE's final determination regarding approval or rejection of the waiver request may not be appealed. Waiver requests may take up to 90 calendar days to process.

All federally assisted construction contracts exceeding \$10,000 annually will be subject to the requirements of Executive Order 11246:

- (1) Recipients, subrecipients, and contractors are prohibited from discriminating in employment decisions on the basis of race, color, religion, sex, sexual orientation, gender identity or national origin.
- (2) Recipients and Contractors are required to take affirmative action to ensure that equal opportunity is provided in all aspects of their employment. This includes flowing down the appropriate language to all subrecipients, contractors and subcontractors.
- (3) Recipients, subrecipients, contractors and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

The Department of Labor's (DOL) Office of Federal Contractor Compliance Programs (OFCCP) uses a neutral process to schedule contractors for compliance evaluations. OFCCP's Technical Assistance Guide² should be consulted to gain an understanding of the requirements and possible actions the recipients, subrecipients, contractors and subcontractors must take.

Term 48. Potentially Duplicative Funding Notice

If the Recipient or subrecipients have or receive any other award of federal funds for activities that potentially overlap with the activities funded under this Award, the Recipient must promptly notify DOE in writing of the potential overlap and state whether project funds (i.e., recipient cost share and federal funds) from any of those other federal awards have been, are being, or are to be used (in whole or in part) for one or more of the identical cost items under this Award. If there are identical cost items, the Recipient must promptly notify the DOE Contracting Officer in writing of the potential duplication and eliminate any inappropriate duplication of funding.

Term 49. Transparency of Foreign Connections

During the term of the Award, the Recipient must notify the DOE Contracting Officer within fifteen (15) business days of learning of the following circumstances in relation to the Recipient or subrecipients:

² See OFCCP's Technical Assistance Guide at: <https://www.dol.gov/sites/dolgov/files/ofccp/Construction/files/ConstructionTAG.pdf?msclkid=9e397d68c4b111ec9d8e6fecb6c710ec> Also see the National Policy Assurances <http://www.nsf.gov/awards/managing/rtc.jsp>

1. The existence of any joint venture or subsidiary that is based in, funded by, or has a foreign affiliation with any foreign country of risk;
2. Any current or pending contractual or financial obligation or other agreement specific to a business arrangement, or joint venture-like arrangement with an enterprise owned by a country of risk or foreign entity based in a country of risk;
3. Any current or pending change in ownership structure of the Recipient or subrecipients that increases foreign ownership related to a country of risk;
4. Any current or pending venture capital or institutional investment by an entity that has a general partner or individual holding a leadership role in such entity who has a foreign affiliation with any foreign country of risk;
5. Any current or pending technology licensing or intellectual property sales to a foreign country of risk; and
6. Any current or pending foreign business entity, offshore entity, or entity outside the United States related to the Recipient or subrecipient.

Term 50. Foreign Collaboration Considerations

- a. Consideration of new collaborations with foreign organizations and governments. The Recipient must provide DOE with advanced written notification of any potential collaboration with foreign entities, organizations or governments in connection with its DOE-funded award scope. The Recipient must await further guidance from DOE prior to contacting the proposed foreign entity, organization or government regarding the potential collaboration or negotiating the terms of any potential agreement.
- b. Existing collaborations with foreign entities, organizations and governments. The Recipient must provide DOE with a written list of all existing foreign collaborations in which has entered in connection with its DOE-funded award scope.
- c. Description of collaborations that should be reported: In general, a collaboration will involve some provision of a thing of value to, or from, the Recipient. A thing of value includes but may not be limited to all resources made available to, or from, the recipient in support of and/or related to the Award, regardless of whether or not they have monetary value. Things of value also may include in-kind contributions (such as office/laboratory space, data, equipment, supplies, employees, students). In-kind contributions not intended for direct use on the Award but resulting in provision of a thing of value from or to the Award must also be reported. Collaborations do not include routine workshops, conferences, use of the Recipient's services and facilities by foreign investigators resulting from its standard published

process for evaluating requests for access, or the routine use of foreign facilities by awardee staff in accordance with the Recipient's standard policies and procedures.

Subpart D. Award-Specific Provisions

Term 51. Reporting, Tracking and Segregation of Incurred Costs

BIL funds can be used in conjunction with other funding, as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the BIL and related Office of Management and Budget (OMB) Guidance. The Recipient must keep separate records for BIL funds and must ensure those records comply with the requirements of the BIL.

Term 52. Davis-Bacon Requirements

This Award is funded under Division D of the Bipartisan Infrastructure Law (BIL). All laborers and mechanics employed by the recipient, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2,000 on an award funded directly by or assisted in whole or in part by funds made available under this Award shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the "Davis-Bacon Act" (DBA).

Recipients shall provide written assurance acknowledging the DBA requirements for the Award and confirming that all of the laborers and mechanics performing construction, alteration, or repair work in excess of \$2,000 funded directly by or assisted in whole or in part by the Award are paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act).

The Recipient must comply with all Davis-Bacon Act requirements, including but not limited to:

- (1) ensuring that the wage determination(s) and appropriate Davis-Bacon clauses and requirements are flowed down to and incorporated into any applicable subcontracts or subrecipient awards.
- (2) being responsible for compliance by any subcontractor or subrecipient with the Davis-Bacon labor standards.
- (3) receiving and reviewing certified weekly payrolls submitted by all subcontractors and subrecipients for accuracy and to identify potential compliance issues.
- (4) maintaining original certified weekly payrolls for 3 years after the completion of the project and must make those payrolls available to the DOE or the Department of Labor upon request, as required by 29 CFR 5.6(a)(2).

- (5) conducting payroll and job-site reviews for construction work, including interviews with employees, with such frequency as may be necessary to assure compliance by its subcontractors and subrecipients and as requested or directed by the DOE.
- (6) cooperating with any authorized representative of the Department of Labor in their inspection of records, interviews with employees, and other actions undertaken as part of a Department of Labor investigation.
- (7) posting in a prominent and accessible place the wage determination(s) and Department of Labor Publication: WH-1321, Notice to Employees Working on Federal or Federally Assisted Construction Projects.
- (8) notifying the Contracting Officer of all labor standards issues, including all complaints regarding incorrect payment of prevailing wages and/or fringe benefits, received from the recipient, subrecipient, contractor, or subcontractor employees; significant labor standards violations, as defined in 29 CFR 5.7; disputes concerning labor standards pursuant to 29 CFR parts 4, 6, and 8 and as defined in FAR 52.222-14; disputed labor standards determinations; Department of Labor investigations; or legal or judicial proceedings related to the labor standards under this Contract, a subcontract, or subrecipient award.
- (9) preparing and submitting to the Contracting Officer, the Office of Management and Budget Control Number 1910-5165, Davis Bacon Semi-Annual Labor Compliance Report, by April 21 and October 21 of each year. Form submittal will be administered through the iBenefits system (<https://doeibenefits2.energy.gov>) or its successor system.

The Recipient must complete Davis-Bacon Act compliance training and must maintain competency in Davis-Bacon Act compliance. The Contracting Officer will notify the Recipient of any DOE sponsored Davis-Bacon Act compliance trainings. The Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.

The Department of Energy has contracted with, a third-party DBA electronic payroll compliance software application. Once operable, the Recipient must ensure the timely electronic submission of weekly certified payrolls as part of its compliance with the Davis-Bacon Act unless a waiver is granted to the Recipient or a particular contractor or subcontractor because they are unable or limited in their ability to use or access the software.

Davis Bacon Act Electronic Certified Payroll Submission Waiver

A waiver must be granted before the Award starts. The applicant does not have the right to appeal DOE's decision concerning a waiver request.

For additional guidance on how to comply with the Davis-Bacon provisions and clauses, see <https://www.dol.gov/agencies/whd/government-contracts/construction> and <https://www.dol.gov/agencies/whd/government-contracts/protections-for-workers-in-construction>.

Term 53. Signage

The Recipient is encouraged to display DOE standard infrastructure investment signage, available for download from DOE (<https://www.energy.gov/branding>), during construction of the project. Expenditures for such signage shall be a permitted eligible cost of the project.

ATTACHMENT “E”
[Department to provide only if needed.]