



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

JOHN J. BARTHELMES
COMMISSIONER

57 Jan

January 13, 2016

Her Excellency, Governor Margaret Wood Hassan
and the Honorable Council
State House
Concord, New Hampshire 03301

Retroactive

Requested Action

Authorize the Department of Safety to **retroactively** exercise the first of seven (7) four-year automatic renewals of a Memorandum of Operation and Maintenance Agreement (MOMA) with the Department of Transportation (DOT), Department of Resources and Economic Development (DRED), the Adjutant General (TAG), and New Hampshire Public Broadcasting, Inc. (NHPTV) for the purpose of establishing and defining the roles, responsibilities, and expectations of the aforementioned parties to operate and maintain the shared microwave system known as the NHSafeNet. This agreement was originally approved by Governor and Council on October 3, 2012, item #65A. Effective upon Governor and Executive Council approval for the period from October 3, 2014, through October 3, 2018, contingent upon funding availability and legislative appropriation, with Governor and Executive Council approval.

Explanation

This request is **retroactive** because due to the automatic renewal terms of the approved Memorandum of Operation and Maintenance Agreement (section 3.2 of the attached document) the Department of Safety did not know an additional request to Governor and Council was needed for each of those renewal periods. This request is to continue the Memorandum of Operation and Maintenance Agreement (MOMA) as it establishes and defines the roles and responsibilities necessary to meet the requirements of a Memorandum of Agreement (MOA) originally submitted by DRED and approved by the Governor and Executive Council on March 16, 2011, item #56 (Appendix A of the attached document). This MOMA is related to the receipt of federal funding by the University System of New Hampshire to enhance broadband communication capabilities for all four (4) agencies and NHPTV. The MOMA delineates the responsibilities of each party related to the operations and maintenance of the shared microwave system, NHSafeNet. Funding for this project is the responsibility of each of the parties. The initial term of this agreement was for two (2) years, which ended October 3, 2014, with seven (7) automatic renewal terms of four (4) years each. This is the first of seven renewals.

Respectfully submitted,


John J. Barthelmes
Commissioner, Department of Safety

CO - CO - 08 - 2012 - 02



State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, NH 03305
603/271-2791

GHC #65A
- 10-03-2012

JOHN J. BARTHELMES
COMMISSIONER

September 7, 2012

His Excellency, Governor John Lynch
and the Honorable Council
State House
Concord, New Hampshire 03301

Requested Action

Authorize the Department of Safety to enter into a Memorandum of Operation and Maintenance Agreement with the Department of Transportation (DOT), Department of Resources and Economic Development (DRED), the Adjutant General (TAG), and New Hampshire Public Broadcasting, Inc. (NHPTV) for the purpose of establishing and defining the roles, responsibilities, and expectations of the aforementioned parties to operate and maintain the shared microwave system known as the NHSafeNet. Effective upon Governor and Executive Council approval for a two (2) year period with renewal for seven (7) additional four (4) year periods contingent upon funding availability and legislative appropriation, with Governor and Executive Council approval.

Explanation

This request establishes and defines a Memorandum of Operation and Maintenance Agreement (MOMA) necessary to meet the requirements of the Memorandum of Agreement (MOA) previously approved by the Governor and Executive Council on March 16, 2011, item #56. This MOMA is related to the receipt of federal funding by the University System of New Hampshire to enhance broadband communication capabilities for all four (4) agencies and NHPTV. The MOMA delineates the responsibilities of each party related to the operations and maintenance of the shared microwave system. Funding for this project is the responsibility of each of the parties. The term of this agreement is for an initial two (2) years with seven (7) renewal terms of four (4) years each, contingent upon Governor and Executive Council approval.

The Attorney General's office has approved this MOMA as to form, substance, and execution.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John J. Barthelmes".

John J. Barthelmes
Commissioner, Department of Safety

STATE OF NEW HAMPSHIRE

Memorandum of Operation and Maintenance Agreement (MOMA)

Between

The New Hampshire Department of Transportation (DOT), New Hampshire Department of Resources and Economic Development (DRED), The Adjutant General Department (TAG), the New Hampshire Department of Safety (DOS), and New Hampshire Public Broadcasting, Inc. (NHPTV), (hereinafter referred to as "the PARTIES").

WHEREAS, the PARTIES collaboratively worked together and with the University of New Hampshire (UNH) and other sub-awardees and applied for and received an ARRA National Opportunities Program Grant funded by the U.S. Department of Commerce Award #NT10BIX5570082, CDFA No. and Project Title 11.557 Recovery Act – Network New Hampshire Now – Microwave Middle Mile to enhance broadband communication capabilities for the PARTIES.

WHEREAS, the PARTIES entered into a Memorandum of Agreement (MOA) approved by Governor and Council on 3/16/11.

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1. GENERAL

1.1 Document Purpose

The Parties are bound by and subject to the Memorandum of Agreement (MOA) (See Appendix A) between the Parties (Governor and Council Item #56, 3/16/2011) and the MOA and this document the MOMA (here after referred to as the Agreement) constitute the controlling operational agreement between the Parties for the purposes of the grant funding. In the event of any conflict between the two documents the terms of the MOA control.

The purpose of this Agreement is to document the roles, responsibilities, and expectations of the parties to operate and maintain the shared microwave system known as NHSafeNet for the benefit of the Parties and the State of New Hampshire.

2. DEFINITIONS

See Appendix B

3. TERMS AND CONDITIONS

3.1 Initial Term

The initial term of this Agreement shall be two (2) years, starting on the date when all signatories have signed the Agreement, by Governor and Council, whichever is the latter.

3.2 Renewal

This Agreement shall be renewed automatically for seven additional four year periods, contingent upon funding availability and legislative appropriation. Any Party shall provide written notice of its intent not to renew to the other Parties not less than ninety (90) days prior to the expiration of the Initial Term or any additional Term. The Initial Term and any additional Terms are collectively referred to as the "Term".

3.3 Ownership

The asset of the shared Microwave System (NHSafeNet) shall be transferred from the University System of New Hampshire to DOS upon final system acceptance by University System of New Hampshire.

3.4 Operational Contact Information

Operational contact for each of the Parties is attached as Appendix C. All Parties shall provide and maintain up to date contact information.

3.5 Initial Documentation

All Parties will receive a copy of the most current version of the shared system as-built documentation provided by the vendor.

3.6 Risk Management Committee

Each Party shall designate a member to serve on the risk management committee as described in 4.1.9.

4. ROLES AND RESPONSIBILITIES

The following table outlines the roles and responsibilities agreed to between the Parties with respect to the shared system and should be used to resolve any conflict that may arise.

Index Number	Action	D O S	NHPTV	DOT	DRED	TAG	UNH
4.1.1	Construction Inspection	S	S	S	S	S	P
4.1.2	Acceptance Testing	S	S	S	S	S	P
4.1.3	Monitoring	P					
4.1.4	Incident Notification	P					
4.1.5	Troubleshooting/Repair	P	S	S	S	S	
4.1.6	Incident Closeout	P	S	S	S	S	
4.1.7	Scheduled Maintenance	P	S	S	S	S	
4.1.8	Network Performance Reporting	P					
4.1.9	Risk Management	J	J	J	J	J	
4.1.10	Frequency Licensing	P					
4.1.11	Future System Modification and Asset Replacement	J	J	J	J	J	

P=Primary: S= Secondary J=Joint

4.1.1 Construction Inspection

Primary Party is responsible for this role. UNH shall take the lead but in as much as DOS will be responsible to maintain the system it shall also be a participant in the inspection and acceptance testing. Primary and secondary parties are responsible for ensuring their respective functional requirements are met. Primary Party is responsible to complete this process. UNH shall take primary role in acceptance testing as defined in the Contract between the Vendor and the University System of NH, attached as Appendix D.

4.1.2 Acceptance Testing

Primary Party is responsible to complete this process. UNH shall take the lead role in acceptance testing as defined in the Contract between the vendor and the University System of NH, attached as Appendix D. In as much as DOS will be responsible to maintain the system, it shall also be a participant in acceptance testing.

4.1.3 Monitoring

DOS shall operate a Network Monitoring Operation ("NMO") from the Incident and Planning Operations Center (IPOC) twenty-four (24) hours a day, seven (7) days a week. The NMO is available to dispatch maintenance and repair personnel to handle and repair problems detected by any Party. The NMO shall be responsible for monitoring the shared system up to the demarcation point. In addition, DOS shall provide to the Parties, contingent on funding, access to network operational status via graphical user interface or other internet link. NHDOT, TAG and NHPTV shall in addition monitor their own systems after the demarcation point, and report problems in the normal course of business.

Incident Severity Levels



4.1.4 Incident Notification

When DOS is alerted to a critical or major incident DOS shall notify all parties by email or phone.



4.1.6 Incident Closeout

DOS shall notify Parties of incident resolution and service resumption by e-mail or phone whenever reasonably possible within thirty (30) minutes of that resolution and the affected Party shall confirm to DOS by e-mail or phone the service resumption and/or quality of service within thirty (30) minutes.

4.1.7 Scheduled Maintenance

Whenever reasonably possible, DOS shall schedule routine maintenance on shared network equipment and shall notify Parties of work to be done seven (7) days in advance. When Parties conduct maintenance on non-shared equipment they will notify DOS twenty-four (24) hours in advance. Conflicts with regards to scheduled maintenance shall be resolved in favor of the affected Parties whenever possible. DOS shall decide in the case of an unresolved conflict.

4.1.8 Network Performance Monitoring

DOS shall maintain shared network performance data for a period of a minimum of ninety (90) days and shall make the information available to the Parties upon request.

4.1.9 Risk Management

The Committee shall meet no less than semi-annually or more if needed or at the request of any Party, to discuss and manage system risk.

4.1.10 Frequency Licensing

DOS shall be responsible to obtain and maintain the shared system FCC licensing. Each Party shall be responsible for its own individual licensing.

4.1.11 Future System Modification and Asset Replacement

Any Party seeking modification to the shared system shall provide written justification for the modification to include purpose, costs, benefits, and impact to present operations to NHDOS for distribution to all Parties. Before enacting the modification, all Parties must concur in writing and concurrence shall not be unreasonably withheld.

5. MANAGEMENT OF BANDWIDTH

5.1.1 Initial Bandwidth Allocation

Is initially set in the following chart and shall be reviewed by the Parties and shall be amended as needed.

Bandwidth Allocation 150 Mbps each direction	QOS	Burst
VLAN1 - NHSP/CM	50	As Available
VLAN2 - DOT	35	As Available
VLAN3-4 - NHPTV	25	As Available
VLANX - NHNG	30	As Available
DRED	10	As Available
Interoperability (Interstate)	1.5Mbps	1.5Mbps

6. COST ALLOCATION

- A. Historically, one or more Parties to this Agreement have borne costs associated with the operation of one or more communication sites that are expected to receive shared system components. The Parties contemplate that they will be expected to contribute personnel and other technological resources in furtherance of this MOMA.
- B. Given the collective goals of this Agreement, the Parties agree to provide each other with at least ninety (90) days notice of reduction or termination of levels of maintenance, utilities or other services to the communications sites that receive shared system components.
- C. The Parties to this Agreement shall each bear a portion of the shared costs generated by the shared system which are not paid for by Federal funds pursuant to this Agreement except for after hours as written in 4.1.5, which shall be the sole responsibility of the Party requesting repairs after hours. Each Party shall be responsible for shared costs in each instance that is proportional to the amount of bandwidth allocated and indicated in the Quality Of Service (QOS) column of 5.1.1 to such party under this Agreement.
- D. In requesting reimbursement of a shared cost, DOS shall provide complete and auditable documentation at the request of any Party. DOS will maintain a historical record of all requests of the Parties for cost allocation so that total cost of the shared system can be determined in an ongoing basis.
- E. The Parties agree that the costs and reimbursements of the shared system shall include but not be limited to the costs of: equipment; personnel; and transportation.
- F. The Parties agree to pay any allocated costs within ninety (90) days of receipt of an invoice. If payment is not made in a timely manner, services to the delinquent party may be terminated by DOS.
- G. The Assistant Commissioner of DOS shall convene a meeting of the stakeholders during the months of April and October of each year to review the maintenance and operations of the system, validate the bandwidth allocation and allocated costs.
- H. Each September in the last year of a biennium the DOS Business Office shall call a meeting of the financial representatives of the stakeholders to establish the estimated costs for the stakeholders' budgeting purposes.
- I. The Parties contemplate that this Agreement will be amended to provide for a different cost allocation method in the future, which may consider relative levels of maintenance, utility, replacement, and other costs borne by the Parties in their operation of the communication sites at which shared system assets are located.
- J. Within 6 months of the renewal of this MOMA, DOS shall prepare a budget for costs associated with the shared system as required by this MOMA.

7. AVAILABILITY AND RESTRICTIONS ON USE OF FEDERAL FUNDS

- A. Funds are not presently available to TAG for this MOMA. The TAG's obligation under this MOMA is contingent upon the availability of appropriated Federal funds from which payment for MOMA purposes can be made. No legal liability on the part of the TAG for any payment may arise until funds are made available to TAG for this MOMA and until NHDOS receives notice of such availability, to be confirmed in writing by TAG.

B. Funds are also not presently available for performance by the TAG under this contract beyond Federal FY12. The TAG's obligation for performance of this contract beyond FY12 is contingent upon the availability of appropriated Federal funds from which payment for contract purposes can be made. No legal liability on the part of TAG for any payment may arise for performance under this contract beyond Federal FY12, until funds are made available to the TAG for performance and until NHDOS receives notice of availability, to be confirmed in writing by TAG.

C. Notwithstanding any provision in this MOMA to the contrary, the TAG shall not be responsible to reimburse any other party to the MOMA for, or share in any costs, expenses or any other fees, which are generated by a contract, or sub-contract that does not contain the provisions of Appendix E.

8. RELEASE AND WAIVER

The Parties agree to hold harmless DOS, its officers, employees and agents for any interruption of services and any damages resulting from the interruption of services provided by the shared system.

9. SOVEREIGN IMMUNITY

This Agreement does not abridge or limit, nor shall it be interpreted as abridging or limiting the sovereign or official immunity to which the State of New Hampshire and its representatives and agents are lawfully entitled.

The Parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

Notwithstanding any statement to the contrary, the Parties agree that this Agreement and pertinent Appendices shall be construed in accordance with the laws and rules of the State of New Hampshire.

10. AMENDMENT

Any part of this (MOMA) Memorandum of Operation and Maintenance Agreement may be amended at any time upon approval by all parties hereto in writing.

MOMA Signature Page

J. Barthelmes by: E. Sweeney
Asst. Comm.
John J. Barthelmes, Commissioner
Department of Safety

7/30/2012
Date:

W. D. WT
Christopher D. Clement, Sr., Commissioner
Department of Transportation

7/29/12
Date:

George Bald
George Bald, Commissioner
Department of Resources & Economic Development

7/25/12
Date:

William N. Reddel, III
William N. Reddel, III,
Major General, NHNG
The Adjutant General

30 JUL 12
Date:

Peter Frid
Peter Frid, President and CEO
New Hampshire Public TV

7/2/12
Date:

Approved as to form, substance, and execution:

AG
New Hampshire Department of Justice (AG)

7/31/12
Date:

Approved by Governor and Council

Date: [Signature] OCT 03 2012

Agenda Item: _____

DEPUTY SECRETARY OF STATE

**Appendix A – Memorandum of Agreement (MOA)
University of New Hampshire Sub Award Agreement No 11-029**

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("MOA") is made and entered into by and between the New Hampshire Department of Transportation (NH DOT), New Hampshire Department of Resources and Economic Development (NH DRED), the New Hampshire Adjutant General Department (TAG), the New Hampshire Department of Safety (NH DOS), and New Hampshire Public Broadcasting, Inc. (NH PTV), (hereinafter referred to as "the PARTIES").

WITNESSETH

WHEREAS, the PARTIES collaboratively worked together and with the University of New Hampshire (UNH) and other sub-awardees and applied for and received an ARRA National Telecommunication and Information Administration (NTIA) Broadband Technology Opportunities Program Grant funded by the US Department of Commerce Award # NT10BIX5570082, CDFA No. and Project Title 11.557 Recovery Act - Network New Hampshire Now - Microwave Middle Mile to enhance broadband communication capabilities for the PARTIES.

WHEREAS, the PARTIES designed a shared microwave system to be integrated at mountain top communication locations and facilities in New Hampshire. The shared microwave system will consolidate and upgrade the backbone delivery system to a multi-user platform.

WHEREAS, the shared microwave system purchased by this grant will be owned by instrumentalities of the State of New Hampshire.

WHEREAS, the PARTIES agreed that NH PTV shall act as the PARTIES' lead for grant and asset management for the life of the grant.

WHEREAS, the PARTIES agree by signing this MOA to share broadband capacity and communications infrastructure, on a shared microwave system.

IT IS THEREFORE AGREED by and between the PARTIES that they shall develop, operate and maintain their individual and shared communications infrastructure as follows:

1. Each party shall retain sole ownership of any equipment, infrastructure, or other tangible property paid for with its agency funds.
2. NH DOS shall be responsible to administer, manage, and repair the shared microwave system as well as all pre-existing, tower mounted microwave antenna incorporated into the shared microwave system and including but not limited to microwave transmitters, receivers, waveguide, routers, batteries, and network management installed by a qualified vendor and defined in the final system design and document.

3. The PARTIES shall work cooperatively to develop joint requirements, including bandwidth requirements, communications capacity utilization, and a high-level design for all core rings and microwave spurs of the shared microwave system to be detailed in the Operational and Maintenance Agreement (MOMA).
4. The PARTIES shall develop a security protocol and facilitate a secure partitioning of bandwidth to ensure the integrity of the shared system. Each PARTY is responsible for implementing security on its own individual network segments and at its own expense.
5. The PARTIES understand and agree that each State agency shall participate and be represented by its Commissioner or Designee in decisions regarding management, modification, upgrade and/or capacity utilization over and above those specific actions listed in this memorandum. NHPTV shall also participate in such matters and shall be represented by its President or Designee.
6. The PARTIES agree that they shall not approve or undertake network modifications, upgrades and/or changes in capacity utilization of any kind to the shared microwave system that will financially obligate the other(s) without the written approval of all the PARTIES.
7. The PARTIES shall create and maintain an Operational and Maintenance Agreement (MOMA) to support this MOA, outlining the detailed operation and maintenance of the shared microwave system, including, but not limited to: resource and cost allocation, bandwidth control and allocation, and governance. The MOMA shall be finalized and signed by all of the PARTIES no later than June 30, 2011.
8. In the event that any PARTY determines that it is necessary to terminate this MOA, the terminating PARTY shall give 30 days advanced written notice to all other parties. The terminating PARTY shall make every effort to adhere to the specific terms and conditions of the shared microwave system, which shall be developed by the PARTIES and documented in the MOMA.
9. This MOA does not abridge or limit, nor shall it be interpreted as abridging or limiting the sovereign or official immunity to which the STATE of New Hampshire and its representatives and agents are lawfully entitled.
10. The parties hereto do not intend to benefit any third parties and this MOA shall not be construed to confer any such benefit.
11. This MOA has been entered into in the State of New Hampshire and is to be construed according to the laws of the State of New Hampshire.

Signature page to follow

IN WITNESS WHEREOF, PARTIES, through their undersigned officials, have hereunto affixed their signatures.

PARTIES

New Hampshire Department of Resources and Economic Development

By:

George M Bald
George M Bald - NH DRED

Date: 2/2/11

New Hampshire Department of Safety

By:

John Barthelmes
John Barthelmes - NHDOS

Date: 2/10/11

New Hampshire Department of Transportation

By:

George Campbell
George Campbell - NH DOT

Date: 2/10/11

New Hampshire Public Broadcasting

By:

Peter Frid
Peter Frid - NHPTV

Date: 2/7/11

New Hampshire Adjutant General Dept

By:

William N Reddel, III
Major General William N Reddel, III - NH TAG

Date: 09 FEB 11

Approved as to form, substance, and execution:

A. B. R.
New Hampshire Department of Justice

Approved by the Governor and Council

Date: 3/16/11

Agenda Item: #56

Agreement No. 11-029

This agreement is entered into by and between the University of New Hampshire ("University"), and the State of New Hampshire, Department of Safety ("Subrecipient").

RECITALS

University is the recipient of Grant No. NT10BIX5570082 (CFDA No. 11.557) ("Prime Agreement") from U.S. Department of Commerce, ("Federal Awarding Agency" or "Federal Government").

The Prime Agreement provides for collaborative effort by Subrecipient to be implemented through appropriate contractual arrangements.

Subrecipient agrees to participate in the manner, and for the consideration, described in this document.

NOW THEREFORE, the parties agree to the following terms:

SPECIAL PROVISIONS

Article 1 – Statement of Work

The Subrecipient shall, as an independent contractor, provide all labor, materials, equipment and facilities necessary to accomplish the work required under this Agreement, as described in the Statement of Work incorporated into this Agreement and attached to this document as Exhibit I.

The Subrecipient represents that all work and services it provides under this Agreement will conform to high professional standards in the field.

Article 2 – Period of Performance

The period of performance for this Agreement is from July 1, 2010 through June 30, 2013. Expenditures incurred prior to the beginning date or subsequent to the end date are not allowable costs.

Article 3 - Key Personnel

The Subrecipient's project director, Captain John LeLacheur, is considered Key Personnel and may not be replaced without prior University approval.

Article 4 - Cost & Limitation of Obligation

The total estimated cost to University for the performance of this work must not exceed \$350,691.00. Subrecipient's budget is incorporated into this Agreement and attached to this document as Exhibit II.

Total funds in the amount of \$350,691.00 have been allotted and are available for payment of allowable costs incurred from July 1, 2010 through June 30, 2013. University will not reimburse Subrecipient for costs exceeding the amount specified in this paragraph.

Article 5 - Allowable Costs

For the performance of the tasks described in Article I of this Agreement, University will pay those of Subrecipient's costs that are determined to be allowable in accordance with:

A) The cost principles applicable to Subrecipient's type of organization:

- OMB Circular A-21: Institutions of higher education
- OMB Circular A-87: State, Local and Federally Recognized Indian Tribal Governments
- OMB Circular A-122: Nonprofit organizations
- 45 CFR 74, Appendix E: Hospitals
- 48 CFR Subpart 31.2: For-Profit (commercial) organizations

Fringe benefits will be reimbursed in accordance with Subrecipient's most recent negotiated rate agreement and in accordance with Subrecipient's institutional policies. Subrecipient shall provide University one copy of the most recent rate agreement memorandum it has negotiated with its cognizant Federal agency.

Facilities and Administrative costs (a.k.a indirect costs), if included in the budget attached as Exhibit II, will be reimbursed in accordance with the negotiated rates for F&A costs in effect at the time this Agreement is entered into. If negotiated rates do not extend through the Period of Performance at the time this Agreement is entered into, then the last available negotiated rate shall be extended through the end of the Period of Performance. The estimated cost for this Agreement may not be adjusted in future years as a result of changes in negotiated rates.

B) The budget included in this document as Exhibit II.

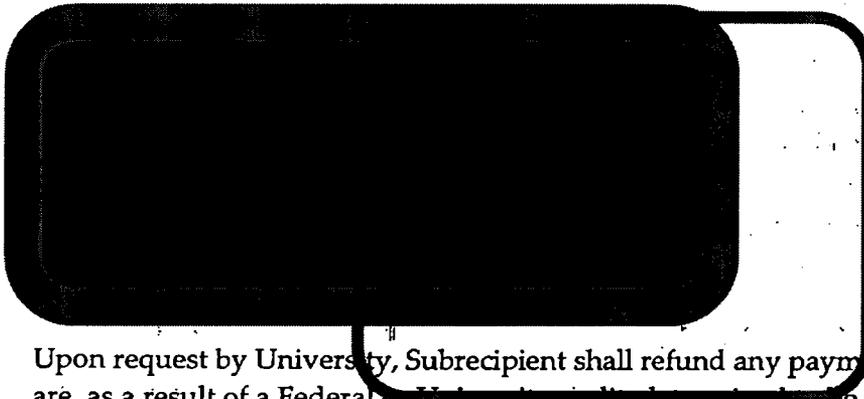
C) The terms of this Agreement.

Article 6 - Payment

Subrecipient must submit invoices to University monthly. Invoices must show the period for which reimbursement is being requested and must itemize the costs by budget category as shown on the budget, Exhibit II. The invoice must show "current" and "cumulative" costs and must be signed by an authorized official of Subrecipient.

University will pay properly prepared and approved invoices within 30 days of receipt. Subrecipient shall submit its final invoice, which must be marked "Final," no later than 60 days after the ending date of this Agreement as specified in Article 2 - Period of Performance. The final invoice will be used as Subrecipient's final report of expenditures.

Subrecipient shall reference the Agreement Number on its invoices and mail the invoices to:



Upon request by University, Subrecipient shall refund any payments received for what are, as a result of a Federal or University audit, determined to be unallowable expenditures. Subrecipient, however, has the right to establish allowability of any such expenditures. University may withhold payment of the final invoice pending receipt of the Final Report, as referred to in Article 10 - Reports, by University's Project Director and/or resolution of any audit findings.

Article 7 - Rebudgeting

The Subrecipient is authorized to rebudget funds in accordance with the General Provisions incorporated into this Agreement and attached to this document as Exhibit III. University approval is required for rebudgeting that requires prior approval under the terms of the General Provisions. All requests for rebudgeting approval must be directed to the Authorized University Representative identified in Article 16 - Notices.

Article 8 - Equipment: Vesting & Reporting

University is providing project management, procurement, and acceptance oversight for the shared microwave system from inception through final system acceptance. Upon final acceptance, University will transfer ownership and responsibility of the shared microwave system, assets constructed or equipment purchased by University at an estimated value of \$2,200,000 (Federal funding: \$, 000,000 in-kind contributions, and \$1,200,000 in cash contributions from S&P) to Subrecipient, who will retain title to these assets constructed or equipment purchased, subject to the conditions of the Prime Agreement attached to this document as Exhibit III. In the event that this Agreement terminates prior to the expiration date for whatever purposes, title for all assets constructed or purchased by University for the shared microwave system will remain with the University.

Article 9 - Records & Audit

Subrecipient agrees to comply with the requirements of OMB Circular A-133 and further agrees to provide University with copies of any independent auditors' reports which present instances of non-compliance with federal laws and regulations which bear directly on the performance or administration of this Agreement. In cases of such non-compliance, Subrecipient shall also provide University copies of responses to auditors' reports and plans for corrective actions. The Subrecipient shall cooperate with University to ensure that corrective actions address instances of non-compliance to the satisfaction of University.

Subrecipient may not receive payment for work done under this Agreement prior to providing notice of compliance with OMB Circular A-133. Such notice will be provided to the Authorized University Representative identified in Article 16 - Notices prior to the submission of any invoices and yearly thereafter for the duration of the Period of Performance.

Subrecipient shall maintain adequate financial records, in accordance with generally accepted accounting practices, to clearly identify expenses of the Agreement, to describe the nature of each expense and to establish relatedness to the Agreement. All records of this Agreement must be available for inspection by representatives of University and/or the Federal Government at the regular place of business of Subrecipient during normal business hours. All records of this Agreement must be retained for a period of three years with the following qualifications:

- A. The retention period starts from the date of FINAL PAYMENT made to Subrecipient by University under this Agreement.

-
- B. Records related to any audit initiated prior to the expiration of the three-year period must be retained until the audit findings involving the records have been resolved.

Article 10 - Reports

Subrecipient shall participate in monthly, face-to-face meetings and prepare monthly status reports using the template provided by the University project director. In addition, within 45 days of the expiration of this Agreement, Subrecipient shall provide a final programmatic report to the University project director, and, for multi-year projects, Subrecipient shall provide an annual progress report to the University project director no later than 30 days prior to the Agreement's anniversary date. Subrecipient's reports will include copies of all reprints, conference papers, etc. resulting from work funded under this Agreement. University's project director is entitled to request submission of additional progress reports on a schedule agreeable to Subrecipient's project director.

In addition, Subrecipient shall comply with the additional reporting requirements under the American Recovery and Reinvestment Act of 2009 as defined in the special terms and conditions attached as Exhibit III. Subrecipient will submit an ARRA reporting form, attached as Exhibit IV, to the University within 5 days at the end of each calendar quarter: January 5, April 5, July 5 and October 5. Failure to provide acceptable reporting by the due date may result in the suspension or termination of this award.

Article 11 - Publication & Copyright

Subject to the provisions of the Prime Agreement, publication of the results obtained from work funded under this Agreement is encouraged and Subrecipient may copyright material that is developed by its staff in the course of or under this Agreement. The Subrecipient agrees to grant to the Federal Government, and others acting on its behalf, a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use the material developed under this agreement. The Subrecipient also grants University a royalty free, non-exclusive, and irrevocable license to use any data, copyrighted material (including computer programs) or know-how developed under this Agreement for the purpose of allowing University to meet its reporting/deliverables obligations under the Prime Agreement. All publications must cite the source of support and indicate that the findings, opinions and recommendations they express therein are those of the author and not necessarily those of University or of the Federal Awarding Agency.

Article 12 - Inventions

Subject to the provisions of the Prime Agreement, rights of ownership and disposition of inventions made under this Agreement will be governed in accordance with 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms

Under Government Grants, Contracts, and Cooperative Agreements", which is incorporated in this Agreement by reference to the same extent as if provided in full text.

Article 13 - Termination

University is entitled to terminate this Agreement, upon written notification to the Subrecipient, for convenience of either University or Subrecipient or because of Subrecipient's default or failure to:

- Accomplish the work required under this Agreement within the time specified as the Period of Performance or any extension of the Period of Performance.
- Make progress, so as to endanger University's performance of the Prime Agreement.
- Correct any breach of this Agreement within a reasonable time after having been advised of such breach.

In the event of termination, Subrecipient will be reimbursed for allowable costs and non-cancelable obligations incurred prior to the date of notice of termination.

Termination of this Agreement for any reason will not affect the rights and obligations of either party accrued prior to the termination of this Agreement, including rights and remedies provided by law for default or failure to perform.

Article 14 - Disputes

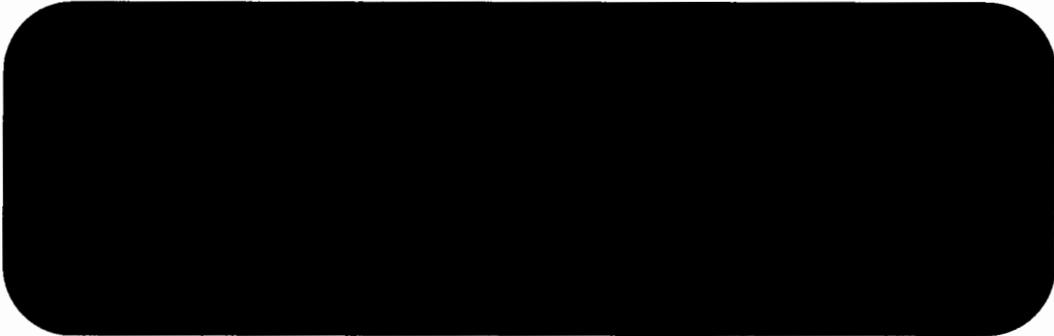
Any dispute arising under this Agreement which cannot be resolved by mutual consent of the parties to this Agreement may be settled by mediation, arbitration at the parties' mutual agreement, or other appropriate legal proceedings. Pending the resolution of any such proceedings, Subrecipient shall, at University's discretion, proceed diligently with the performance of this Agreement.

Article 15 - Hold Harmless

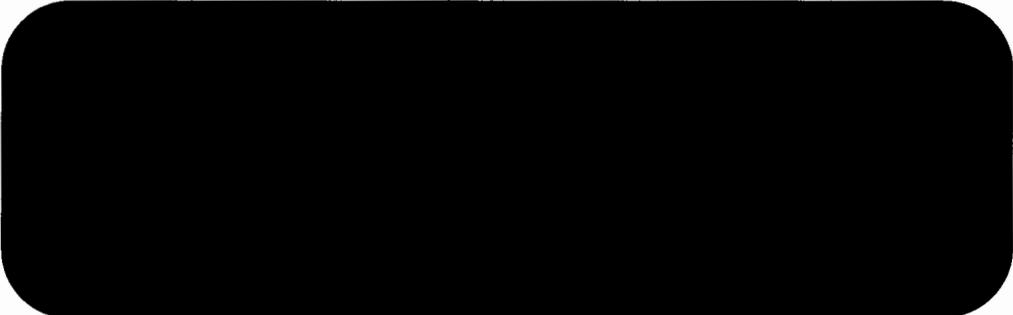
Each party to this Agreement assumes all risk of personal injury and property damage attributable to the negligent acts or omissions of its personnel.

Article 16 - Notices

Communications concerning Subrecipient's performance under this Agreement will be directed to University's project director at the following address:



Communications concerning contractual and administrative aspects of this Agreement will be directed to University's Grant & Contract Administrator at the following address:



Article 17 – Use of Name

Neither Subrecipient nor University may make use of this Agreement, or use the other's name or that of any member of the other's staff for publicity or advertising purposes without prior written approval of the other party.

Article 18 - Certifications

Debarment and Suspension (E.O.s 12549 and 12689) – The Subrecipient certifies that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency. Where the Subrecipient is unable to certify to this statement, it shall attach an explanation to this Agreement, and, at University's option, University may void this Agreement. Subrecipient shall promptly notify University if it or its principals becomes debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

Equal Employment Opportunity – The Subrecipient must comply with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) – The Subrecipient certifies, to their knowledge and belief, that:

- No Federal appropriated funds have been paid or will be paid by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352.
- If any funds other than Federal appropriated funds have been paid or will be paid by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352, Subrecipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- Subrecipient shall require that the language of this certification be included in the award documents of all subcontracts at all tiers and that all Subrecipients shall certify and disclose accordingly.

Article 19 - General Provisions

All applicable requirements, regulations, provisions, terms and conditions of the Prime Agreement are included as Exhibit III to this document and are hereby adopted in full force and effect to the relationship between University and Subrecipient. References to Contractor or Recipient in Exhibit III will be taken to mean Subrecipient; references to the Government or Federal Awarding Agency in Exhibit III will be taken to mean Government/Federal Awarding Agency or University or both, as appropriate.

Article 20 - Assignment

Subrecipient shall not assign, delegate or otherwise transfer, either in whole or in part, any of its rights or obligations under this Agreement without the prior written approval of University.

Article 21 – Order of Precedence & Severability

In the event of conflict between the Special and General Provisions in this Agreement, the Special Provisions shall prevail over the General Provisions.

In the event that any part of this Agreement is held to be unenforceable or invalid in any court of competent jurisdiction, then said part must be deleted or modified, as necessary, to render the remainder of this Agreement valid and enforceable;

Article 22:- Entire Agreement & Counterparts

Unless otherwise specified, this Agreement and its Exhibits embody the entire understanding between UNH and the Sponsor for the Project, and any prior or contemporaneous representations, either oral or written, are hereby superseded. No amendments or changes to this Agreement, including without limitation, changes in the statement of work, total estimated cost and period of performance, shall be effective unless made in writing and signed by authorized representatives of the parties. This Agreement may be executed in two or more counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument. A facsimile or pdf copy of a signature of a party hereto shall have the same effect and validity as an original signature.

IN WITNESS WHEREOF, The University of New Hampshire and Department of Safety have executed this Agreement.

By An Authorized Official of:

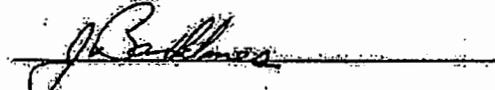
By An Authorized Official of:

UNIVERSITY OF NEW HAMPSHIRE

STATE OF NEW HAMPSHIRE
DEPARTMENT OF SAFETY



Victor G. Sosa, Director
Sponsored Programs Administration



Name: JOHN J. BARTHELMES

Title: COMMISSIONER

Date: 5-26-11

Date: May 26, 2011

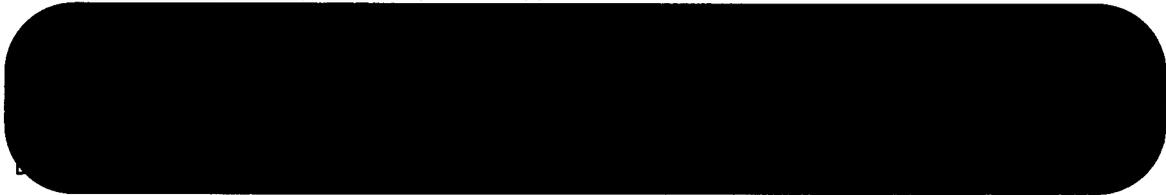
EXHIBIT I

(Statement of Work)

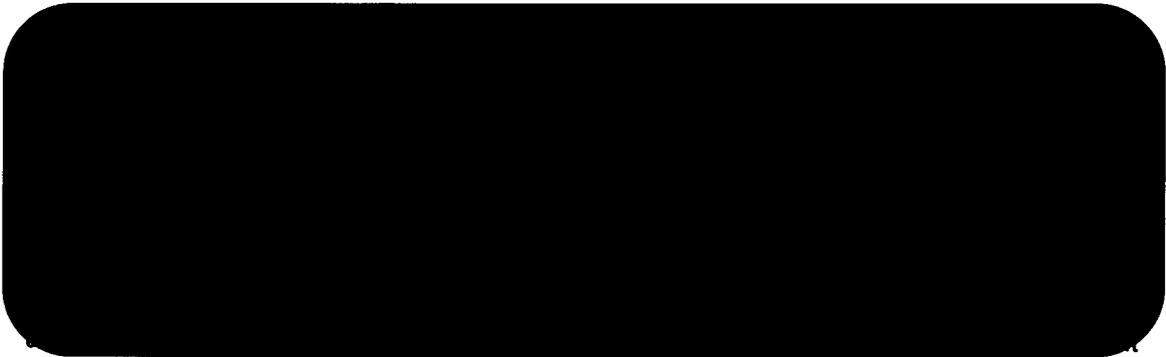
Statement of Work

New Hampshire's state agencies have worked to maximize state and federal investment in Comprehensive Community Infrastructure. Led by the Department of Resources & Economic Development (DRED), the Departments of Safety, Transportation, Education, and Health & Human Services are pooling their technology leadership and approaches.

In particular, the University of New Hampshire, together with the Department of Safety and New Hampshire Public Television, is spearheading the creation of a microwave network to significantly improve NH's public safety capability and capacity. This enhancement will leverage existing microwave facilities to construct a consolidated, high-speed, fault tolerant, ring network, delivering broadband services to the following New Hampshire entities: State Police (NHSP), the Department of Resources and Economic Development (DRED), the Department of Fish and Game, the Department of Transportation (DOT), the Army National Guard, New Hampshire Public Television, and the surrounding States Departments of Public Safety (ME, MA, VT). NH Department of Safety grant-funded staff will provide design, installation, testing, and acceptance support for shared microwave network.



The network will be composed of a core ring network to provide high availability throughout New Hampshire. Stubs off of the core ring will connect all of the stakeholders and will be accomplished with Hot Standby 300 mbps radios, antennas, and waveguide for each stub point. This design point is subject to the change depending on the outcomes of the RFP process. Each site will be interconnected with MPLS type technology and the associated high speed routers, automatic network transmission protection switches, and secure VLAN technology required to isolate and protect data integrity of the individual partners. Beyond the core ring and the stubs, there are 3 Short-Haul (or WiMax) radio systems that provide interconnects between the middle mile fiber network and the microwave network as well as a direct fiber connection between UNH and NHPTV's Broadcast Center in Durham, NH.



portion of the NH existing public safety microwave network center and has the necessary resources and proven track record to be able to deliver outstanding support today and into the future.

EXHIBIT II

(Project Budget)

EXHIBIT III

(Award Terms and Conditions)

FORM CD-450 (REV 01/09)		<input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT	
U. S. DEPARTMENT OF COMMERCE		AWARD NUMBER	
FINANCIAL ASSISTANCE AWARD		NT10BIX5570082	
RECIPIENT NAME University System of New Hampshire			
STREET ADDRESS 51 College Road Service Bldg 107		FEDERAL SHARE OF COST \$44,480,992.00	
CITY, STATE, ZIP CODE Durham NH 03824-3585		RECIPIENT SHARE OF COST \$21,366,900.00	
AWARD PERIOD 07/01/2010-06/30/2013		TOTAL ESTIMATED COST \$65,847,892.00	
AUTHORITY The American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (2009)			
CFDA NO. AND PROJECT TITLE 11.557 Recovery Act - Network New Hampshire Now			
<p>This award offer approved by the Grants Officer constitutes an obligation of Federal funding. By accepting this award offer, the Recipient agrees to comply with the award Terms and Conditions checked below. If this was a paper issued award offer, please send two signed documents to the Grants Officer and retain one set of signed award documents for your files. If this award offer is not accepted without modification within 30 days of receipt, the Grants Officer may unilaterally withdraw this award offer and de-obligate the funds.</p>			
<input checked="" type="checkbox"/> Department of Commerce Financial Assistance Standard Terms and Conditions <input type="checkbox"/> Government Wide Research Terms and Conditions <input type="checkbox"/> Bureau Specific Administrative Standard Award Conditions <input checked="" type="checkbox"/> Award Specific Special Award Conditions <input checked="" type="checkbox"/> Line Item Budget <input checked="" type="checkbox"/> 15 CFR Part 14, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations <input type="checkbox"/> 15 CFR Part 24, Uniform Administrative Requirements for Grants and Agreements to States and Local Governments <input checked="" type="checkbox"/> OMB Circular A-21, Cost Principles for Educational Institutions <input type="checkbox"/> OMB Circular A-87, Cost Principles for State, Local, and Indian Tribal Governments <input type="checkbox"/> OMB Circular A-122, Cost Principles for Non-Profit Organizations <input type="checkbox"/> 48 CFR Part 31, Contract Cost Principles and Procedures <input checked="" type="checkbox"/> OMB Circular A-133, Audits of States, Local Governments, and Non-Profit Organizations <input checked="" type="checkbox"/> Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements REF: 73 FR 7696 (February 11, 2008). <input checked="" type="checkbox"/> Other(s) 75 FR 3792 January 22, 2010. 75 FR 10464 March 8, 2010. 75 FR 14131 March 24, 2010.			
SIGNATURE OF DEPARTMENT OF COMMERCE GRANTS OFFICER		TITLE	DATE
Sonja Wyatt		Grants Officer	06/18/2010
TYPE NAME AND SIGNATURE OF AUTHORIZED RECIPIENT OFFICIAL		TITLE	DATE
Victor Sosa		Contract Officer	07/23/2010

Special Award Conditions

Award Number: NT10BIX5570082
Amendment Number: 0

1) 4248 ARRA Special Award Condition for Reporting Requirements

Reporting Requirements:

Pursuant to ARRA Special award conditions which are incorporated into this award. The recipient will report on the progress of their approved projects as reflected in the description of work which is incorporated by reference. Information from the progress reports will be available to the public.

The Recipient shall report the information described in section 1512(c) of the ARRA special award Condition using the reporting instructions and data elements that are provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed. Note: This is the primary reporting requirement under ARRA. Additional progress reports are needed for the program office which is identified in a separate special award condition.

The ARRA report is due no later than 10 days following the end of each calendar reporting period. For example, for the period ending September 30, due October 10th, period ending December 31, due January 10th, period ending March 31, due April 10th, period ending June 30, due July 10, following this pattern until the expiration date of the award is reached.

Failure to provide acceptable reporting by the due date may result in the suspension or termination of your award.

2) 4248 BTOP-Wide SACs

A. Guidelines for Matching Funds:

Recipient will provide, from non-Federal sources, not less than 20 percent of the total project cost. Matching funds can be in the form of either cash or in-kind contributions consistent with the 15 CFR 14.23, 24.3 and 24.24 as applicable. The recipient may be asked to provide supporting documentation upon request from the Grants Officer or NTIA.

B. Incorporation of Requirements from the Notice of Funding Availability (NOFA):

The recipient shall comply with the requirements found in the Department of Commerce, National Telecommunications and Information Administration Broadband Technology Opportunities Program, 75 FR 3792, January 22, 2010 (http://www.ntia.doc.gov/fnotices/2010/FR_BTOPNOFA_100115.pdf)

C. Notice of Limited Waiver of Section 1605 (Buy American Requirement) of the American Recovery and Reinvestment Act of 2009 (ARRA)

In accordance with Section 1605 of the Recovery Act, the Secretary of Commerce has granted a limited waiver of the Recovery Act's Buy American requirements with respect to certain broadband equipment that will be used in projects funded under the BTOP. A description of this equipment is included in the notice of waiver published in the Federal Register at 74 FR31410 (July 1, 2009).

D. Whistleblower Protection Act Requirements:

The Recipient shall comply with the Whistleblower Protection requirements of the American Recovery and Reinvestment Act (Recovery Act), Section 553 of Division A, Title XV, Public Law 111-5 which provides protection for employees of non-federal employers making specified disclosures relating to possible fraud, waste, or abuse of Recovery Act funds.

The act requires any non-federal employer receiving Recovery Act funds to post a notice of the rights and remedies provided under the Act. The Recipient shall display a poster at their job sites. Recipients are reminded that the Office of Inspector General will verify the appropriate place of this poster as part of any field work conducted. Failure to display the poster may result in an audit finding. The poster can be downloaded from the following web site:

<http://www.oig.doc.gov/recovery/whistleblower.html>

E. Interest-Bearing Accounts

This award is subject to 15 CFR 24.21 requiring recipients of Federal financial assistance that receive more than \$120,000 in Federal awards per year to maintain advances of Federal funds in interest bearing accounts. Interest earned on Federal advances deposited in such accounts (with the exception of \$100 per year, which may be retained for administrative expenses) shall be remitted promptly.

The complete address for remitting checks for interest earned on Federal advances is Department of Health and Human Services, Payment Management System, P.O. Box 6021, Rockville, MD 20852. Recipients that do not have electronic remittance capability should send a check to this address. In keeping with Electronic Funds Transfer rules (31 USC part 206), interest should be remitted to the HHS Payment Management System through an electronic medium such as the FEDWIR Deposit System. Electronic remittances should be in the format and should include any data that are specified by the HHS as being necessary to facilitate direct deposit in HHS' account at the Department of Treasury.

G. Nondiscrimination and Interconnection:

The recipient shall comply with the nondiscrimination and network interconnection obligations set forth in section V.D.3.b of the NOFA and in Section 6001(j) of the Recovery Act. Recipients may be asked to provide supporting documentation upon request from the Grants Officer. Failure to comply with this provision of the award may be considered grounds for any or all of the following actions: establishment of an account receivable for affected BTOP award, withholding payments under any and all BTOP awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any BTOP active awards, and termination of any BTOP active awards.

3) 4248 Automated Standard Application for Payments system (ASAP)

Notwithstanding Section A.02 of the DoC Financial Assistance Standard Terms and Conditions, dated March 2008:

a. The advanced method of payment shall be authorized unless otherwise specified in a special award condition.

b. Payments will be made through electronic funds transfers, using the Department of Treasury's Automated Standard Application for Payment (ASAP) system and in accordance with the requirements of the Debt Collection Improvement Act of 1996. The following information is required when making withdrawals for this award: (1) ASAP account identification (id) = award number found on the cover sheet of this award;

(2) Agency Location Code (ALC) = 13060001; and (3) Region Code = 02. Recipients do not need to submit a "Request for Advance or Reimbursement" (SF-270) for payments relating to this award. All non-ASAP Recipient Organizations must enroll electronically. The ASAP system no longer accepts paper forms for enrollment. If you are not currently enrolled in the ASAP system you must provide the Federal Awarding Agency with a Point of Contact name, e-mail address, mailing address, telephone number, EIN and DUNS numbers of your organization in order for the Federal Awarding Agency Enrollment Initiator (EI) to begin the on-line enrollment. If you have questions on this requirement please contact the Grant Specialist responsible for this award. If you have questions on the electronic process step-by-step instructions you may contact your responsible Regional Finance Center.

Advances taken through the ASAP shall be limited to the minimum amounts necessary to meet immediate disbursement needs. Advanced funds not disbursed in a timely manner must be promptly returned, via an ASAP credit, to the account from which the advanced funding was withdrawn. Advances shall be for periods not to exceed 30 days.

c. This award has the following control or withdrawal limits set in ASAP:

None

Agency Review required for all withdrawals (see explanation below)

Agency review required for all withdrawal requests over

\$ _____ (see explanation below)

Maximum Draw Amount controls (see explanation below)

\$ _____ each month

\$ _____ each quarter

\$ _____ each year

d. Funds that have been withdrawn through ASAP may be returned to ASAP via the Automated Clearing House (ACH) or via FEDWIRE. The ACH or FEDWIRE transaction may only be performed by the Recipient's financial institution. Full or partial payments received by a Payment Requestor/Recipient Organization may be returned to ASAP. All funds returned to the ASAP system will be credited to the ASAP Suspense Account. The Suspense Account allows the Regional Financial Center to monitor returned funds and ensure that they are credited to the correct ASAP account. Returned funds that cannot be identified and classified to an ASAP account will not be accepted and will be returned to the originating depository financial institution (ODFI).

It is essential that the Payment Requestor/Recipient Organization provide its financial institution with ASAP account information (ALC, Recipient ID and Account ID) to which the returned funds are to be credited. Additional detailed information can be found at: <http://www.fms.treas.gov/asap/pay-return2.pdf>

There is a 10-day deadline for the head of the organization to initiate recipient enrollment upon receipt of ASAP registration notification. Failure to comply could subject the award to a change in the method of payment to reimbursement only.

4) Accounting System Verification

The recipient shall submit a signed statement from an authorized official, verifying the ability of the recipients financial management system to appropriately track and account for federal grants funds and expenditures associated with the funded project. This statement must be received within 30 days of the award start date and the recipient is not allowed to draw down any funds until this statement is received and accepted by the Grants Officer.

5) Matching Requirement

Since this award requires the Recipient to provide \$21,366,900 in project-related costs from non-federal sources, the Recipient must maintain its official accounting records an accounting of \$65,847,892.

6) New Award SAC

This award number NT10BIX5570082 to University System of New Hampshire, supports the work described in the Recipient's proposal entitled "Recovery Act - Network New Hampshire Now" dated 03/26/2010, and revisions dated 05/26/2010 for detailed budget, 05/27/2010 for 424C, and 06/17/2010 for budget narrative which are incorporated into the award by reference. Where the terms of the award and proposal differ, the terms of the award shall prevail.

7) 4248 Post-Award Reporting Requirements

The recipient shall submit a "Financial Status Report" (SF-425) on a quarterly basis for the periods ending March 31, June 30, September 30, and December 31 or any portion thereof. Reports are due no later than 30 days following the end of each reporting period. A final SF-425 shall be submitted within 90 days after the expiration date of the award.

The recipient shall submit program-specific quarterly performance reports electronically to the Federal Program Officer in the same frequency as the Financial Status Report (SF- 425) unless otherwise authorized by the Grants Officer. The Federal Program Officer will provide updated instructions for accurate report completion at least 30 days prior to reporting period end date.

8) 4248 Infrastructure-Wide SACs

A. Sale or Lease of Real Property Purchased with Award Funds:

Recipients may not sell or lease any portion of the award-funded broadband facilities or equipment during their life, except as otherwise approved by NTIA. NTIA will consider a petition for waiver of the restriction if: (1) the transaction is for adequate consideration; (2) the purchaser or lessee agrees to fulfill the terms and conditions relating to the project after such sale or lease; and (3) the transaction would be in the best interests of those served by the project. The petition for waiver may be submitted at any time during the life of the award-funded facilities and equipment, and it must include supporting documentation and justification regarding why the petition should be granted. This requirement is not meant to limit CCI awardees from leasing facilities to another service provider for the provision of broadband services, nor is this section meant to restrict a transfer of control of the awardee (NOFA, Section IX.C.2).

B. Security Interest in Real Property including Broadband Facilities and Equipment

The recipient shall execute a security interest or other statement of NTIA's interest in real property including broadband facilities and equipment acquired or improved with Federal funds acceptable to NTIA, which must be perfected and placed on record in accordance with local law. This security interest will provide that, for the estimated useful life of the real property, facilities, or equipment, the recipient will not sell, transfer, convey, or mortgage any interest in the real property including broadband equipment acquired or improved in whole or in part with Federal funds made available under the award, nor shall the recipient use the real property including broadband facilities and equipment and for purposes other than the purposes for which the award was made, without the prior written approval of the Grants Officer. Such approval may be withheld until such time as the recipient first pays to NTIA the Federal share of the real property including broadband facilities and equipment as provided in 15 CFR 14.32 (15 CFR 24.31 for state, local, or other government entities). This security interest shall be executed in advance of any sale or lease and not later than closeout of the grant.

C. Construction-Related Requirements

- **Maintenance.** The recipient agrees that, for the estimated useful life of the facility funded with this award, the project will be properly and efficiently administered, operated, and maintained for the purpose authorized by this award and in accordance with the terms, conditions, requirements, and provisions of the award. If NTIA determines at any time during the estimated useful life of the project, that the project and any project property is not being properly and efficiently administered, operated, and maintained, NTIA shall have the right to terminate this award for cause and pursue any other remedies allowed by law.
- **Compliance.** The recipient shall comply, and must require each contractor or subcontractor to comply, with all applicable Federal, state, and local laws and regulations.
- **Energy Efficiency.** The recipient shall apply, where feasible, sustainable, and energy efficient, design principles for the purpose of reducing pollution and energy costs and optimizing lifecycle costs associated with the construction.
- **Signs.** The recipient is responsible for constructing, erecting, and maintaining in good condition throughout the construction period a sign(s) satisfactory to NTIA that identifies the project and indicates that the project is Federally funded. NTIA also may require that the recipient maintain a permanent plaque or sign at the project site with the same or similar information.
- **Land, Easements, and Rights of Way.** The recipient must disclose all encumbrances to the operating unit. The operating unit will not accept any encumbrance that interferes with the construction, intended use, operation, or maintenance of the project during its estimated useful life. Unless otherwise provided for in the award, prior to grant of the award and commencement of construction, or when requested by the operating unit, the recipient must furnish evidence, satisfactory in form and substance to the operating unit, that title to real property is vested in the recipient, and that it has obtained any rights-of-way, easements, State and local government permits, long-term leases, or other property interests.
- **Relocation Assistance.** The provisions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, (Pub. L. No. 91-646; 42 U.S.C. 4601 et seq.), are applicable to each recipient of assistance from an operating unit. This Act provides assistance to persons, businesses, or farm operations affected by the acquisition, rehabilitation or demolition of real property acquired for a project financed wholly or in part with Federal assistance

funds. It also requires compliance with specific guidelines pertaining to reimbursable costs incidental to such land acquisition.

- Tribal Employment Rights Ordinances. In accordance with Departmental policy, all operating units must recognize Tribal Employment Rights Ordinances (TEROs), which may provide for preferences in contracting and employment, in connection with its financial assistance awards. Tribal ordinances requiring preference in contracting, hiring, and firing and the payment of a TERO fee are allowable provisions under Federal awards and should be incorporated by the operating unit under its grants and contracts with American Indian and Alaska Native tribal governments. The payment of the TERO fee, which supports the tribal employment rights office to administer the preferences, should generally be allowable as an expense that is necessary and reasonable for proper and efficient performance and administration of an award, as provided under the applicable cost principles set out in 2 CFR 225.

9) 4248 Baseline Project Plan

Recipients shall submit baseline project plans and details regarding key outputs and outcomes from their projects within 45 days of the close of the first quarter. Federal Program Officers will provide guidance on the format and content of these baseline plans and details for this one-time data gathering activity.

Due Date: 11/15/2010

**U.S. Department of Commerce
American Recovery and Reinvestment Act Award Terms**

NOTE: This award is subject to the terms and conditions of the award, the requirements of federal law and the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 STAT. 115, including section 1553 of the Recovery Act, *Protecting State and Local Government and Contractor Whistleblowers* (123 STAT. 297).

A. Award Terms Required Pursuant to 2 CFR Part 176

1. Reporting and Registration Requirements under Section 1512 of the American Recovery and Reinvestment Act of 2009, Public Law 111-5.

(a) This award requires the Recipient to complete projects or activities which are funded under the American Recovery and Reinvestment Act of 2009 ("Recovery Act") and to report on use of Recovery Act funds provided through this award. Information from these reports will be made available to the public.

(b) The reports are due no later than ten calendar days after each calendar quarter in which the Recipient receives the assistance award funded in whole or in part by the Recovery Act.

(c) Recipients and their first-tier Recipients must maintain current registrations in the Central Contractor Registration (www.ccr.gov) at all times during which they have active federal awards funded with Recovery Act funds. A Dun and Bradstreet Data Universal Numbering System (DUNS) Number (www.dnb.com) is one of the requirements for registration in the Central Contractor Registration.

(d) The Recipient shall report the information described in section 1512(c) using the reporting instructions and data elements that will be provided online at www.FederalReporting.gov and ensure that any information that is pre-filled is corrected or updated as needed.

2. Use of American Iron, Steel, and Manufactured Goods under Section 1605 of the Recovery Act.

(a) None of the funds appropriated or otherwise made available by the Recovery Act may be used for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States.

(b) Subsection (a) shall not apply in any case or category of cases in which the head of the Federal department or agency involved finds that--

- (1) applying subsection (a) would be inconsistent with the public interest;
- (2) iron, steel, and the relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron, steel, and manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent.

(c) If the head of a Federal department or agency determines that it is necessary to waive the application of subsection (a) based on a finding under subsection (b), the head of the department or agency shall publish in the *Federal Register* a detailed written justification as to why the provision is being waived.

(d) This award term shall be applied in a manner consistent with United States obligations under international agreements.

(e) AWARD TERM.-- The award term required by 2 CFR Part 176, Subpart B is set out in full as *Recovery Act Award Terms – Addendum to Award Term A.2* below.

3. Wage Rate Requirements under Section 1606 of the Recovery Act.

(a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR Parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. Federal agencies providing grants, cooperative agreements, and loans under the Recovery Act shall ensure that the standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated in any resultant covered contracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).

(b) For additional guidance on the wage rate requirements of section 1606, contact your awarding agency. Recipients of grants, cooperative agreements and loans should direct their initial inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

4. Single Audit Requirements: Recovery Act Transactions listed in Schedule of Expenditures of Federal Awards; Recipient Responsibilities for Informing Sub-Recipients.

(a) To maximize the transparency and accountability of funds authorized under the Recovery Act as required by Congress and in accordance with 2 CFR 215, subpart __. 21 "Uniform Administrative Requirements for Grants and Agreements" and OMB A-102 Common Rules provisions, Recipients agree to maintain records that identify adequately the source and application of Recovery Act funds.

(b) For Recipients covered by the Single Audit Act Amendments of 1996 and OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," Recipients agree to separately identify the expenditures for Federal awards under the Recovery Act on the Schedule of Expenditures of Federal Awards (SEFA) and the Data Collection Form (SF-SAC) required by OMB Circular A-133. This shall be accomplished by identifying expenditures for Federal awards made

under Recovery Act separately on the SEFA, and as separate rows under Item 9 of Part III on the SF-SAC by CFDA number, and inclusion of the prefix "ARRA-" in identifying the name of the Federal program on the SEFA and as the first characters in Item 9d of Part III on the SF-SAC.

(c) Recipients agree to separately identify to each sub-recipient, and document at the time of sub-award and at the time of disbursement of funds, the Federal award number, CFDA number, and amount of Recovery Act funds. When a Recipient awards Recovery Act funds for an existing program, the information furnished to sub-recipients shall distinguish the sub-awards of incremental Recovery Act funds from regular sub-awards under the existing program.

(d) Recipients agree to require their sub-recipients to include on their SEFA information to specifically identify Recovery Act funding similar to the requirements for the Recipient SEFA described above. This information is needed to allow the Recipient to monitor sub-recipient expenditure of Recovery Act funds properly, and to allow oversight by the Federal awarding agencies, Offices of Inspector General and the Government Accountability Office.

B. Additional Recovery Act Award Terms

1. Limitation on Expenditures Relating to Certain Activities.

Pursuant to section 1604 of the Recovery Act, expenses related to any casino or other gambling establishment, aquarium, zoo, golf course, or swimming pool are not eligible expenses under this award and will not be reimbursed.

2. Use of the American Recovery and Reinvestment Act Logo on Construction Signs.

All projects which are funded by the Recovery Act shall display signage that features the Primary Emblem throughout the construction phase. The signage should be displayed in a prominent location on site. Some exclusions may apply. The Primary Emblem should not be displayed at a size less than 6 inches in diameter. The agency awarding funds will provide additional instructions regarding specifications.

3. SEC. 1511 Certification.

Pursuant to section 1511 of the Recovery Act, with respect to funds made available to State or local governments for infrastructure investments, the Governor, mayor, or other chief executive, as appropriate, shall certify that the infrastructure investment has received the full review and vetting required by law and that the chief executive accepts responsibility that the infrastructure investment is an appropriate use of taxpayer dollars. Such certification shall include a description of the investment, the estimated total cost, and the amount of covered funds to be used, and shall be posted on a website and linked to the website established by section 1526. A State or local agency may not receive a disbursement of infrastructure investment funding from funds made available in this Act unless this certification is made and posted.

4. Quick Start Activities.

Pursuant to section 1602 of the Recovery Act, in using funds made available in this Act for infrastructure investment, Recipient shall give preference to activities that can be started and completed expeditiously, including a goal of using at least 50 percent of the funds for activities that can be initiated not later than 120 days after the date of the award of funds.¹ Recipients

¹ In lieu of "within 120 days of enactment of this Act" as provided in section 1602.

shall also use grant funds in a manner that maximizes job creation and economic benefit.

5. SEC. 1515 Access of Offices of Inspector General to Certain Records and Employees.

(a) Access- With respect to each contract or grant awarded using covered funds, any representative of an appropriate inspector general appointed under section 3 or 8G of the Inspector General Act of 1978 (5 U.S.C. App.), is authorized--

(1) to examine any records of the contractor or grantee, any of its subcontractors or subgrantees, or any State or local agency administering such contract, that pertain to, and involve transactions relating to, the contract, subcontract, grant, or subgrant; and

(2) to interview any officer or employee of the contractor, grantee, subgrantee, or agency regarding such transactions.

6. First Tier Subrecipients' Planning Activities.

Recipients shall require first tier subrecipients to obtain a DUNS number (or update an existing DUNS record), and to register with the Central Contractor Registration (CCR) no later than the first time Recovery Act data requirements are due (October 10, 2009).

7. Referral of False Claims to Department of Commerce Inspector General.

Recipients and subrecipients awarded funds made available under the Recovery Act shall promptly refer to the Department of Commerce Inspector General any credible evidence that a principal, employee, agent, contractor, subrecipient, subcontractor, or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity, or similar misconduct involving those funds. Referrals can be made online at <http://www.oig.doc.gov/oig/hotline/000016.html> or by calling 1-800-424-5197.

8. Recovery Act One-Time Funding.

This award is made with funds available under the Recovery Act and is intended to provide a one-time injection of funds for purposes of stimulating the American economy.

Recovery Act Award Terms – Addendum to Award Term A.2

2.01. Buy American: Projects Not Implicating International Agreements – Funds Used for Construction, Alteration, Maintenance, or Repair of a Public Building or Public Work that Does NOT Involve Iron, Steel, or Manufactured Goods Covered under International Agreement

REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS—SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 (RECOVERY ACT)

(a) **Definitions.** As used in this award term and condition—

“Manufactured good” means a good brought to the construction site for incorporation into the building or work that has been--

- (1) Processed into a specific form and shape; or
- (2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

“Public building” and “public work” means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

“Steel” means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.* (1) This award term and condition implements Section 1605 of the Recovery Act, by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this term and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate “none”]

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this term and condition if the Federal government determines that—

- (i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;
- (ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities

and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act.

(1)(i) Any Recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

- (A) A description of the foreign and domestic iron, steel, and/or manufactured goods;
- (B) Unit of measure;
- (C) Quantity;
- (D) Cost;
- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the Recovery Act.

(d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COMPARISON

Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
<i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

*[List name, address, telephone number, email address, and contact for suppliers surveyed.
Attach copy of response; if oral, attach summary.]*
[Include other applicable supporting information.]
[Include all delivery costs to the construction site.]*

2.02. Buy American: Projects Implicating International Agreements -- Funds Used for Construction, Alteration, Maintenance, or Repair of a Public Building or Public Work that DO Involve Iron, Steel, or Manufactured Goods Covered under International Agreement

(a) **Definitions.** As used in this award term and condition—

"Designated country" --

(1) A World Trade Organization Government Procurement Agreement country (Aruba, Austria, Belgium, Bulgaria, Canada, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (Republic of), Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Singapore, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, and United Kingdom);

(2) A Free Trade Agreement (FTA) country (Australia, Bahrain, Canada, Chile, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Israel, Mexico, Morocco, Nicaragua, Oman, Peru, or Singapore); or

(3) A United States-European Communities Exchange of Letters (May 15, 1995) country (Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovak Republic, Slovenia, Spain, Sweden, and United Kingdom).

"Designated country iron, steel, and/or manufactured goods" --

(1) Is wholly the growth, product, or manufacture of a designated country; or

(2) In the case of a manufactured good that consist in whole or in part of materials from another country, has been substantially transformed in a designated country into a new and different manufactured good distinct from the materials from which it was transformed.

"Domestic iron, steel, and/or manufactured good" --

(1) Is wholly the growth, product, or manufacture of the United States; or

(2) In the case of a manufactured good that consists in whole or in part of materials from another country, has been substantially transformed in the United States into a new and different manufactured good distinct from the materials from which it was transformed. There is no requirement with regard to the origin of components or subcomponents in manufactured goods or products, as long as the manufacture of the goods occurs in the United States.

"Foreign iron, steel, and/or manufactured good" means iron, steel and/or manufactured good that is not domestic or designated country iron, steel, and/or manufactured good.

"Manufactured good" means a good brought to the construction site for incorporation into the building or work that has been--

(1) Processed into a specific form and shape; or

(2) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

"Public building" and "public work" means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional,

or interstate entities which have governmental functions). These buildings and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

"Steel" means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Iron, steel, and manufactured goods.

(1) This award term and condition implements --

(i) Section 1605(a) of the Recovery, by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States; and

(ii) Section 1605(d), which requires application of the Buy American requirement in a manner consistent with U.S. obligations under international agreements. The restrictions of section 1605 of the Recovery Act do not apply to designated country iron, steel, and/or manufactured goods. The Buy American requirement in section 1605 shall not be applied where the iron, steel or manufactured goods used in the project are from a Party to an international agreement that obligates the Recipient to treat the goods and services of that Party the same as domestic goods and services. This obligation shall only apply to projects with an estimated value of \$7,443,000 or more.

(2) The Recipient shall use only domestic or designated country iron, steel, and manufactured goods in performing the work funded in whole or part with this award, except as provided in paragraphs (b)(3) and (b)(4) of this term and condition.

(3) The requirement in paragraph (b)(2) of this term and condition does not apply to the iron, steel, and manufactured goods listed by the Federal Government as follows:

[Award official to list applicable excepted materials or indicate "none"]

(4) The award official may add other iron, steel, and manufactured goods to the list in paragraph (b)(3) of this award term and condition if the Federal government determines that—

(i) The cost of domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, and/or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the overall cost of the project by more than 25 percent;

(ii) The iron, steel, and/or manufactured goods is not produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of section 1605 of the Recovery Act or the Buy American Act.

(1)(i) Any Recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph(b)(4) of this term and condition shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

(E) Time of delivery or availability;

(F) Location of the project;

(G) Name and address of the proposed supplier; and

(H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(4) of this term and condition.

(ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this term and condition.

(iii) The cost of iron, steel, or manufactured goods shall include all delivery costs to the construction site and any applicable duty.

(iv) Any Recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the Recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the Recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other appropriate actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds, as appropriate, by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to the section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods other than designated country iron, steel, and/or manufactured goods is noncompliant with the applicable Act.

(d) **Data.** To permit evaluation of requests under paragraph (b) of this term and condition based on unreasonable cost, the applicant shall include the following information and any applicable supporting data based on the survey of suppliers:

FOREIGN AND DOMESTIC ITEMS COMPARISON

Description	Unit of Measure	Quantity	Price (Dollars)*
<i>Item 1:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____
 <i>Item 2:</i>			
Foreign steel, iron, or manufactured good	_____	_____	_____
Domestic steel, iron, or manufactured good	_____	_____	_____

**[List name, address, telephone number, email address, and contact for suppliers surveyed.
Attach copy of response; if oral, attach summary.]**
[Include other applicable supporting information.]
[* Include all delivery costs to the construction site.]

EXHIBIT IV

(Project Reporting Forms)

ARRA Reporting Requirements

Definition. "Reporting" includes invoicing, ARRA Data Elements, and technical reporting.

Invoicing. Subrecipient must invoice the Prime Recipient:

- not less often than quarterly
 not less often than monthly

Amendment for Updated Reporting Requirements. A unilateral amendment may be issued to update reporting requirements in response to any additional requirements or guidance from the OMB or Sponsor including, but not limited to, the definition of terms and data elements, and specific instructions for reporting and report formats.

Compliance with the American Recovery and Reinvestment Act (ARRA) of 2009. Subrecipient must comply with all requirements specified in Division A of the ARRA (Public Law 111-5), including reporting requirements outlined in Section 1512 of the Act.

Responsibilities for Informing Sub-recipients. If Subrecipient issues Subawards under this agreement, Subrecipient agrees to separately inform each Subrecipient, and document at the time of Subaward and at the time of disbursement of funds, the Federal award number, any CFDA number assigned for ARRA purposes, and amount of ARRA funds. (2 CFR 215.26, 45 CFR 74.26, and 45 CFR 92.26)

Delegation of Reporting in federalreporting.gov. Prime Recipient hereby

delegates does not delegate ARRA quarterly reporting requirements to the Subrecipient.

Where reporting is delegated, Subrecipient shall directly submit all required data via federalreporting.gov as specified in the OMB memorandum "Implementing Guidance for the Reports on Use of Funds Pursuant to the American Recover and Reinvestment Act of 2009" dated June 22, 2009, or subsequent OMB-issued guidance.

Where reporting is not delegated, Subrecipient shall submit quarterly ARRA reports to the Prime Recipient as follows.

In all cases, Prime Recipient reserves the rights delineated in 2 CFR 215.53 part E, to request additional detail from the Subrecipient as needed to comply with the terms and reporting requirements of the Prime award.

Quarterly ARRA Reports to Prime Recipient

Quarterly ARRA reports are due no later than each of the following dates during the Subaward period of performance: **October 5, January 5, April 5, July 5**

Subrecipient shall use the forms included herein where appropriate to meet its reporting obligations.

Subrecipients' reports shall be submitted, electronically, to:

ARRA Reporting Requirements

Name of Contact Person	Gale M. Dean
Mailing Street Address	UNH, Office of Sponsored Research
Mailing Street Address 2	51 College Road
Place of Performance City, State, Zip Code (zip code + four)	Durham, NH 03824
Telephone	603-862-3915
Fax	603-862-3564
Email	gale.dean@unh.edu

Data to be Reported

A. Technical Reporting. In addition to any other technical reporting requirements set forth under this Subaward Agreement, *when requested by the Prime Recipient Project Director* the Subrecipient Project Director shall provide a brief update on cumulative programmatic achievements, including significant deliverables or milestones reached.

B. Subaward Agreement Data Elements

Sub Recipient DUNS	
Sub Recipient Congressional District	
Sub Recipient Legal Name, Address, City, State, Zip (zip plus four)	
Sub Recipient EIN	
Sub Recipient CCR Registration	
Amount of Subaward	

C. Performance Site

Subrecipient shall identify the physical location of the Primary Place of Performance of the Subaward:

ARRA Reporting Requirements

Place of Performance Street Address 1	
Place of Performance Street Address 2	
Place of Performance City	
Place of Performance State (two character code)	
Place of Performance Zip (zip code+ four)	
Place of Performance Congressional District (two digit code)	
Place of Performance Country Code (two character code)	

D. Jobs Created / Retained

Subrecipient shall provide estimated employment impact of the Recovery Act funded work.

(1) A brief description of the types of jobs created and jobs retained in the United States and outlying areas. "Job created" is a new position created and filled, or an existing unfilled position that is filled, that is funded by the Recovery Act. "Job retained" is an existing position that is now funded by the Recovery Act. A funded job is defined as one in which the wages or salaries are either paid for or will be reimbursed with Recovery act funding. This description may rely on job titles, broader labor categories, or the contractor's existing practice for describing jobs as long as the terms used are widely understood and describe the general nature of the work.

(2) An estimate of the number of jobs created and jobs retained paid from Recovery funds during the current reporting quarter in the United States and outlying areas. The estimate of the number of jobs created or retained by the Recovery Act should be expressed as "full-time equivalents" (FTE). FTE is calculated as all hours worked and funded by Recovery Act during the current quarter divided by the total number of quarterly hours in a full-time schedule, as defined by the recipient or federal contractor. For recipients of assistance agreements that must comply with OMB Circular A-21, Cost Principles for Educational Institutions, an alternative calculation based upon the allocable and allowable portion of activities expressed as a percentage is acceptable to estimate jobs created and retained. For more information on how to perform this calculation, please see OMB Guidance M10-08 (found at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf).

(3) A job must be counted as either a job created or a job retained; it cannot be counted as both.

(4) A brief description of the methodology used to calculate Jobs Created/Retained FTE estimates.

ARRA Reporting Requirements

Reporting for Quarter _____ in Year 20_____

JOBS CREATED/Retained

Job Titles (list titles, i.e. Project Director)	List FTE (range 0.01-1.00 - i.e. .25, .50)
<i>Please insert more rows as needed.</i>	
Describe how you calculated the FTE(s)	

E. Most Highly Compensated Officers

Subrecipient shall provide the names and total compensation of the five most highly compensated officers of the Subrecipient entity if the following items (1) and (2) apply.

If either item (1) or (2) does not apply, the Subrecipient's report shall include a statement certifying this.

If these items do apply, but there is no change in the most highly compensated individuals or their total compensation, the Subrecipient's report shall include a statement certifying this.

(1) The Subrecipient in its preceding fiscal year received—

- (a) 80 percent or more of its annual gross revenues in Federal awards; and
- (b) \$25,000,000 or more in annual gross revenues from Federal awards; and

(2) The public does not have access to information about the compensation of the senior executives of the entity 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 [26 USC § 6104].

"Total compensation" means the cash and non-cash dollar value earned by the executive during the Subrecipient's past fiscal year of the following (for more information see 17 CFR 229.402(c) (2)):

- (i). Salary and bonus.
- (ii). Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with FAS 123R.
- (iii). Earnings for services under non-equity incentive plans. Does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
- (iv). Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- (v). Above-market earnings on deferred compensation which are not tax qualified.

ARRA Reporting Requirements

(vi). Other compensation. For example, severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property if the value for the executive exceeds \$10,000.

HIGHLY COMPENSATED OFFICERS

Exempt from reporting compensation (Yes or No)?	
If not exempt per Section 1512 of ARRA	
Officer 1 Name	
Officer 1 Compensation	
Officer 2 Name	
Officer 2 Compensation	
Officer 3 Name	
Officer 3 Compensation	
Officer 4 Name	
Officer 4 Compensation	
Officer 5 Name	
Officer 5 Compensation	

F. Vendor Payments Equal to or in Excess of \$25,000.

Subrecipient must report, for any payments made to a single vendor equal to or greater than \$25,000, the identity of the vendor. Subrecipient shall report the vendor name and DUNS number if available. If the DUNS is not available, the Subrecipient shall report on the vendor name and zip code of the vendor's headquarters. Subrecipient will provide an estimate of vendor jobs created and retained including a brief description of the methodology used to calculate FTE estimates. For more information on how to perform this calculation, please see OMB Guidance M10-08 (found at http://www.whitehouse.gov/omb/assets/memoranda_2010/m10-08.pdf). Please insert more rows as needed.

VENDOR DATA

Vendor DUNS (9 digit)	
Vendor Name	
Vendor Headquarters Zip Code (zip code plus 4)	
Product/Service Description(s)	
Payment Amount	
Vendor Jobs created and retained related to this purchase (FTEs)	
Job Titles	
Describe how you calculated the FTE(s)	

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS



March 2008

DEPARTMENT OF COMMERCE
FINANCIAL ASSISTANCE
STANDARD TERMS AND CONDITIONS

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PREFACE

The recipient and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the Federal Register, EOs, OMB circulars, Department of Commerce (DOC) Financial Assistance Standard Terms and Conditions, agency standard award conditions (if any), and special award conditions. Special award conditions may amend or take precedence over DOC standard terms and conditions, on a case-by-case basis, when allowed by the DOC standard term and condition.

Some of the DOC terms and conditions herein contain, by reference or substance, a summary of the pertinent statutes, or regulations published in the Federal Register or Code of Federal Regulations (CFR), EOs, OMB circulars or the assurances (Forms SF-424B, 424D). To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular.

A. FINANCIAL REQUIREMENTS

.01 Financial Reports

- a. The recipient shall submit a "Financial Status Report" (SF-269) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-269 shall be submitted within 90 days after the expiration date of the award.
- b. The reports must be submitted to the Grants Officer in hard copy (no more than an original and two copies), or electronically when specified in the special award conditions.

.02 Award Payments

- a. The advance method of payment shall be authorized unless otherwise specified in a special award condition. The Grants Officer determines the appropriate method of payment. Payments will be made through electronic funds transfers directly to the

recipient's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 and the Cash Management Improvement Act. The DOC Award Number must be included on all payment-related correspondence, information, and forms.

- b. When the "Request for Advance or Reimbursement" (SF-270) is used to request payment, the recipient shall submit the request no more frequently than monthly, and advances shall be approved for periods to cover only expenses anticipated over the next 30 days. When the SF-270 is used, the recipient must complete the SF-3881, "ACH Vendor Miscellaneous Payment Enrollment Form," and return it to the Grants Officer.
- c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury's Automated Standard Application for Payment (ASAP) system. Under the ASAP system, payments are made through preauthorized electronic funds transfers, in accordance with the requirements of the Debt Collection Improvement Act of 1996. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which allows them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts. The following information will be required to make withdrawals under ASAP: (1) ASAP account number – the award number found on the cover sheet of the award; (2) Agency Location Code (ALC); and Region Code. Recipients enrolled in the ASAP system do not need to submit a "Request for Advance or Reimbursement" (SF-270), for payments relating to their award. Awards paid under the ASAP system will contain a special award condition, clause, or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system.
- d. Advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no case should advances exceed the amount of cash required for a 30-day period. Advanced funds not disbursed in a timely manner and any applicable interest must be promptly returned to DOC. If a recipient demonstrates an unwillingness or inability to establish procedures which will minimize the time elapsing between the transfer of funds and disbursement or if the recipient otherwise fails to continue to qualify for the advance method of payment, the Grants Officer may change the method of payment to reimbursement only.

.03 Federal and Non-Federal Sharing

- a. Awards which include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal

share shall not exceed the total Federal dollar amount authorized by the award.

- b. The non-Federal share, whether in cash or in-kind, is expected to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case, the recipient must meet its cost share commitment over the life of the award.

.04 Budget Changes and Transfer of Funds Among Categories

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be submitted to the Grants Officer who shall make the final determination on such requests and notify the recipient in writing.
- b. Transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is \$100,000 or less. For awards in which the Federal share of the project exceeds \$100,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct cost transfers exceed 10 percent of the total Federal and non-Federal funds authorized by the Grants Officer. The 10 percent threshold applies to the total Federal and non-Federal funds authorized by the Grants Officer at the time of the transfer request. This is the accumulated amount of Federal funding obligated to date by the Grants Officer along with any non-Federal share. The same criteria apply to the cumulative amount of transfer of funds among programs, functions, and activities. Transfers will not be permitted if such transfers would cause any Federal appropriation, or part thereof, to be used for purposes other than those intended. This transfer authority does not authorize the recipient to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. In addition, this does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget.
- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

.05 Indirect Costs

- a. Indirect costs will not be allowable charges against the award unless specifically included as a cost item in the approved budget incorporated into the award. (The term "indirect cost" has been replaced with the term "facilities and administrative costs" under OMB Circular A-21, "Cost Principles for Educational Institutions.")
- b. Excess indirect costs may not be used to offset unallowable direct costs.

c. If the recipient has not previously established an indirect cost rate with a Federal agency, the negotiation and approval of a rate is subject to the procedures in the applicable cost principles and the following subparagraphs:

1. (a) State, Local, and Indian Tribal Governments; Educational Institutions; and Non-Profit Organizations (Non-Commercial Organizations)

For the above listed organizations, cognizant federal agency is generally defined as the agency that provides the largest dollar amount of direct federal funding. For those organizations for which DOC is cognizant or has oversight, DOC or its designee will either negotiate a fixed rate with carry forward provisions for the recipient or, in some instances, will limit its review to evaluating the procedures described in the recipient's cost allocation methodology plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.

(b) Commercial Organizations

For commercial organizations, cognizant federal agency is defined as the agency that provides the largest dollar amount of negotiated contracts, including options. If the only federal funds received by a commercial organization are DOC award funds, then DOC becomes the cognizant federal agency for the purpose of indirect cost negotiations. For those organizations for which DOC is cognizant, DOC or its designee will negotiate a fixed rate with carryforward provisions for the recipient. Fixed rate means an indirect cost rate which has the same characteristics as a pre-determined rate, except that the difference between the estimated costs and the actual costs of the period covered by the rate is carried forward as an adjustment to the rate computation of the subsequent period.

DOC or its designee will negotiate indirect cost rates using the cost principles found in 48 CFR Part 31, "Contract Cost Principles and Procedures." For guidance on how to put an indirect cost plan together go to:

<http://www.dol.gov/oasam/programs/boc/costdeterminationguide/main.htm>

2. Within 90 days of the award start date, the recipient shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The recipient shall provide the Grants Officer with a copy of the transmittal letter.

Office of Acquisition Management
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room 6412
Washington, DC 20230

3. The recipient can use the fixed rate proposed in the indirect cost plan until such time as the DOC provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carryforward provision used in calculating next year's rate. This calculation of actual indirect costs and the carryforward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.
- d. When DOC is not the oversight or cognizant Federal agency, the recipient shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.
- e. If the recipient fails to submit the required documentation to DOC within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the DOC, oversight, or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the recipient's delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.
- f. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which DOC will reimburse the recipient shall be the lesser of:
 1. The line item amount for the Federal share of indirect costs contained in the approved budget of the award; or
 2. The Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by a cognizant or oversight Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date.

.06 Incurring Costs of Obligating Federal Funds Beyond the Expiration Date

- a. The recipient shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the expiration date stipulated in the award. The only costs which are authorized for a period of up to 90 days following the award expiration date are those strictly associated with closeout activities. Closeout activities are normally limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer.
- b. Unless otherwise authorized in 15 CFR § 14.25(e)(2) or a special award condition,

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

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

.07 Tax Refunds

Refunds of FICA/FUTA taxes received by the recipient during or after the award period must be refunded or credited to DOC where the benefits were financed with Federal funds under the award. The recipient agrees to contact the Grants Officer immediately upon receipt of these refunds. The recipient further agrees to refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the award end date.

B. PROGRAMMATIC REQUIREMENTS

.01 Performance (Technical) Reports

- a. The recipient shall submit performance (technical) reports in triplicate (one original and two copies) or electronically to the Federal Program Officer as specified in the special award conditions in the same frequency as the Financial Status Report (SF-269) unless otherwise authorized by the Grants Officer.
- b. Unless otherwise specified in the award provisions, performance (technical) reports shall contain brief information as prescribed in the applicable uniform administrative requirements incorporated into the award.

.02 Unsatisfactory Performance

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance rating or equivalent evaluation may result in designation of the recipient as high risk and assignment of special award conditions or other further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions."

.03 Programmatic Changes

The recipient shall report programmatic changes to the Grants Officer, and shall request prior approvals in accordance with 15 CFR § 14.25 or 15 CFR § 24.30.

.04 Other Federal Awards with Similar Programmatic Activities

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

.05 Non-Compliance With Award Provisions

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by DOC and may be considered grounds for any or all of the following actions: establishment of an account receivable, withholding payments under any DOC awards to the recipient, changing the method of payment from advance to reimbursement only, or the imposition of other special award conditions, suspension of any DOC active awards, and termination of any DOC active awards.

.06 Prohibition Against Assignment by the Recipient

The recipient shall not transfer, pledge, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.07 Disclaimer Provisions

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any other losses resulting in any way from the performance of this award or any subaward or subcontract under this award.
- b. The acceptance of this award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

C. NON-DISCRIMINATION REQUIREMENTS

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

.01 Statutory Provisions

- a. Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d *et seq.*) and DOC implementing regulations published at 15 CFR Part 8 which prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 USC §§ 1681 *et seq.*) prohibiting discrimination on the basis of sex under Federally assisted education programs or activities;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC § 794) and DOC implementing regulations published at 15 CFR Part 8b prohibiting discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 USC §§ 6101 *et seq.*) and DOC implementing regulations published at 15 CFR Part 20 prohibiting discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- e. The Americans with Disabilities Act of 1990 (42 USC §§ 12101 *et seq.*) prohibiting discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

.02 Other Provisions

- a. Parts II and III of EO 11246 (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and 12086 (43 FR 46501, 1978), require Federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 CFR § 60-1.4(b), 1991).

- b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," and DOC policy guidance issued on March 24, 2003 (68 FR 14180) to Federal financial assistance recipients on the Title VI prohibition against national origin discrimination affecting Limited English Proficient (LEP) persons.

.03 Title VII Exemption for Religious Organizations

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

D. AUDITS

Under the Inspector General Act of 1978, as amended, 5 USC App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Inspector General of the DOC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the recipient, whether written, printed, recorded, produced or reproduced by any electronic, mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires a program audit on a DOC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with DOC, or any other Federal, state or local audit entity.

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

- a. Organization-wide or program-specific audits shall be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations." Recipients that are subject to the provisions of OMB Circular A-133 and that expend \$500,000 or more in a year in Federal awards shall have an audit conducted for that year in accordance with the requirements contained in OMB Circular A-133. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by

OMB as a central clearinghouse. The address is:

Federal Audit Clearinghouse
Bureau of the Census
1201 E. 10th Street
Jeffersonville, IN 47132

- b. Unless otherwise specified in the terms and conditions of the award, in accordance with 15 CFR § 14.26(c) and (d), for-profit hospitals, commercial entities, and other organizations not required to follow the audit provisions of OMB Circular A-133 shall have an audit performed when the federal share amount awarded is \$500,000 or more over the duration of the project period. An audit is required at least once every two years using the following schedule for audit report submission.
 1. For awards less than 24 months, an audit is required within 90 days from the project expiration date, including the close-out period for the award.
 2. For 2-, or 3 -year awards, an audit is required within 90 days after the end of the first year and within 90 days from the project expiration date including the close-out period for the award.
 3. For 4-, or 5-year awards, an audit is required within 90 days after the end of the first year and third year, and within 90 days from the project expiration date including the close-out period for the award.
- c. Some DOC programs have specific audit guidelines that will be incorporated into the award. When DOC does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in OMB Circular A-133, § .235. The Recipient may include a line item in the budget for the cost of the audit. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at the following address:

Office of Inspector General
U.S. Department of Commerce
Atlanta Regional Office of Audits
401 West Peachtree Street, N.W., Suite 2742
Atlanta, GA 30308

.02 Audit Resolution Process

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

whenever audit results are disputed.

- b. In accordance with the *Federal Register* notice dated January 27, 1989 (54 FR 4053), a recipient whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
 1. Unless the Inspector General determines otherwise, the recipient has 30 days from the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
 2. The recipient has 30 days from the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
 3. The DOC shall review the documentary evidence submitted by the recipient and shall notify the recipient of the results in an Audit Resolution Determination Letter. The recipient has 30 days from the date of receipt of the Audit Resolution Determination Letter to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the recipient to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.
 4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
 5. The DOC shall review the recipient's appeal and notify the recipient of the results in an Appeal Determination Letter. After the opportunity to appeal has expired or after the appeal determination has been rendered, DOC will not accept any further documentary evidence from the recipient. No other administrative appeals are available in DOC.

E. DEBTS

.01 Payment of Debts Owed the Federal Government

Any debts determined to be owed the Federal Government shall be paid promptly by the recipient. In accordance with 15 CFR § 21.4, a debt will be considered delinquent if it is not paid within 15 days of the due date, or if there is no due date, within 30 days of the billing date. Failure to pay a debt by the due date, or if there is no due date, within 30 days of the billing date, shall result in the imposition of late payment charges as noted

below. In addition, failure to pay the debt or establish a repayment agreement by the due date, or if there is no due date, within 30 days of the billing date, will also result in the referral of the debt for collection action, including referral to the Treasury Offset Program, 31 C.F.R. § 285.5, and may result in DOC taking further action as specified in the standard term and condition entitled "Non-Compliance With Award Provisions". Funds for payment of a debt must not come from other Federally sponsored programs. Verification that other Federal funds have not been used will be made, e.g., during on-site visits and audits.

.02 Late Payment Charges

- a. An interest charge shall be assessed on the delinquent debt as established by the Debt Collection Act (31 U.S.C. 3701 *et seq.*), as amended. The minimum annual interest rate to be assessed is the Department of the Treasury's Current Value of Funds Rate. This rate is published in the *Federal Register* by the Department of the Treasury. The assessed rate shall remain fixed for the duration of the indebtedness.
- b. A penalty charge shall be assessed on any portion of a debt that is delinquent for more than 90 days, although the charge will accrue and be assessed from the date the debt became delinquent.
- c. An administrative charge shall be assessed to cover processing and handling the amount due.

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

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

.04 Effect of Judgment Lien On Eligibility For Federal Grants, Loans, or Programs

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

F. INDIVIDUAL BACKGROUND SCREENING

An individual background screening will be performed by the OIG on key individuals of organizational units associated with the application at the beginning of the award and at three year intervals thereafter for the life of the award unless (1) the proposed award amount is \$100,000 or less; (2) applicants are accredited colleges and universities; (3) applicants are units of a State or local government; (4) applicants are economic development districts designated by EDA, including those entities whose designations are pending, and councils of governments; or (5) the key individual(s) is/are elected officials of State and local governments who are serving in capacities other than their elected capacities when applying for assistance. In addition, if there is a change in the status of the organization and/or key individuals, or the program officer, OIG, or Grants Officer believes there is good reason to conduct a review sooner, a background screening may be required more frequently. Individual background screenings are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges (e.g., fraud, theft, perjury), or other matters which significantly reflect on the applicant's business integrity, responsibility, or financial integrity. Key individuals of non-exempt organizations associated with this award shall complete Form CD-346, "Applicant for Funding Assistance." An original signature is required. The form is to be submitted to the Grants Specialist named in the award document within 30 days of receipt of this award.

.01 Results of Individual Background Screening

DOC reserves the right to take any of the actions described in section F.02 if any of the following occurs as a result of the individual background screening:

- a. A key individual fails to submit the required Form CD-346, "Applicant for Funding Assistance" within 30 days of receipt of this award;
- b. A key individual makes a false statement or omits a material fact on the Form CD-346;
- c. The individual background screening reveals significant adverse findings that reflect on the business integrity or responsibility of the recipient and/or key individual.

.02 Action(s) Taken as a Result of Individual Background Screening

If any situation noted in F.01 occurs, DOC, at its discretion, may take one or more of the following actions:

- a. Consider suspension/termination of an award immediately for cause;
- b. Require the removal of any key individual from association with management and/or implementation of the award and require Grants Officer approval of personnel

replacements;

- c. Require the recipient to make other changes as appropriate; and/or
- d. Designate the recipient as high risk and amend the award to assign special award conditions, as appropriate, including making changes with respect to the method of payment and/or financial reporting requirements.

G. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

The recipient shall comply with the provisions of Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)" (published in the *Federal Register* on December 21, 2006, 71 FR 76573), which generally prohibit entities that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions.

H. DRUG-FREE WORKPLACE

The recipient shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 702) and DOC implementing regulations published at 15 CFR Part 29, "Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)" (published in the *Federal Register* on November 26, 2003, 68 FR 66534), which require that the recipient take steps to provide a drug-free workplace.

I. LOBBYING RESTRICTIONS

.01 Statutory Provisions

The recipient shall comply with the provisions of 31 U.S.C. § 1352 and DOC implementing regulations published at 15 CFR Part 28, "New Restrictions on Lobbying." These provisions generally prohibit the use of Federal funds for lobbying the Executive or Legislative Branches of the Federal government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying.

.02 Disclosure of Lobbying Activities

The recipient receiving in excess of \$100,000 in Federal funding shall submit a

completed Form SF-LLL, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The recipient must submit the Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer.

J. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Code of Conduct for Recipients

Pursuant to the certification in SF-424B, paragraph 3, the recipient must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.

.02 Applicability of Award Provisions to Subrecipients

- a. The recipient shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative, and audit requirements.
- b. A recipient is responsible for subrecipient monitoring, including the following:
 1. Award Identification - At the time of the award, identifying to the subrecipient the Federal award information (e.g., CFDA title and number, award name, name of Federal agency) and applicable compliance requirements.
 2. During-the-Award Monitoring - Monitoring the subrecipient's use of Federal awards through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient administers Federal awards in compliance with laws, regulations, and the provisions of contracts or grant agreements and that performance goals are achieved.
 3. Subrecipient Audits - Ensuring that subrecipients expending \$500,000 or more in Federal awards during the subrecipient's fiscal year have met the audit requirements of OMB Circular A-133, and that the required audits are completed within 9 months of the end of the subrecipient's audit period. In addition, the recipient is required to issue a management decision on audit findings within 6 months after receipt of the subrecipient's audit report, and ensuring that the subrecipient takes timely and appropriate corrective action on all audit findings.

In cases of continued inability or unwillingness of a subrecipient to have the required audits, the pass-through entity shall take appropriate action using sanctions.

.03 Competition and Codes of Conduct for Subawards

- a. All subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition. The recipient must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of subawards. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients. However, the recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.
- c. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity could result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It could also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts

- a. The recipient shall include the following notice in each request for applications or bids:

Applicants/bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a

DOC official) are subject to 2 CFR Part 1326, Subpart C "Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants/bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to 15 CFR Part 28, "New Restrictions on Lobbying." Applicants/bidders should familiarize themselves with these provisions, including the certification requirement. Therefore, applications for a lower tier covered transaction must include a Form CD-512, "Certification Regarding Lobbying--Lower Tier Covered Transactions," completed without modification.

- b. The recipient shall include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts), that the award is subject to Subpart C of 2 CFR Part 1326, "Governmentwide Debarment and Suspension (Nonprocurement)."
- c. The recipient shall include a statement in all lower tier covered transactions (subawards, contracts, and subcontracts) exceeding \$100,000 in Federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C § 1352, as implemented at 15 CFR Part 28, "New Restrictions on Lobbying." The recipient shall further require the subrecipient, contractor, or subcontractor to submit a completed "Disclosure of Lobbying Activities" (Form SF-LLL) regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The Form SF-LLL shall be submitted from tier to tier until received by the recipient. The recipient must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

.05 Minority Owned Business Enterprise

DOC encourages recipients to utilize minority and women-owned firms and enterprises in contracts under financial assistance awards. The Minority Business Development Agency will assist recipients in matching qualified minority owned enterprises with contract opportunities. For further information contact:

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

.06 Subaward and/or Contract to a Federal Agency

- a. The recipient, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of DOC and/or other Federal department, agency or instrumentality, without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted to the Federal Program Officer who shall review and make recommendation to the Grants Officer. The Grants Officer shall make the final determination and will notify the recipient in writing of the final determination.

K. PROPERTY

.01 Standards

The recipient shall comply with the property management standards as stipulated in the applicable uniform administrative requirements.

.02 Real Property

The recipient shall execute a security interest or other statement of the Federal Interest in real property acquired or improved with Federal funds, acceptable in form and substance to the DOC, which statement must be perfected and placed of record in accordance with local law, with continuances re-filed as appropriate. The recipient must provide the DOC with a written statement from a licensed attorney in the jurisdiction where the property is located certifying that the Federal Interest has been protected, as required under the award and in accordance with local law. The attorney's statement, along with a copy of the instrument reflecting the recordation of the Federal Interest, shall be returned to the Grants Officer. The recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from the Grants Officer. No funds under this award shall be released until the recipient has complied with this provision, unless other arrangements satisfactory to the DOC are made.

L. ENVIRONMENTAL REQUIREMENTS

Environmental impacts must be considered by Federal decision makers in their decisions whether or not to (1) approve a proposal for Federal assistance; (2) approve the proposal with mitigation; or (3) approve a different proposal/grant having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate a planning process with an early consideration of potential environmental impacts that projects funded with Federal assistance may have on the environment. The recipient and subrecipients must comply with all environmental standards, to include those prescribed under the following statutes and Executive Orders, and shall identify to the awarding agency any impact the award may have on the environment. In some cases, award funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the DOC to make an assessment on any impacts that a project may have on the environment.

.01 The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321-4327)

The National Environmental Policy Act (NEPA) and the Council on Environmental Quality (CEQ) implementing regulations (40 CFR parts 1500 through 1508) require that an environmental analysis be completed for all major Federal actions significantly affecting the environment. NEPA applies to the actions of Federal agencies and may include a Federal agency's decision to fund non-Federal projects under grants and cooperative agreements. Recipients of Federal assistance are required to identify to the awarding agency any impact an award will have on the quality of the human environment, and assist the agency to comply with the National Environmental Policy Act. Recipients may also be requested to assist NOAA in drafting of an environmental assessment, if the Department determines an assessment is required, when the award activities remain subject to Federal authority and control. If additional information is required during the period of the award, funds can be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional environmental compliance information sufficient to enable the Department to make an assessment on any impacts that a project may have on the environment.

.02 Floodplain Management, EO 11988 and, Protection of Wetlands, EO 11990, May 24, 1977

Recipients must identify proposed actions in Federally defined floodplains and wetlands to enable the agency to make a determination whether there is an alternative to minimize any potential harm.

.03 Clean Air Act, Clean Water Act, and EO 11738

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 et seq.), Clean Water Act (33 U.S.C. §§1251 et seq.), and EO 11738, and shall not use a facility on EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR §15.5, and shall notify the Program Officer in writing if it intends to use a facility that is on the EPA List of Violating Facilities or knows that the facility has been recommended to be placed on the List.

.04 The Flood Disaster Protection Act of 1973 (42 U.S.C. § 4002 et seq.)

Flood insurance, when available, is required for Federally assisted construction or acquisition in flood-prone areas.

.05 The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)

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

.06 The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)

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

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

Restrictions are placed on Federal Funding for actions within the Coastal Barrier System.

.08 The Wild and Scenic Rivers Act, as amended (16 U.S.C. §§ 1271 et seq.)

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

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

This Act precludes Federal assistance for any project that the EPA determines may contaminate a sole source aquifer so as to threaten public health.

.10 The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. §§ 6901 et seq.)

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

.11 The Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, and the Superfund Amendments and Reauthorization Act of 1986, and the Community Environmental Response Facilitation Act of 1992, as amended, (42 U.S.C. §§ 9601 et seq.)

These requirements address responsibilities of hazardous substance releases, threatened releases and environmental cleanup. There is also a requirement to impose reporting and community involvement requirements to ensure disclosure of the release or disposal of regulated substances and cleanup of hazards.

.12 Environmental Justice in Minority Populations and Low Income Populations, EO 12898, February 11, 1994.

This order identified and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations.

M. MISCELLANEOUS REQUIREMENTS

.01 Criminal and Prohibited Activities

- a. The Program Fraud Civil Remedies Act (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the Federal government for money (including money representing grants, loans or other benefits).
- b. False statements (18 U.S.C. §§ 287 and 1001), provides that whoever makes or

presents any false, fictitious, or fraudulent statements, representations, or claims against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.

- c. False Claims Act (31 U.S.C. 3729 *et seq.*), provides that suits under this act can be brought by the government, or a person on behalf of the government, for false claims under Federal assistance programs.
- d. Copeland "Anti-Kickback" Act (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a Federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract.

.02 Foreign Travel

- a. The recipient shall comply with the provisions of the Fly America Act (49 USC § 40118). The implementing regulations of the Fly America Act are found at 41 CFR §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed foreign air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. Use of foreign air carriers may also be used only if bilateral agreements permit such travel pursuant to 49 USC § 40118(b). DOC is not aware of any bilateral agreements which meet these requirements. Therefore, it is the responsibility of the recipient to provide the Grants Officer with a copy of the applicable bilateral agreement if use of a foreign carrier under a bilateral agreement is anticipated.
- d. If a foreign air carrier is anticipated to be used for any part of foreign travel, the recipient must receive prior approval from the Grants Officer. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 CFR § 301-10.142, which requires the recipient to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel, name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide the Grants Officer with a copy of the agreement. The Grants Officer shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

.03 American-Made Equipment and Products

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

.04 Intellectual Property Rights

- a. **Inventions.** The rights to any invention made by a recipient under a DOC financial assistance award are determined by the Bayh-Dole Act, Pub. L. 96-517, as amended, and codified in 35 U.S.C. § 200 et seq., except as otherwise required by law. The specific requirements governing the development, reporting, and disposition of rights to inventions and patents resulting from financial assistance awards are described in more detail in 37 CFR Part 401 and in particular, in the standard patent rights clause in 37 CFR § 401.14, which is hereby incorporated by reference into this award.

1. Ownership.

- (a) **Recipient.** The recipient has the right to own any invention it makes (conceived or first actually reduced to practice) or made by its employees. The recipient may not assign its rights to a third party without the permission of DOC unless it is to a patent management organization (i.e., a university's Research Foundation.) The recipient's ownership rights are subject to the Government's nonexclusive paid-up license and other rights.
- (b) **Department.** If the recipient elects not to own or does not elect rights or file a patent application within the time limits set forth in the standard patent rights clause, DOC may request an assignment of all rights, which is normally subject to a limited royalty free nonexclusive revocable license for the recipient. DOC owns any invention made solely by its employees but may license the recipient in accordance with the procedures in 37 CFR Part 404.
- (c) **Inventor/Employee.** If neither the recipient nor the Department is interested in owning an invention by a recipient employee, the recipient, with the written concurrence of DOC, may allow the inventor/employee to own the invention subject to certain restrictions as described in 37 CFR § 401.9.
- (d) **Joint inventions.** Inventions made jointly by a recipient and a DOC employee will be owned jointly by the recipient and DOC. However, DOC may transfer its rights to the recipient as authorized by 35 U.S.C. § 202(e) and 37 CFR § 401.10 if the recipient is willing to patent and license the invention usually in exchange for a share of "net" royalties based on the number of inventors (e.g., 50-50 if there is one recipient and DOC employee). The agreement will be prepared by DOC and may include other provisions, such as a royalty free license to the Government and certain other entities. 35 U.S.C. § 202(e) also

authorizes the recipient to transfer its rights to the Government which can agree to share royalties similarly as described above.

2. Responsibilities - iEdison. The recipient has responsibilities and duties set forth in the standard patent rights clause, which are not described below. The recipient is expected to comply with all the requirements of the standard patent rights clause and 37 CFR Part 401. Recipients of DOC financial assistance awards are required to submit their disclosures and elections electronically using the Interagency Edison extramural invention reporting system (iEdison) at www.iEdison.gov. Recipients may obtain a waiver of this electronic submission requirement by providing to DOC compelling reasons for allowing the submission of paper copies of reports related to inventions.

b. Patent Notification Procedures.

Pursuant to E.O. 12889, DOC is required to notify the owner of any valid patent covering technology whenever the DOC or its financial assistance recipients, without making a patent search, knows (or has demonstrable reasonable grounds to know) that technology covered by a valid United States patent has been or will be used without a license from the owner. To ensure proper notification, if the recipient uses or has used patented technology under this award without a license or permission from the owner, the recipient must notify the Grants Officer.

However, this notice does not necessarily mean that the Government authorizes and consents to any copyright or patent infringement occurring under the financial assistance.

c. Data, Databases, and Software.

The rights to any work produced or purchased under a DOC Federal financial assistance award are determined by 15 CFR § 24.34 and 15 CFR § 14.36. Such works may include data, databases or software. The recipient owns any work produced or purchased under a DOC Federal financial assistance award subject to DOC's right to obtain, reproduce, publish or otherwise use the work or authorize others to receive, reproduce, publish or otherwise use the data for Government purposes.

d. Copyright.

The recipient may copyright any work produced under a DOC Federal financial assistance award subject to DOC's royalty-free nonexclusive and irrevocable right to reproduce, publish or otherwise use the work or authorize others to do so for Government purposes. Works jointly authored by DOC and recipient employees may be copyrighted but only the part authored by the recipient is protected because, under 17 U.S.C. § 105, works produced by Government employees are not copyrightable in

the United States. On occasion, DOC may ask the recipient to transfer to DOC its copyright in a particular work when DOC is undertaking the primary dissemination of the work. Ownership of copyright by the Government through assignment is permitted by 17 U.S.C. § 105.

.05 Increasing Seat Belt Use in the United States

Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally-owned vehicles.

.06 Research Involving Human Subjects

- a. All proposed research involving human subjects must be conducted in accordance with 15 CFR Part 27, "Protection of Human Subjects." No research involving human subjects is permitted under this award unless expressly authorized by Special Award Condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. DOC regulations, 15 CFR Part 27, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate DOC officials. This documentation may include:
 1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines, see 15 CFR § 27.103;
 2. Documentation to support an exemption for the project under 15 CFR § 27.101(b);
 3. Documentation to support deferral for an exemption or IRB review under 15 CFR § 27.118;
 4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken, conducted, or costs incurred

and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

.07 Federal Employee Expenses

Federal agencies are generally barred from accepting funds from a recipient to pay transportation, travel, or other expenses for any Federal employee unless specifically approved in the terms of the award. Use of award funds (Federal or non-Federal) or the recipient's provision of in-kind goods or services, for the purposes of transportation, travel, or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, DOC policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants regardless of the source.

.08 Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects.

Pursuant to EO 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," unless the project is exempted under section 5(c) of the order, bid specifications, project agreements, or other controlling documents for construction contracts awarded by recipients of grants or cooperative agreements, or those of any construction manager acting on their behalf, shall not:

- a. include any requirement or prohibition on bidders, offerors, contractors, or subcontractors about entering into or adhering to agreements with one or more labor organizations on the same or related construction project(s); or
- b. otherwise discriminate against bidders, offerors, contractors, or subcontractors for becoming or refusing to become or remain signatories or otherwise to adhere to agreements with one or more labor organizations, on the same or other related construction project(s).

.09 Minority Serving Institutions (MSIs) Initiative

Pursuant to Eos13256, 13230, and 13270, DOC is strongly committed to broadening the participation of MSIs in its financial assistance programs. DOC's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance

programs. DOC encourages all applicants and recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

.10 Research Misconduct

Scientific or research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. It does not include honest errors or differences of opinion. The recipient organization has the primary responsibility to investigate allegations and provide reports to the Federal Government. Funds expended on an activity that is determined to be invalid or unreliable because of scientific misconduct may result in a disallowance of costs for which the institution may be liable for repayment to the awarding agency. The Office of Science and Technology Policy at the White House published in the *Federal Register* on December 6, 2000, a final policy that addressed research misconduct. The policy was developed by the National Science and Technology Council (65 FR 76260). The DOC requires that any allegation be submitted to the Grants Officer, who will also notify the OIG of such allegation. Generally, the recipient organization shall investigate the allegation and submit its findings to the Grants Officer. The DOC may accept the recipient's findings or proceed with its own investigation. The Grants Officer shall inform the recipient of the DOC's final determination.

.11 Publications, Videos and Acknowledgement of Sponsorship

Publication of the results or findings of a research project in appropriate professional journals and production of video or other media is encouraged as an important method of recording and reporting scientific information. It is also a constructive means to expand access to federally funded research. The recipient is required to submit a copy to the funding agency and when releasing information related to a funded project include a statement that the project or effort undertaken was or is sponsored by DOC. The recipient is also responsible for assuring that every publication of material (including Internet sites and videos) based on or developed under an award, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer: "This [report/video] was prepared by [recipient name] under award [number] from [name of operating unit], U.S. Department of Commerce. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the [name of operating unit] or the U.S. Department of Commerce." This also applies to videos produced under DOC financial assistance awards.

.12 Care and Use of Live Vertebrate Animals

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Public Law

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

.13 Homeland Security Presidential Directive – 12

If the performance of a grant award requires recipient organization personnel to have unsupervised physical access to a Federally controlled facility for more than 180 days or access to a Federal information system, such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, the DOC will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DUS), to ensure the individual is in a lawful immigration status and that they are eligible for employment within the US. Any items or services delivered under a financial assistance award shall comply with the Department of Commerce personal identity verification procedures that implement Homeland Security Presidential Directive -12, FIPS PUB 201, and OMB Memorandum M-05-24. The recipient shall insert this clause in all subawards or contracts when the subaward recipient or contractor is required to have physical access to a Federally controlled facility or access to a Federal information system.

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

- a. This clause applies to the extent that this financial assistance award involves access to export-controlled information or technology.
- b. In performing this financial assistance award, the recipient may gain access to export-controlled information or technology. The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled information and technology, including deemed exports. The recipient shall establish and maintain throughout performance of the financial assistance award effective export compliance procedures at non-DOC facilities. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual and electronic access to export-controlled information and technology.

c. Definitions

1. Deemed Export. The Export Administration Regulations (EAR) define a deemed export as any release of technology or source code subject to the EAR to a foreign national, both in the United States and abroad. Such release is "deemed" to be an export to the home country of the foreign national. 15 CFR § 734.2(b)(2)(ii).
 2. Export-controlled information and technology. Export-controlled information and technology subject to the EAR (15 CFR §§ 730-774), implemented by the DOC Bureau of Industry and Security, or the International Traffic In Arms Regulations (ITAR) (22 CFR §§ 120-130), implemented by the Department of State, respectively. This includes, but is not limited to, dual-use items, defense articles and any related assistance, services, software or technical data as defined in the EAR and ITAR.
- d. The recipient shall control access to all export-controlled information and technology that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access is restricted, or licensed, as required by applicable Federal laws, Executive Orders, and/or regulations.
 - e. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, Executive Orders or regulations.
 - f. The recipient shall include this clause, including this paragraph (f), in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled information technology.

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

This Act authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.

.16 The Federal Funding Accountability and Transparency Act of 2006 (Pub. L. No. 109-282).

This Act requires that the Federal government establish a single searchable awards website by January 1, 2008 to enable the public to see where Federal funds for grant and contract awards are being spent. Subaward and subcontract data will be required on the website by January 1, 2009. Funding data retroactive to October 1, 2006 must be reported by all Federal agencies and their recipient and subrecipient organizations.

Data elements will include:

Name of entity receiving award;

Award amount;

Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;

Location of: entity, primary location of performance (City/State/Congressional District/Country; and

Unique identifier of entity.

The data will be required within 30 days of an award. The DOC will be implementing this Act, which will require recipients and subrecipients to report the required data.

APPENDIX B – DEFINITIONS

NHSafeNet – describes the shared microwave system and equipment purchased under the grant and operated by the Parties.

DOS – refers to the NH Department of Safety.

DOT – refers to NH Department of Transportation

NHPTV – refers to NH Public TV

TAG – refers to The Adjutant General of the NH National Guard.

NHNG – refers to NH National Guard

DRED – refers to NH Department of Resources and Economic Development

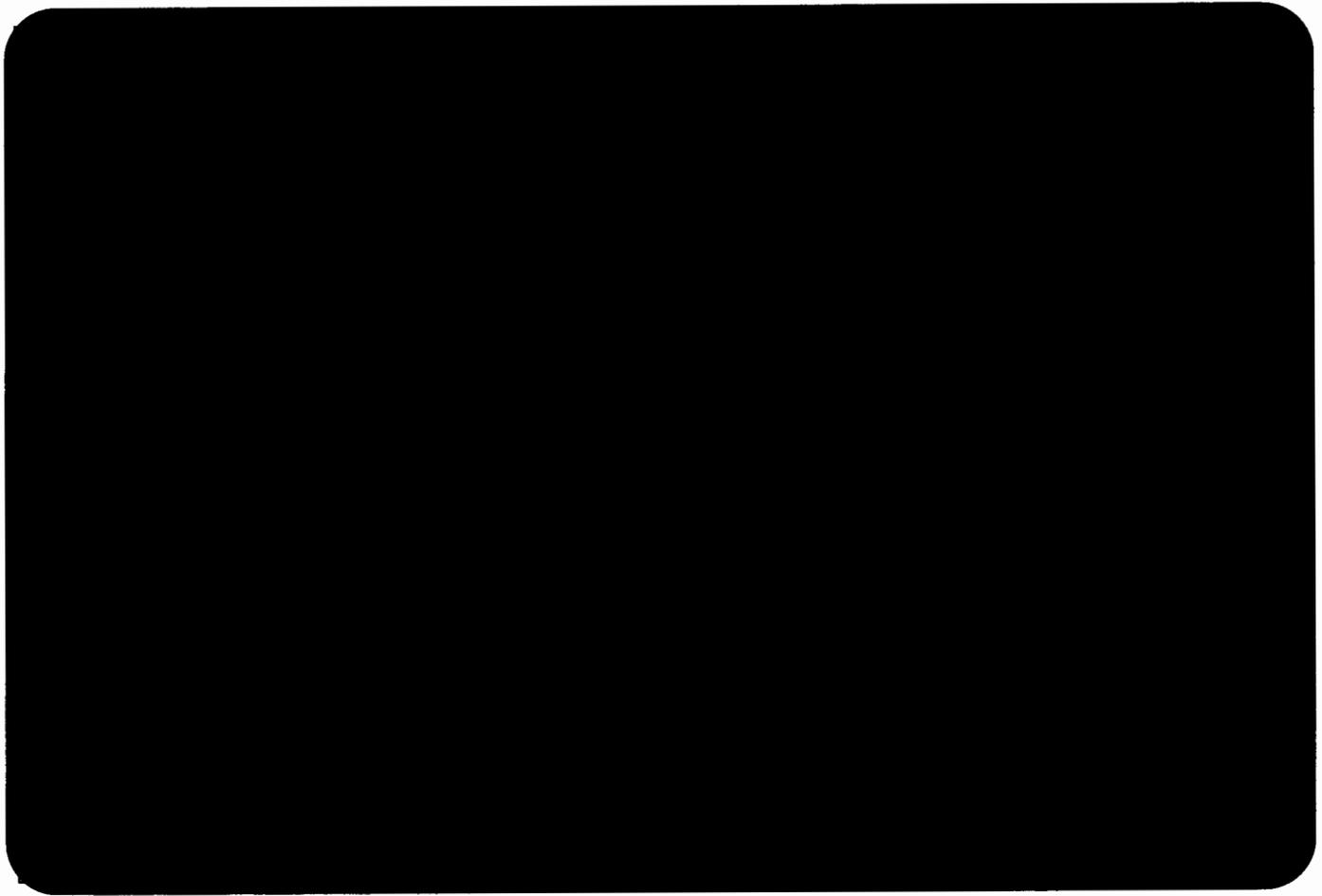
Risk Management - refers to RSA 5-B:2, IV confirms a process set up in accordance with the requirements of the NH Statute.

Response Time Objective - The Response Time Objective is the maximum amount of time DOS expects to expend, once receiving notification of an outage, to assess the severity of the outage, dispatch a communications technician or team of communications technicians to respond to the outage, notify all affected users of the outage, and advise affected users of the predicted Resolution Time Objective.

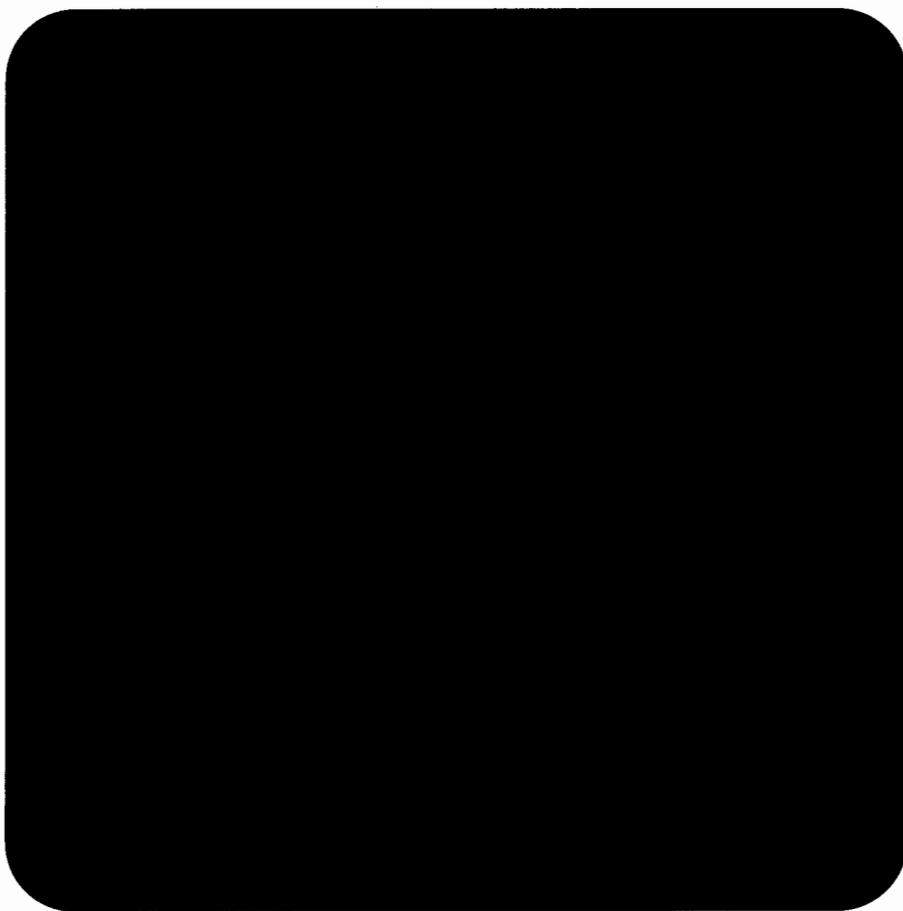
Resolution Time Objective - The Resolution Time Objective is the amount of time DOS expects to reasonably expend, depending on the severity of the outage, to repair, replace, or adjust failed equipment in order to correct an outage, return the affected system to its normal operating parameters, and notify all affected users of the resolution of the outage.

Demarcation Point – refers to the physical point between the shared Network and the facilities of a Party which shall be at the cable port entry.

Appendix C – Operational Contacts



Appendix C – Party Contact Information



Appendix D - Acceptance Testing



**GREEN MOUNTAIN
COMMUNICATIONS, INC.**

Telecommunication Services for the Wireless Industry

May 12, 2011

Brian Shepperd
Program Director, Network NH Now
University of New Hampshire
310A Nesmith Hall
131 Main Street
Durham NH 03824

Dear Brian,

This letter provides acknowledgement of Network New Hampshire Now's role in purchasing our products as outline below:

- The University System of New Hampshire - Network New Hampshire Now department is providing project management and fiscal oversight for the State of New Hampshire for a sub-project of the New Hampshire American Reinvestment and Recovery Act ("ARRA") Broadband Opportunities Program Middle Mile Project grant.
- Green Mountain Communications Inc. has been awarded a contract to purchase equipment under this grant and all equipment except Ceragon includes a 5 year warranty as part of the contract. The Ceragon equipment includes a 4 year warranty in addition to the standard manufacturers 1 year warranty.
- The equipment is being purchased by the University System of New Hampshire - Network New Hampshire Now project. Upon final system acceptance, NNHN will transfer full ownership of this equipment to the State of New Hampshire - Department of Safety.
- Final system acceptance shall occur on or before June 30th, 2013

VENDOR understands and agrees that the 4 and 5 year warranty period will commence on the date of system acceptance and will be in effect between the vendor and the State of New Hampshire - Department of Safety. At that time, our records will be updated to reflect the State of New Hampshire - Department of Safety as the owner of this equipment.

Sincerely,

Victor Drouin
President

06/07/2011

Network New Hampshire Now - NHSafeNet
Master Agreement

MASTER AGREEMENT

This Master Agreement is by and between the University System of New Hampshire (hereafter "USNH" or "Owner") on behalf of Network New Hampshire Now (hereafter "NNHN"), with a principle place of business of 310A Nesmith Hall, 131 Main Street, Durham, New Hampshire 03824, and Green Mountain Communications, Inc., (hereafter "GMCI"), a New Hampshire Corporation, having its principal place of business at 702 Riverwood Drive, Pembroke, NH 03275. GMCI will design, install and commission the carrier class, closed, middle-mile microwave network for public safety, public television, transportation, and mobile broadband communications on mountaintops across New Hampshire, (hereafter "NHSafeNet"), as specified in USNH RFP 8600-0002. This will be a sub-project of the New Hampshire American Reinvestment and Recovery Act ("ARRA") Broadband Opportunities Program Middle Mile Project grant.

RECITALS

NNHN desires to have GMCI implement the BTOP funded public, safety microwave network; GMCI wishes to provide implementation of the BTOP funded, public safety microwave network.

The parties therefore agree as follows:

This Agreement is comprised of the following documents (Contract Documents). Appendices G, I and J are included by reference and are as fully a part of the Contract as if attached to this Agreement or repeated herein.

- Appendix A. NHSafeNet Pricing Table (06/07/2011)
- Appendix B. NHSafeNet Payment Schedule (06/07/2011)
- Appendix C1 & C2 - NHSafeNet Project Plan and Schedule (06/07/2011)
- Appendix D. NHSafeNet Training Plan (06/07/2011)
- Appendix E. NHSafeNet Site Drawings (06/07/2011)
- Appendix F. NHSafeNet Network Diagram (06/07/2011)
- Appendix G USNH General Conditions of the Contract for Construction (10/08/2010)
- Appendix H. FIRST AMENDMENT TO USNH General Conditions of the Contract for Construction
- Appendix I. RFP 8600-0002 (11/16/10) Including Addenda 1-3
- Appendix J. GMCI Proposal

CONTRACT TERM

The Master Agreement, including any associated Appendices, and all obligations of the parties hereunder shall become effective after full execution by the parties ("Effective Date").

The Master Agreement shall begin on the Effective Date and extend through June 30th, 2013.

Time is of the essence in the performance of GMCI's and NNHN's obligations under the Master Agreement. GMCI understands the time constraints imposed under American Recovery and Reinvestment Act (ARRA) Grants and shall adhere to the milestones as stated in the RFP:

- 70% Completion by June 30, 2012
- 100% Completion by June 30, 2013

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CONTRACT PRICE

This is a Firm Fixed Price (FFP) contract with price and term limitations as set forth in the Master Agreement. The total value of the contract is \$4,893,270, consisting of NNHN payments to GMCI in the amount of \$3,885,270, and grant required in-kind matching from GMCI in the amount of \$1,008,000. Details of pricing for this project have been identified in **Appendix A. NHSafeNet Pricing Table**.

GMCI will provide all goods and services as a fixed cost, "turnkey" project and will assume complete responsibility for all engineering, design, integration, installation, testing, commissioning, and delivery of a completely operational microwave system, MPLS network system, and associated applications as specified by the RFP and this Master Agreement.

NNHN and GMCI agree that any modifications to the Master Agreement and any Appendices will require negotiation to reduce the requirements of one area to accommodate the modification to another area. These modifications will not result in net changes to the project budget amount or required contract match amount.

NTIA COMPLIANCE

GMCI must comply with the rules set forth in the NTIA BTOP Round 2 NOFA General Program Requirements found at <http://www2.ntia.doc.gov/compliance>.

SCOPE OF WORK

1.1 Overview

GMCI will design, construct and commission a new carrier-grade, high capacity, microwave radio system to implement a closed, middle-mile MPLS based public safety network for Network New Hampshire Now (NNHN) as specified in USNH RFP 8600-0002. The new microwave backbone will serve the following Stakeholders:

- New Hampshire Department of Safety (NHDOS)
- New Hampshire Department of Resources and Economic Development (NHDRED)
- New Hampshire Department of Transportation (NHDOT)
- New Hampshire National Guard (NHNG)
- New Hampshire Public Television (NHPTV)
- Maine, Massachusetts, and Vermont Departments of Public Safety

RFP 8600-0002 and GMCI's RFP response shall be the governing documents for this Master Agreement with specific negotiated modifications noted as part of this Agreement. In the event of conflict, the terms and conditions of Request for Proposal #8600-0002 shall apply.

1.2 Detailed Plans to Implement MPLS

A high level network design can be found in **Appendix F. NHSafeNet Network Diagram**. Hardware and software required for this have been identified in **Appendix A. NHSafeNet Pricing Table**.

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1.3 Obtaining Rights of Way and NHDRED Application and Specific Requirements

If necessary, GMCI will obtain any necessary Rights of Way. GMCI will complete and submit NHDRED Applications for Electronic Communication Site Use as required to meet the state-mandated technical requirements for installation.

1.4 Component Delivery and Staging

GMCI will receive and store all equipment associated with the project. Prior to deployment each component will be staged, configured, and tested in GMCI's Pembroke facility to ensure all equipment and associated software is ready to be placed into service prior to arrival at the intended installation site.

1.5 Network Management

The system proposed as part of this response will support all of the foundational features for network management system including configuration, monitoring and alarms. The Stakeholders will have the option of keeping these management functions separate from existing Enterprise NMS, or integrating them in a Manager of Managers concept with centralized access and privilege controls. The final configuration will result from the final detailed system design process.

1.6 Warranties and Maintenance Support

GMCI will install new and first quality equipment and will provide a five (5) year warranty period (including all parts and labor) for all equipment (except Ceragon) and material purchased and installed by GMCI. GMCI will install new and first quality equipment and will provide a four (4) year warranty period (including all parts and labor) for all Ceragon equipment.

Warranty will begin upon formal system acceptance by NNHN.

GMCI will provide a letter of acknowledgment from Ceragon related to the transfer of ownership to the State of New Hampshire Department of Safety and associated warranty commitment. GMCI will provide a letter of acknowledgment from Cisco related to the transfer of ownership to the State of New Hampshire Department of Safety and associated warranty commitment, or alternatively identify the State of New Hampshire Department of Safety as the customer in the Cisco warranty documents. GMCI will provide the warranty directly to the State of New Hampshire Department of Safety for all dehydrators, DC systems, and miscellaneous components.

Material and labor will be warranted for a minimum of five (5) years after date of final system acceptance, unless otherwise specified, and will include repair or replacement under normal wear and usage and telephone/on-site support as needed for both hardware and software defects, system operation, and configuration assistance.

GMCI will further warrant support in the form of replacement parts for NNHN equipment for seven (7) years from the last date of manufacture.

1.7 Training

GMCI is responsible for providing the training outlined in Appendix B, NHSafeNet Training Plan.

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1.8 Technical Specifications / Requirements

GMCI agrees to abide by the specifications in the RFP except as noted below:

Link Capacity - GMCI will provide 300 Mbps capacity (600 Mbps full duplex) for the 8-site primary ring, 150 Mbps hot standby capacity (300 Mbps full duplex) for all of the New Hampshire stubs, and 150 Mbps non-protected capacity (300 Mbps full duplex) for Mt. Agamenticus, Mt. Grace, and Keene State College.

- The Video Conversion equipment has been removed from this Agreement.

Path Reliability - The design goal for all microwave paths, both ring and stubs, as designed by GMCI, is to provide a minimum of 99.9999% two-way path reliability Error Free Seconds (EFS) per year. Once the final system configuration is complete GMCI will re-run all of the microwave paths that were modified in any way to establish the final predicted reliability. If the reliability of any path is predicted to be less than 99.9999% GMCI will work with the Stakeholders to identify a solution that will achieve the design goal or agree upon a reduction to the reliability.

- **Final Links and Routing Equipment** - outlined in Appendix A. NHSafeNet Pricing Table, Appendix E. NHSafeNet Site Drawings, and Appendix F. NHSafeNet Network Diagram. The final configuration will result from the final detailed system design process.
- **Factory Acceptance Test** - It has been agreed that the most expeditious manner of conducting Factory Acceptance Testing for the microwave and MPLS Networking equipment will be to stage sections of the respective networks at GMCI in Pembroke, NH. This is expected to consist of microwave link testing in the GMCI lab environment with MPLS Network equipment overlaid on the microwave equipment as dictated by the final system design. Stakeholder representatives will participate in the lab system test and data collection process, which will later be verified subsequent to installation at the respective sites.

1.9 Program Management

To manage the project's critical path, GMCI's Project Manager will meet weekly with NNHN's Project Director to identify any issues that might impact the project. Mitigation strategies will be developed at these meetings and communicated with the Team Leaders.

Bi-weekly reports will be developed to track progress on a site or task basis. It is anticipated this project will require daily tracker updates with weekly meetings. Progress on each site or task will be assessed noting any delays that may impact link completion and acceptance. Progress will be shown in the project Gantt chart. Tracking progress at this level of detail will facilitate early identification of challenges that may arise and allow the Team to respond rapidly with effective mitigation strategies.

GMCI's Team will utilize MS Project® software for scheduling. The final schedule and delivery milestones have been agreed upon by NNHN and GMCI. This detailed project schedule has been included as Appendix C2. NHSafeNet Project Schedule.

The comprehensive transition plan outlines the means by which GMCI will minimize service disruption to the Stakeholders during the installation process.

Updates will reflect actual progress as reported by the Team Leaders. Each Team Leader will maintain his or her portion of the schedule and coordinate with the Project Manager to update the master schedule. The

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Project Manager will assimilate the updates into the Master Schedule and make necessary changes to reflect emerging events.

GMCI is responsible for:

- Project management approach
- Organization and responsibilities
- Overall Project Schedule
- Documentation delivery schedule
- Subcontractor management (if applicable)
- System integration plan/overview
- System installation and cutover plan
- Procurement plan and deadlines for purchased hardware, software, and services
- Schedule evaluation and control
- Risk identification and mitigation
- Project assumptions.
- Milestone payment monitoring and forecasts.
- Specifications and drawing tree

NNHN is responsible for:

- Final decision making for the NHSafeNet Stakeholder group
- Providing necessary resources during the design phase, on-site oversight during installations, and final acceptance testing.
- Periodic progress inspections and testing
- Proper processing of milestone payments, approval of change orders, etc.
- Federal grant reporting based on data received from GMCI

1.10 Meeting Structure

Kickoff Meeting

To start this project in a manner that invites collaboration and open communication, GMCI will hold a day-long kick-off meeting at its offices in Pembroke. GMCI will invite NHPTV's Project Manager and the project Team Leads from each of the Stakeholders: USNH/NNHN, NHDRED, NHDOS, NHDOT, and the NH National Guard. The main purpose of this meeting will be to establish communication protocols and guidelines (frequency, method, etc.) and begin planning and scheduling. GMCI will bear all costs for the meeting. Individual Stakeholders will each bear their own costs for transportation to and from the meeting.

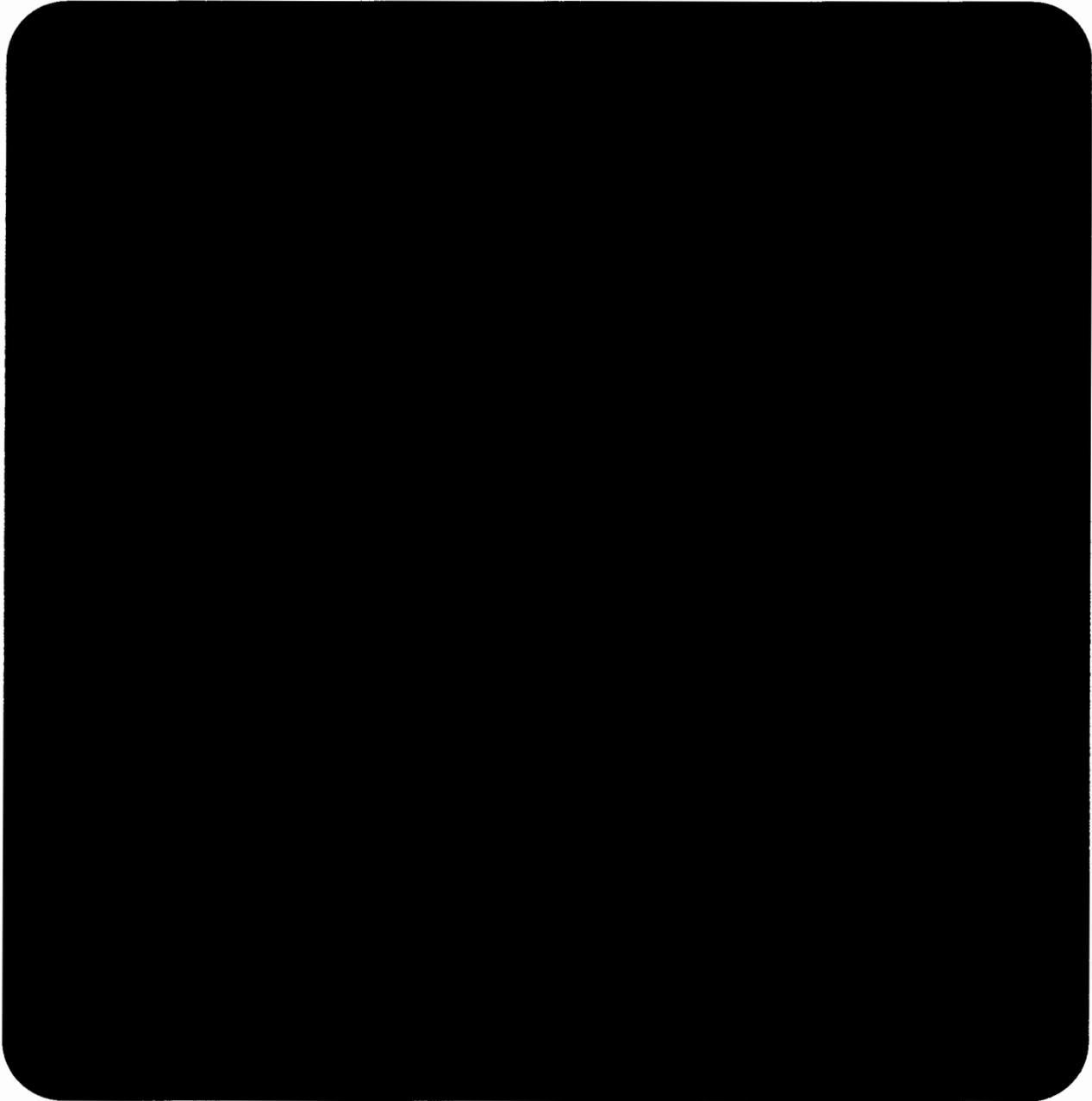
Regular Meetings and Design Reviews

Regular meetings will be scheduled to discuss the project status, schedule, and to address any issues that may arise. In addition to these meetings, GMCI and NNHN believe that open communications through a variety of ad hoc meetings will help guide the project staff towards successful and timely project completion.

Project reviews will also be conducted regularly to further sustain consistent and open verbal and electronic communication among all team members. These project review meetings will optimize the project delivery and schedule by minimizing reworks in the design and in the field. As part of the project review process, GMCI will document discussions and circulate any action items to the appropriate Team

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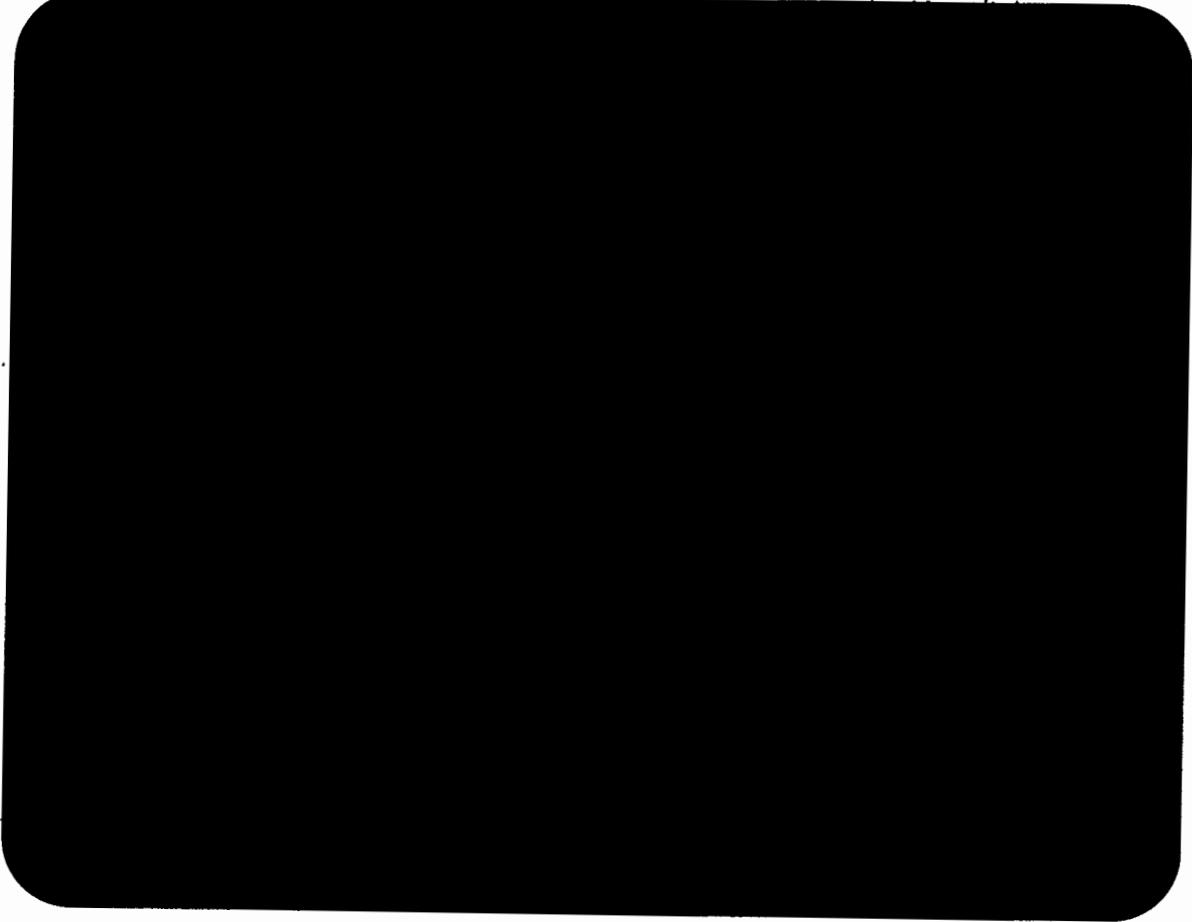
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Leaders with a copy to the Project Management Team. These communications will be followed up with emails to update the Team on the outcome or status of each action item identified.

Detailed Design Review

While GMCI is ultimately responsible for this project, all Team members will have an active voice in discussing project design and implementation. GMCI's team structure and management approach will take full advantage of the leadership of each key member in their area of expertise to meet the project needs.

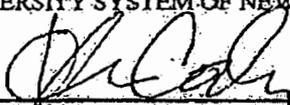
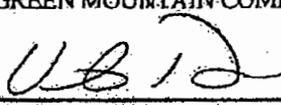
1.11 Project Team - Personnel, Organization, and Contacts



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The parties hereto agree that signatures on a facsimile copy of this Master Agreement shall be accepted by the parties as original.

UNIVERSITY SYSTEM OF NEW HAMPSHIRE 	GREEN MOUNTAIN COMMUNICATIONS, INC. 
Kenneth Coody, Vice Chancellor for Financial Affairs and Treasurer	Victor Drouin, President
Dated: <u>June 28, 2011</u>	Dated: <u>6/28/2011</u>

EXTRACTED FROM RFP 8600-0002

3.6 Test Plans and Procedures

3.6.1 Factory and Site Acceptance Test Plans (ATPs)

- 3.6.1.1 The Proposer shall provide a preliminary Factory Acceptance Test Plan (ATP) to NNHN for review and comment at least ten (10) working days prior to the Design Review. The Proposer shall include sample staging documentation and a Factory ATP, or equivalent, as part of its proposal.

- 3.6.1.2 The Proposer shall provide airfare, lodging, and per diem for 5 NNHN delegates to attend the Factory Acceptance.
- 3.6.1.3 The Proposer shall provide a Site ATP to NNHN for review, comment, and approval at least thirty (30) working days prior to the start of Site Acceptance Testing. The Proposer shall include a sample Site ATP, or equivalent, as part of its proposal.
- 3.6.1.4 The ATPs shall be developed in accordance with requirements of the documentation and specification sections herein. The ATPs shall describe the overall testing philosophy and methodology and shall define the tests to be performed to demonstrate compliance with all requirements for Factory Acceptance Testing (FAT) and Site Acceptance Testing (SAT) respectively. The ATPs shall also show traceability of all specification requirements to specific acceptance tests. This may be done in the form of a requirements traceability matrix that may list the requirements and the method of demonstrating compliance such as test, demonstration, analysis, or inspection, said methods to be defined in the ATP and agreed to by NNHN. The ATPs shall include proposed schedules for FAT and SAT to be coordinated with and approved by NNHN.
- 3.6.1.5 The Proposer shall prepare detailed Test Procedures for each test called out in the ATPs. Test Procedures shall be submitted to NNHN for review, comment, and approval at least twenty (20) working days prior to the start of the associated test. NNHN will complete its review and forward the results to the Proposer within fifteen (15) working days of receipt. No acceptance testing shall be conducted until NNHN has approved the test procedures in writing. Test Procedures shall include, but not be limited to, method of test, test setup, diagrams of test configurations, description of required test equipment, parameter values for test conditions, specific steps to be followed, and accept/fail criteria.

3.6.2 Site Acceptance Testing

- 3.6.2.1 Once all system components have been installed, the Proposer shall conduct a formal Site Acceptance Test (SAT). At a minimum, SAT will include the testing called out in the specification section of this RFP and any resulting contract or agreement. NNHN's Project Manager and other representatives shall witness SAT and the Proposer shall coordinate closely with NNHN to schedule testing and provide appropriate notification of each test event.

3.6.3 Monitor and Control System Tests

- 3.6.3.1 The Proposer shall demonstrate that the monitor and control systems and associated Network Management System is fully operational in accordance with specifications, and that all delivered functionality can be executed. This shall include fault insertion/failure simulation, BER erroring, fade margin alarms, system configuration, circuit provisioning, etc. Certain functionality may be tested in conjunction with other areas of acceptance testing, such as validation of appropriate fade alarms during the fade test.

3.6.4 Test Data and Reports

- 3.6.4.1 The Proposer shall provide test data and reports after completion of each phase of testing that documents all tests performed and the results of each. Test reports shall include a listing of all anomalies, discrepancies, test failures, etc., encountered during testing and a description of the remedy for each, a listing of regression test procedures performed, and the results of regression testing. Testing shall be deemed complete upon resolution of all outstanding issues, completed and documented regression testing, and approval by NNHN of the final test data and reports.

3.6.5 System Acceptance

- 3.6.5.1 NNHN shall offer official acceptance of the system once all work and testing has been completed and all deliverables have been approved. The system will not be accepted until the following, as a minimum, have been completed in the following sequence:
- Notification by the Proposer that the system installation is complete
 - Completion of inspections by County Project Manager

- Notification by Proposer that final punch list is resolved and Acceptance Tests can commence
- Site Acceptance Test
- Proposer provides draft SAT report
- Satisfactory completion of the Thirty Day Performance Test as described in Section 3.6.4.1
- Site Acceptance Test results and report approved by NNHN
- All deliverables received and approved by NNHN
- Final System Acceptance Executed

3.6.6 Site Acceptance Test Criteria

3.6.6.1 The following tests, in addition to other standard manufacturer's test procedures, shall be performed on the fielded microwave system. Complete documentation of site Acceptance Testing (SAT) shall be delivered to NNHN upon completion of testing.

3.6.6.2 Where specifications for these parameters are not included herein, the Proposer shall provide these specifications in the form of a Design Specification document, delivered to NNHN prior to the Detailed Design Review.

3.6.7 Installation Inspection

3.6.7.1 Inspection of the completed microwave network equipment installation shall be performed to ensure compliance with standards set forth in final contract and the Design Specifications and as agreed to by the Proposer and NNHN.

3.6.8 Path Alignment

3.6.8.1 The Proposer shall be responsible to perform initial microwave dish alignments for all microwave paths

3.6.8.2 Dishes shall be aligned for maximum AGC level

3.6.8.3 The Proposer shall provide all material, equipment, and personnel required to perform path alignments

3.6.9 Waveguide Sweeps

3.6.9.1 Antenna waveguide shall be swept and plotted in accordance with manufacturer's specifications. Sweeps shall be performed both with an appropriately matched load attached at the upper portion of the waveguide and then with the antenna attached.

3.6.9.2 Measured return loss shall be a minimum of 23 dB

3.6.10 Waveguide pressurization

3.6.10.1 Antenna waveguide shall be pressurized in accordance with manufacturer's specifications

3.6.10.2 Waveguide leak down tests shall be performed to ensure leak rate does not exceed manufacturer's specifications

3.6.11 Power plants

3.6.11.1 Set float and equalize voltages on charger

3.6.11.2 Set and verify alarm thresholds on charger in accordance with manufacturer's specifications

3.6.12 DC Power Supply Voltage Checks

3.6.12.1 Verify all DC power supply voltages in accordance with published specifications.

- 3.6.13 Transmitter Tests
 - 3.6.13.1 Measure and record Transmit Power
 - 3.6.13.2 Verify compliance with FCC regulations (output power levels)
 - 3.6.13.3 Measure and record Transmit Frequency
 - 3.6.13.4 Verify compliance with FCC regulations (frequency)
 - 3.6.13.5 Verify operation of APC
 - 3.6.13.6 Compare measured values to Factory Test Records
- 3.6.14 Receiver Tests
 - 3.6.14.1 Measure and record RF receiver local oscillator frequency
 - 3.6.14.2 Measure and record IF frequency
 - 3.6.14.3 Verify error-less receiver switching
 - 3.6.14.4 Verify space diversity receiver switching as applicable
 - 3.6.14.5 Compare measured values to Factory Test Records
- 3.6.15 Protection Switching Tests
 - 3.6.15.1 Verify protective switching operation, as applicable, for associated module failure
 - 3.6.15.2 Verify operation of reverse path protection, as applicable
 - 3.6.15.3 Measure reframe time and frame-lost seconds
- 3.6.16 Alarm Checks
 - 3.6.16.1 Verify individual alarm reporting for module faults, as applicable
- 3.6.17 Radio Loop Back Checks
 - 3.6.17.1 Verify radio loopback capabilities, as applicable (local and remote IF, local and remote RF, etc.)
 - 3.6.17.2 Loopbacks shall be performed with a BER test set for 15 minutes and results recorded
- 3.6.18 Fade Test
 - 3.6.18.1 Simulate path fade by use of a variable attenuator and BER test set
 - 3.6.18.2 Measure and record AGC voltages and RSL at BER thresholds of 10⁻⁶ and 10⁻³
 - 3.6.18.3 Compare measured values to Factory Test Records and Path Calculation sheets
 - 3.6.18.4 Measure and record T/I ratios in both directions on each path
- 3.6.19 Bite Error Rate Tests
 - 3.6.19.1 BER test shall be performed for 24 hours on each microwave hop
 - 3.6.19.2 Test to be performed 12 hours on A side and 12 hours on B side, if applicable

3.6.19.3 Unfaded RBER shall be <10-13

3.6.19.4 Record results

3.6.20 Synchronization

3.6.20.1 Verify operation of synchronization network in normal and backup operating modes

3.6.21 Alternate Route Tests

3.6.21.1 Verify automatic alternate route switching, as applicable

3.6.22 Thirty Day Performance Test Criteria

3.6.22.1 Upon satisfactory completion and NNHN approval of Site Acceptance Testing, the Proposer and NNHN shall execute a Performance Test of the entire system that shall consist of thirty (30) consecutive days of uninterrupted operation. Depending upon the severity of the failure, the Stakeholders will determine if the 30 day clock restarts or continues, until thirty (30) days without failure. This shall include long term BER monitoring of the microwave paths using approved industry standards and test sets, logging of outages and severely errored seconds, end user application operations, network management system operation, local and remote monitoring, radio gateway operations, and security. During this test period, the Proposer shall keep detailed records of any failures or adjustments of the system and shall provide NNHN with full electronic test results. The Proposer shall provide an Acceptance Test Plan (ATP) including test methodology, test set up, test equipment, and general test procedures for the Performance Test at least twenty (20) working days prior to the scheduled start of the test.

3.6.22.2 Final system acceptance shall be contingent upon the performance test bearing out that the system is meeting the technical performance criteria of the specification. The test shall be considered a failure if any of the following events occurs:

- The System experiences a catastrophic failure that results in:
 - Failure of any contracted features, functions or capabilities
 - Failure of the network management system and / or equipment
 - Failure of local or remote site control equipment
 - Failure of operations at all console positions
- The same device fails twice during the performance test
- A non-critical failure is not restored according to the contracted response time

3.6.22.3 A failure of any system resource or need for any system adjustments or corrections shall, at a minimum, result in a suspension of the thirty-day performance period until corrective actions have been completed. Any resulting test suspension shall be from the point of failure. Once the failure has been corrected, at NNHN's discretion the 30-day performance test shall either be resumed for the remaining test days from the point of failure or restarted for another thirty days. The nature of failures and adjustments and/or corrections requiring the test to be restarted shall be defined in the Thirty Day Performance Test Plan as agreed to by the Proposer and the NNHN.

3.6.23 Failure Reporting

3.6.23.1 The Proposer will issue to NNHN written reports on all system failures. The Proposer will record failures in a System Reliability Failure Log. Information provided in the Failure Log will include a description of the failure, the date and time of the failure, the date and time of resolution of the failure, the amount of time that the subsystem or component operated in a failed condition, and corrective measures taken to resolve the failure. The Proposer will provide to NNHN supporting reports from the Network Management System (NMS) as applicable.

3.6.23.2 The Proposer shall determine subsystem unavailability time, using data from the NMS.

3.6.23.3 The Proposer will notify NNHN that the failure condition has occurred and has been corrected.

3.6.23.4 The Proposer shall notify NNHN of the failure event within eight hours of occurrence of any failure condition. The PROPOSER shall notify NNHN when the failure has been corrected and the system has been restored to normal operation. Within 48 hours after the restoration of any failure condition, the PROPOSER will meet with NNHN to explain the failure, corrective actions, steps taken to prevent similar failures in the future, and to make a determination as to whether the thirty day performance test shall be resumed from the point of failure or be restarted.

3.6.24 Failure Exclusions

3.6.24.1 Failures caused wholly, or in part, by the following conditions shall not adversely impact system/subsystem acceptance associated with the 30-Day Performance Test:

- Acts of God, such as lightning, flood, fire, or earthquake;
- Willful abuse or damage caused by any person or group of persons (excluding the Proposer);
- Loss of adequate AC power for a period longer than provided for by battery, UPS, and generator backup power;
- Any intentional or unintentional service disruptions caused by operator intervention (excluding Proposer)

3.6.25 Final Report

3.6.25.1 Failures detected during the 30-Day Performance Test will be reported to NNHN in a final report at the conclusion of the thirty-day performance test period. These written reports will include, as a minimum:

- Model and Serial Number of the equipment affected (Asset number if applicable)
- Original Complaint
- Repairs Made and Parts Used
- Technician Name or Control Number
- Any recommended improvements to the system/subsystem

Appendix E – Special Provisions

**STATE OF NEW HAMPSHIRE
THE ADJUTANT GENERAL'S DEPARTMENT**

APPENDIX E , SPECIAL PROVISIONS

SUBJECT:

The following special provisions modify, change, delete or add to the General Provisions of the MOMA between the TAG and DOT, DRED, DOS, and NHPTV, hereinafter referred to in this as "other parties." Where any part of the MOMA is modified or voided by these Special Provisions, the unaltered provisions for that part shall remain in effect.

1. With regard to the TAG, the MOMA is funded, wholly or in part, by monies of the Federal Government of the United States; therefore, all parts and provisions of this agreement that refer to an agreement which are funded in any part by the federal government are applicable to the MOMA.

2.

A. NONDISCRIMINATION: The other parties covenant and agree that no person shall be denied benefits of, or otherwise be subjected to discrimination in connection with the Contractor/Vendor's performance under this MCA, on the ground of race, religion, color, national origin, sex or handicap. Accordingly and to the extent applicable, the Contractor/Vendor covenants and agrees to comply with the following:

a. Title VII of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq.), and DOD regulations (32 CFR Part 300) issued thereunder;

b. Executive Order 11246 and Department of Labor regulations issued thereunder (41 CFR Part 60);

c. Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794) and DOD Regulations issued thereunder (32 CFR Part 56); and

d. The Age Discrimination Act of 1975 (42 U.S.C. § 6101 et seq.) and regulations issued thereunder (45 CFR Part 90).

B. LOBBYING: a. The other parties covenant and agree that they will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and, the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

a. The Interim Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to

implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. § 1352) is incorporated by reference.

C. DRUG FREE WORK PLACE: a. The other parties covenant and agree that they will comply with the provisions of the Drug-Free Work Place Act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. § 701 et seq.) and maintain a drug-free workplace.

a. The Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28, Subpart f) to implement the provisions of the Drug-Free Workplace Act of 1988 is incorporated by reference and the Contractor/Vendor covenants and agrees to comply with all provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

D. ENVIRONMENTAL STANDARDS: a. The TAG covenants *and agrees* that its performance under *this Agreement* shall comply with:

- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
- (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued there under;
- (3) The Resources Conservation and Recovery Act (RCRA);
- (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
- (5) The National Environmental Policy Act (NEPA);
- (6) The Resources Conservation and Recovery Act (RCRA);
- (7) The applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 and Environmental Protection Agency (EPA) rules at Subpart J of 40 CFR part 32;
- (8) To identify *any* impact this award *may have on the* quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.
- (9) The applicable provision of the Clean Air Act (42 U.S.C. § 7401, et seq.) and Clean Water Act (33 USC 1251, et seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 comp., p.799].

b. In accordance with the EPA rules, the parties further agree that the TAG shall also identify to National Guard Bureau (NGB) any impact this award may have on:

(1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.

(2) Flood-prone areas, and provide help the agency may need to comply with

(3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451-, et seq.), concerning protection of U.S. coastal resources.

(4) Coastal barriers, and provide help *the agency may need to comply with the Coastal Barriers Resource Act* (16 U.S.C. 3501 et seq.), concerning preservation of barrier resources.

(5) Any existing or proposed component of the National Wild and Scenic Rivers System, and provide help the agency may need to comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. 1271 et seq.).

(6) Underground *sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source*, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C 300H-3).

E. DEBARMENT AND SUSPENSION: a. The other parties shall not make any award or permit any award (sub-grant or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

a. The Final Rule, Government wide Debarment and Suspension (Nonprocurement), issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 25) to implement the provisions of Executive Order 12549, "Debarment and Suspension" is incorporated by reference and the Contractor/Vendor covenants and agrees to comply with all the provisions thereof, including any amendments to the Final Rule that may hereafter be issued.

F. HATCH ACT: The other parties agree to comply with the Hatch Act (5 U.S.C. 1501 - 1508 and 7324 - 7328), as implemented by the Office of Personnel Management at 5 CFR Part 151, which limits political activity of employees or officers of State or local governments whose employment is connected to an activity financed in whole or part with Federal funds.

G. EQUAL EMPLOYMENT OPPORTUNITY: (*All construction contracts awarded in excess of \$10,000 by grantees and their contractors or subgrantees*). Compliance with Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity", as amended by Department of Labor regulations (41 CFR Chapter 60).

H. COPELAND "ANTI-KICKBACK" ACT: The other parties covenant and agree that they will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat or procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in

whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

I. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT: The other parties agree that they will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1 1/2 times the basic rate of pay. This Act is applicable to any construction contract awarded in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers.

J. USE OF UNITED STATES FLAG CARRIERS: All parties covenant and agree that travel supported by U.S. Government funds under this agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. 40118) and the inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942. All parties agree that they will comply with the Cargo Preference Act of 1954 (46 U.S.C. 1241), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

K. NATIONAL HISTORIC PRESERVATION: *(Any construction, acquisition, modernization, or other activity that may impact a historic property.)* All parties agree to identify to NGB any property listed or eligible for listing on the National Register of Historic Places that will be affected by this award, and to provide any help the awarding agency may need, with respect to this award, to comply with Section 106 of the National Historic Preservation Act of 1966 (16 U.S.C. 470, et seq.), as implemented by the Advisory Council on Historic Preservation regulations at 36 CFR Part 800 and Executive Order 11593 (3 CFR, 1971-1975 Comp., p. 559). (36 CFR Part 800 requires Grants Officers to get comments from the Advisory Council on Historic Preservation before proceeding with Federally assisted projects that may affect properties listed on or eligible for listing on the National Register of Historic Places.)

L. BUY AMERICAN ACT: The other parties agree that they will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C. 10). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

M. RELOCATION AND REAL PROPERTY ACQUISITION: The other parties assure that they will comply with 49 CFR part 24, which implements the Uniform Relocation

Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. § 4601 et seq.) and regulations issued thereunder (49 CFR Part 24). The Act provides for fair and equitable treatment of persons displaced by Federally assisted programs or persons whose property is acquired as a result of such programs.



STATE OF NEW HAMPSHIRE
DEPARTMENT of RESOURCES and ECONOMIC DEVELOPMENT
OFFICE OF THE COMMISSIONER

172 Pembroke Road P.O. Box 1856 Concord, New Hampshire 03302-1856

February 1, 2011

His Excellency, Governor John H. Lynch
and the Honorable Executive Council
State House
Concord, New Hampshire 03301.

NHRECOVERY
putting new hampshire to work

REQUESTED ACTION

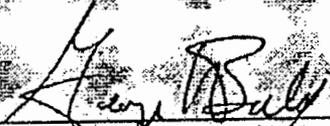
Authorize the Department of Resources and Economic Development, Division of Economic Development to enter into a Memorandum of Agreement (MOA) with the New Hampshire Department of Transportation, the New Hampshire Adjutant General Department, the New Hampshire Department of Safety, and New Hampshire Public Broadcasting, Inc. for the purpose of grant administration and project collaboration, for a 3-year period upon Governor and Executive Council approval through June 30, 2013 or until such time that the shared asset is retired or replaced. Although this an ARRA project, no ARRA funds will be expended for this MOA.

EXPLANATION

The purpose of the MOA is to work together collaboratively and with the University of New Hampshire and other sub-awardees who have received an ARRA National Telecommunication and Information Administration Broadband Technology Opportunities Program Grant funded by the US Department of Commerce for a Network New Hampshire Now - Microwave Middle Mile project which is designed to enhance broadband communication capabilities for the agencies.

The Attorney General's office has approved this MOA as to form, substance and execution.

Respectfully submitted,


George M. Bald, Commissioner

GMB/cm