

Cooperative Ecosystem Studies Unit
Cooperative Agreement No. P18AC00215

Between

THE UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

AND

FROSTBURG STATE UNIVERSITY (THE COOPERATOR)

101 BRADDOCK ROAD

FROSTBURG, MD 21532-2303

DUNS No: 143485568

CFDA: 15.945 Cooperative Research and Training Programs Resources of the National Park System

Project Title: **Provide research, technical assistance and education for resource management and research**

Federal Funds Obligated by this action: N/A

Total Amount of Award: \$0

Period of Performance: 02/23/2018- 02/23/2023

This Agreement is made and entered into between the United States Department of the Interior, National Park Service (NPS) and Frostburg State University (the Cooperator).

ARTICLE I – BACKGROUND AND OBJECTIVES

The partnership proposed by the Cooperator was selected due to merit review evaluations from the 2017 Notice of Funding Opportunity P17AS00037. The Cooperator demonstrated expertise in disciplines and subject areas of relevance to cooperative research and training. The Cooperator met the program interests of NPS with expertise, facilities, experience, diversity of programs, and history of collaborative research projects.

The Cooperator helps the NPS-CESU to meet its objectives to:

- Provide research, technical assistance and education to NPS for land management, and research;
- Develop a program of research, technical assistance and education that involves the biological, physical, social, and cultural sciences needed to address resources issues and interdisciplinary problem-solving at multiple scales and in an ecosystem context at the local, regional, and national level; and
- Place special emphasis on the working collaboration among NPS, universities, and their related partner institutions.

Title: Provide research, technical assistance and education for resource management and research

The CESU network seeks to provide scientifically-based information on the nature and status of selected biological, physical, and cultural resources occurring within the parks in a form that increases its utility for making management decisions, conducting scientific research, educating the public, developing effective monitoring programs, and developing management strategies for resource protection.

Studying the resources present in NPS parks benefits the Cooperator's goal of advancing knowledge through scientific discovery, integration, application, and teaching, which lead toward a holistic understanding of our environmental and natural resources.

The Cooperator is a public research university, sharing research, educational, and technological strengths with other institutions. Through inter-institutional collaboration, combined with the unique contributions of each constituent institution, the Cooperator strives to contribute substantially to the cultural, economic, environmental, scientific, social and technological advancement of the nation.

The NPS expects there to be substantial involvement between itself and the Cooperator in carrying out the activities contemplated in this Agreement.

The primary purpose of this study is not the acquisition of property or services for the direct benefit or use by the Federal Government, but rather to accomplish a public purpose of support or stimulation authorized the Legislative Authorities in ARTICLE II.

This agreement fulfills the Public Purpose of support and economic stimulation for the following reasons:

- Projects will engage recipients, partners, communities, and/or visitors in shared environmental stewardship.
- Projects will promote greater public and private participation in historic preservation programs and activities. The project builds resource stewardship ethics in its participants.
- The information, products and/or services identified or developed by projects will be shared through a variety of strategies to increase public awareness, knowledge and support for historic preservation and stewardship of the nation's cultural and historical heritage.
- Projects will support the Government's objective to provide opportunities for youth to learn about the environment by spending time working on projects in National Parks. The NPS receives the indirect benefit of completing conservation projects.
- Projects will motivate youth participants to become involved in the natural, cultural and /or historical resource protection of their communities and beyond.
- Students gain "real world" or hands-on experience outside of the classroom of natural, cultural and/or historical resource projects.
- The scientific community and/or researchers external to NPS gains by new knowledge provided through research and related results dissemination of natural, cultural and/or historical resource information.
- Projects assist in the creation, promotion, facilitation, and/or improvement of the public's understanding of natural, cultural, historic, recreational and other aspects of areas such as ecological conservation areas, and state and local parks.

For performance under this cooperative agreement, the regulations set forth in 2 CFR, Part 200, supersedes OMB Circulars A-21 (2 CFR 220), A-87 (2 CFR 225), A-110, and A-122 (2 CFR 230); Circulars A-89, A-102, and A-133; and the guidance in Circular A-50 on Single Audit Act follow-up apply. The Cooperator shall adhere to 2 CFR, Part 200 in its entirety in addition to any terms and conditions of the master agreement not superseded by 2 CFR 200, as well as the terms and conditions set forth in this agreement. In the event of a conflict between the

original terms of the master agreement and 2 CFR, Part 200, relating to this task agreement, 2 CFR, Part 200 shall take precedence.

ARTICLE II - AUTHORITY

NPS enters into this Agreement to assist in providing research, technical assistance, and education.

a. 54 U.S.C. § 100703 - Agreements with Educational Institutions to Study National Park System Resources and Non-Park Service Resources: The NPS is authorized and directed to enter into cooperative agreements with colleges and universities in partnership with other Federal and State agencies, to establish cooperative study units to conduct multi-disciplinary research and develop integrated information products on the resources of the National Park System or the larger region of which parks are a part.

b. 54 U.S.C. § 101702(b) – Cooperative Research and Training Programs:

The NPS is authorized to enter into cooperative agreements with public or private educational institutions, States, and their political subdivisions, for the purpose of developing adequate, coordinated, cooperative research and training activities concerning the resources of the NPS.

c. 54 U.S.C. § 101702(a) – Agreements for the Transfer of Appropriated Funds to Carry out NPS Programs:

The NPS is authorized to enter into cooperative agreements that involve the transfer of National Park Service appropriated funds to State, local and tribal governments, other public entities, educational institutions, and private nonprofit organizations for the public purpose of carrying out National Park Service programs.

d. 54 U.S.C. § 101702(d)(1) – Cooperative Agreements for National Park Natural Resource Protection:

The NPS is authorized to enter into cooperative agreements with State, local, or tribal governments, other Federal agencies, other public entities, educational institutions, private nonprofit organizations, or participating private landowners for the purpose of protecting natural resources of units of the National Park System through collaborative efforts on land inside and outside of National Park System units.

e. 54 U.S.C. § 200103(g)(1) - Outdoor Recreation of Programs, Research and Education:

The NPS is authorized to sponsor, engage in, and assist in research relating to outdoor recreation, directly or by contract or cooperative agreements, and make payments for such purposes without regard to the limitations of section 3324(a) and (b) of title 31 concerning advances of funds when he considers such action in the public interest, (2) undertake studies and assemble information concerning outdoor recreation, directly or by contract or cooperative agreement, and disseminate such information without regard to the provisions of section 3204 of title 39, and (3) cooperate with educational institutions and others in order to assist in establishing education programs and activities and to encourage public use and benefits from outdoor recreation.

ARTICLE III – STATEMENT OF WORK

A. The Cooperator agrees to:

1. Conduct, a program of research, technical assistance, and education related to the CESU objectives and allow and encourage faculty to participate in the program as appropriate;
 2. Promote the application of biological, physical, and cultural information to the conservation, restoration, and management of NPS's resources;
 3. Encourage students and employees to participate in the activities of the CESU;
 4. Allow and encourage faculty to engage in NPS research, technical assistance and education activities related to the CESU objectives, as appropriate;
 5. Encourage its students to participate in the activities of the CESU;
 6. Attend the CESU Manager's Committee meeting, at least annually, to provide advice and guidance, review of the annual work and multi-year strategic plans, and assist in evaluating the CESU;
 7. Obtain research collecting permits through the appropriate NPS administrative unit for work accomplished through this Agreement;
 8. Participate in symposiums, conferences, or workshops to promote the understanding and use of biodiversity information on NPS parks;
 9. Support professional development for youth and visitors, whenever possible, with projects under this Agreement;
 10. Provide to the NPS expert consultation in support of environmental policy and management of natural and cultural resources;
 11. Assist the NPS in outreach to national and international audiences with information about the resources that are supported by national parks;
 12. Provide the NPS with reports, manuscripts, popular-press articles, monographs, and research data generated by personnel conducting projects under this Agreement.
- B. NPS agrees to:
1. Provide administrative assistance, as appropriate, necessary to execute this Agreement and subsequent modifications;
 2. Participate in project activity, research, technical assistance and education related to the CESU objectives to the extent allowed by NPS authorizing legislation;
 3. Provide opportunities for research on national park lands or using federal facilities in cooperation with NPS, as appropriate, and according to all applicable laws, regulations, and policies;
 4. Provide project funds and/or collaboration to support specific research, technical assistance and education projects, as appropriate;
 5. Make available managers to serve on the CESU Manager's Committee;
 6. Comply with the Cooperator's rules, regulations, and policies regarding professional conduct, health, safety, use of services and facilities, use of animals, recombinant DNA, infectious agents or radioactive substances, as well as other policies generally applied to the Cooperator's personnel;
 7. Ensure its employees follow the Code of Ethics for Government Service (Pub. L. 96-303) and Standards of Ethical Conduct (5 CFR Part 2635);
 8. Allow NPS employees to participate in the activities of the Cooperator, including serving on graduate committees and teaching courses, as appropriate, and as specifically determined in modifications to the Agreement; and
 9. Provide substantial guidance and consultation to the Cooperator in connection with projects, as appropriate.
 10. Familiarize the Cooperator with parks and park resources.

11. Provide the Cooperator with timely information on changes to park boundaries or land ownership.
 12. Provide access to and use of the natural and cultural resources of units of the National Park System for appropriate research, monitoring, and educational activities of the Cooperator, except for those activities which may conflict with the values and purposes of the area as stated in Federal law or policy.
- C. The Cooperator and NPS jointly agree to:
1. Maintain the CESU closely following the mission and goals of the CESU Network as described in the *CESU Network Strategic Plan*, adapting key elements to local and regional needs, as appropriate;
 2. Maintain a CESU role and mission statement;
 3. Operate under a multi-year strategic plan;
 4. Issue individual funding documents, in accordance with NPS procedures, developed cooperatively between the NPS and Cooperator that individually include a specific “scope of work” statement and a brief explanation of the following:
 - a. the proposed work;
 - b. the project contribution to the objectives of the CESU;
 - c. the methodology of the project;
 - d. the substantial involvement of each party;
 - e. the project budget and schedule;
 - f. the specific project outputs or products.Unless otherwise specified, the terms and conditions of this Cooperative Agreement will apply to Task Agreements written under it.
 5. Provide data on CESU projects to the CESU Network National Office and/or host institution in accordance with CESU Network Council guidelines as posted on the CESU Network National Office website (www.cesu.org);
 6. Engage in collaborative activities consistent with federal scientific and scholarly integrity directives and policies (e.g., Presidential and OSTP Scientific Integrity Memoranda, as appropriate. The Code of Scientific and Scholarly Conduct for the Department of the Interior can be found at: <https://www.doi.gov/sites/doi.gov/files/migrated/scientificintegrity/upload/DOI-Code-of-Scientific-and-Scholarly-Conduct-Poster-December-2014.pdf>

ARTICLE IV – TERM OF AGREEMENT

- A. The Agreement will become effective February 23, 2018 and extend through February 23, 2023, unless terminated earlier per Article XI. The period from the Effective Date to the Expiration Date is the period of performance for the Agreement (Agreement Term).
- B. For the purposes of this Agreement, amendments are changes (edits, deletions, or additions) to the Agreement that do not involve the transfer of funds. Amendments may be proposed by NPS or the Cooperator. Amendments shall be in writing, signed, and agreed to by NPS and the Cooperator.
- C. The expiration of this Agreement will not affect the validity or duration of projects which have been initiated under this Agreement prior to such expiration.

ARTICLE V – KEY OFFICIALS

A. Key officials are essential to ensure maximum coordination and communications between the parties and the work being performed. They are:

1. **For the NPS:**

a. **Financial Assistance Awarding Officer (AO)**

Laquita Palmer
Financial Assistance Officer
National Capital Region
1100 Ohio Drive SW
Washington, D.C. 20242
Phone: (202) 619-7082
Laquita_Palmer@nps.gov

b. **Agreement Technical Representative (ATR)**

Daniel Filer
CHWA CESU Research Coordinator
National Park Service
301 Braddock Road, Room 304
Frostburg, MD 21532
Phone: (301) 689-7108
Danny_Filer@nps.gov

2. **For the Cooperator:**

a. **Principal Investigator**

Dr. Thomas L. Serfass
Professor
Department of Biology
Compton Science Center 210
301-687-4171
tserfass@frostburg.edu

b. **Administrative Contact**

Aaron Hoel
Director of Research and Sponsored Programs
Frostburg State University
Ort Library 511
301-687-3101
ahoel@frostburg.edu

c. **Authorizing Official**

Dr. Ronald H. Nowaczyk
President
Frostburg State University
101 Braddock Road
Frostburg, MD 21532
rnowaczyk@frostburg.edu
301-687-4111

B. **Communications.** Cooperator shall address any communication regarding this

this Agreement. Any permanent change in key officials will be made only by modification to this Agreement.

ARTICLE VI – AWARD AND PAYMENT

- A. The commitment of funds in furtherance of this Agreement will be authorized by individual Task Agreements issued against this Cooperative Agreement identifying each project or group of projects, the amount of financial assistance and any other special terms or conditions applicable to the project tasks.
- B. A 17.5% indirect cost rate will be paid on work covered by the Agreement and all its modifications or task agreements. Non-CESU sub-recipients may be asked to follow the rate, but may not be required.).
- C. Cooperator shall request payment in accordance with the following:
1. **Method of Payment.** Payment will be made by advance and/or reimbursement through the Department of Treasury’s Automated Standard Application for Payments (ASAP) system.
 2. **Requesting Advances.** Requests for advances must be submitted via the ASAP system. Requests may be submitted as frequently as required to meet the needs of the Financial Assistance (FA) Cooperator to disburse funds for the Federal share of project costs. If feasible, each request should be timed so that payment is received on the same day that the funds are dispersed for direct project costs and/or the proportionate share of any allowable indirect costs. If same-day transfers are not feasible, advance payments must be as close to actual disbursements as administratively feasible.
 3. **Requesting Reimbursement.** Requests for reimbursements must be submitted via the ASAP system. Requests for reimbursement should coincide with normal billing patterns. Each request must be limited to the amount of disbursements made for the Federal share of direct project costs and the proportionate share of allowable indirect costs incurred during that billing period.
 4. **Adjusting Payment Requests for Available Cash.** Funds that are available from repayments to, and interest earned on, a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds must be disbursed before requesting additional cash payments.
 5. **Bank Accounts.** All payments are made through electronic funds transfer to the bank account identified in the ASAP system by the FA Cooperator.
 6. **Supporting Documents and Agency Approval of Payments.** Additional supporting documentation and prior NPS approval of payments may be required when/if a FA Cooperator is determined to be “high risk” or has performance issues. If prior Agency payment approval is in effect for an award, the ASAP system will notify the FA Cooperator when they submit a request for payment. The Cooperator must then notify the NPS AO that a payment request has been

submitted. The NPS AO may request additional information from the Cooperator to support the payment request prior to approving the release of funds, as deemed necessary. The FA Cooperator is required to comply with these requests. Supporting documents may include invoices, copies of contracts, vendor quotes, and other expenditure explanations that justify the reimbursement requests.

- D. **System for Award Management (SAM).** In order to receive a financial assistance award and to ensure proper payment, it is required that Cooperator maintain their registration with SAM, accessed at <http://www.sam.gov>. Failure to maintain registration can impact obligations and payments under this Agreement and/or any other financial assistance or procurements documents the Cooperator may have with the Federal government.
- E. **Anti-Deficiency Act.** Any award beyond the current fiscal year is subject to availability of funds; funds may be provided in subsequent fiscal years if project work is satisfactory and funding is available.
- F. **Allowable and Eligible Costs.** Expenses charged against awards under the Agreement may not be incurred prior to the beginning of the Agreement, and may be incurred only as necessary to carry out the approved objectives, scope of work and budget with prior approval from the NPS AO. The Cooperator 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.
- G. **Travel Costs.** For travel costs charged against awards under the Agreement, costs incurred must be considered reasonable and otherwise allowable only to the extent such costs do not exceed charges normally allowed by the Cooperator in its regular operations as the result of the Cooperator's written travel policy. If the Cooperator does not have written travel policies established, the Cooperator and its contractors shall follow the travel policies in the Federal Travel Regulation, and may not be reimbursed for travel costs that exceed the standard rates. All charges for travel must conform to the applicable cost principles.
- H. **Indirect Costs.** Indirect costs will not be allowable charges against the award unless specifically included as a line item in the approved budget incorporated into the award.
- I. **Cooperator Cost Share or Match.** Any 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 AO based on sufficient documentation demonstrating previously determined plans for or later commitment of cash or in-kind contributions. In any case, the Cooperator must meet their cost share commitment over the life of the award.
- J. Nothing herein shall be construed as obligating the NPS to expend, or as involving the NPS in any contract or other obligation for the future payment of money, in excess of appropriations authorized by law and administratively allocated for specific work.

ARTICLE VII – PRIOR APPROVAL

The Cooperator shall obtain prior approval for budget and program revisions, in accordance with 2 CFR 200.308.

ARTICLE VIII – INSURANCE AND LIABILITY

- A. **Insurance.** The Cooperator shall be required to (1) obtain liability insurance or (2) demonstrate present financial resources in an amount determined sufficient by NPS to cover claims brought by third parties for death, bodily injury, property damage, or other loss resulting from one or more identified activities carried out in connection with this Agreement.
- B. **Insured.** The federal government shall be named as an additional insured under the Cooperator's insurance policy.
- C. **Indemnification.** The Cooperator hereby agrees to indemnify the federal government, including NPS, from and against (1) any act or omission of the Cooperator, or its officers, employees, members, participants, agents, or representatives, as appropriate, (2) third party claims for damages arising from any activity carried out in connection with this Agreement, and (3) damage or loss to government property resulting from such an activity. This obligation shall survive the termination of this Agreement.

The Cooperator hereby agrees to purchase public and employee liability insurance at its own expense from a responsible company or companies with a minimum limitation of *one million dollars (\$1,000,000)* per person for anyone claim, and an aggregate limitation of *three million dollars (\$3,000,000)* for any number of claims arising from any one incident. The policies shall name the United States as an additional insured, shall specify that the insured shall have no right of subrogation against the United States for payments of any premiums or deductibles due thereunder, and shall specify that the insurance shall be assumed by, be for the account of, and be at the insured's sole risk. Prior to beginning the work authorized herein, the Cooperator shall provide the NPS with confirmation of such insurance coverage.

The Cooperator hereby agrees to pay the United States the full value for all damage to the lands or other property of the United States caused by the Cooperator, its officers, employees, or representatives.

The Cooperator hereby agrees to provide workers' compensation protection to the Cooperator, its officers, employees, and representatives.

The Cooperator hereby agrees to cooperate with NPS in the investigation and defense of any claims that may be filed with NPS arising out of the activities of the Cooperator, its agents, and employees.

In the event of damage to or destruction of the buildings and facilities assigned for the use of the Cooperator in whole or in part by any cause whatsoever, nothing herein contained shall be deemed to require NPS to replace or repair the buildings or facilities. If NPS determines in writing, after consultation with the Cooperator that damage to the buildings or portions thereof renders such buildings unsuitable for continued use by the

Cooperator, NPS shall assume sole control over such buildings or portions thereof If the buildings or facilities rendered unsuitable for use are essential for conducting operations authorized under this Agreement, then failure to substitute and assign other facilities acceptable to the Cooperator will constitute termination of this Agreement by NPS.

- D. **Flow-down:** For the purposes of this Article VIII, "Cooperator" includes such sub-Cooperators, contractors, or subcontractors as, in the judgment of the Cooperator and subject to the NPS's determination of sufficiency, have sufficient resources and/or maintain adequate and appropriate insurance to achieve the purposes of this Article VIII.

ARTICLE IX – REPORTS AND/OR DELIVERABLES

- A. Specific projects, tasks or activities for which funds are advanced will be tracked and reported by **annual** submission of a SF-425 Federal Financial Report (FFR) and narrative Performance Report. A final SF-425 and Performance Report shall be submitted at the completion of the Agreement. For the final SF-425 and Performance Report, the reporting period end date shall be the end date of the agreement. Annual and final reports shall be submitted no later than 90 days after the end period date. All reports shall be submitted via email to the NPS AO at ncr_rfar@nps.gov and danny_filer@nps.gov with a copy to the NPS Agreements Technical Representative via email.
- B. The Secretary of the Interior and the Comptroller General of the United States, or their duly authorized representatives, will have access, for the purpose of financial or programmatic review and examination, to any books, documents, papers, and records that are pertinent to the Agreement at all reasonable times during the period of retention in accordance with 2 CFR 200.333.
- C. An electronic version of the final report and separate abstract suitable for public distribution will be submitted by the Recipient to the ATR. The ATR will send the final report electronically to NPS's Technical Information Center and carbon-copy the CESU Research Coordinator. Please send Catherine Kisluk at Technical Information Center (TIC) one hard copy and one digital copy of the final report and abstract. Mail the hard copy to: NPS Technical Information Center (TIC) 12795 West Alameda Parkway, Lakewood, Colorado 80228 Attn: Catherine Kisluk and email the digital version to catherine_kisluk@nps.gov and cc the CESU Research Coordinator.

ARTICLE X – PROPERTY UTILIZATION

All equipment and facilities furnished by NPS will be on a loan basis. Equipment and facilities will be returned in the same condition received except for normal wear and tear in project use. Property management standards set forth in 2 CFR 200.310 through 200.316 apply to this Agreement.

ARTICLE XI – MODIFICATION, REMEDIES FOR NONCOMPLIANCE TERMINATION

- A. This Agreement may be modified only by a written instrument executed by the parties. Modifications will be in writing and approved by the NPS AO and the authorized representative of Cooperator.

- B. Additional conditions may be imposed by NPS if it is determined that the Cooperator is non-compliant to the terms and conditions of this agreement. Remedies for Noncompliance can be found in 2 CFR 200.338.
- C. This Agreement may be terminated consistent with applicable termination provisions for Agreements found in 2 CFR 200.339 through 200.342.

ARTICLE XII – GENERAL AND SPECIAL PROVISIONS

A. General Provisions

1. **OMB Circulars and Other Regulations.** The following Federal regulations are incorporated by reference into this Agreement (full text can be found at <http://www.ecfr.gov>):

- a. **Administrative Requirements:** *2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, in its entirety;*
- b. **Determination of Allowable Costs:** *2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart E; and*
- c. **Audit Requirements:** *2 CFR, Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Subpart F.*
- d. **Code of Federal Regulations/Regulatory Requirements:** *2 CFR Part 182 & 1401, “Government-wide Requirements for a Drug-Free Workplace”;*

2 CFR 180 & 1400, “Non-Procurement Debarment and Suspension”, previously located at 43 CFR Part 42, “Governmentwide Debarment and Suspension (NonProcurement)”;

43 CFR 18, “New Restrictions on Lobbying”;

2 CFR Part 175, “Trafficking Victims Protection Act of 2000”;

FAR Clause 52.203-12, Paragraphs (a) and (b), Limitation on Payments to Influence Certain Federal Transactions;

2 CFR Part 25, System for Award Management (www.SAM.gov) and Data Universal Numbering System (DUNS); and

2 CFR Part 170, “Reporting Subawards and Executive Compensation”.

2. **Non-Discrimination.** All activities pursuant to this Agreement shall be in compliance with the requirements of Executive Order 11246, as amended; Title VI of the Civil Rights Act of 1964, as amended, (78 Stat. 252; 42 U.S.C. §§2000d et seq.); Title V, Section 504 of the Rehabilitation Act of 1973, as amended, (87 Stat. 394; 29 U.S.C. §794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§6101 et seq.); and with all other federal laws and regulations prohibiting discrimination on grounds of race, color, sexual orientation, national origin, disabilities, religion, age, or sex.

3. **Lobbying Prohibition.** 18 U.S.C. §1913, Lobbying with Appropriated Moneys, as amended by Public Law 107-273, Nov. 2, 2002 - No part of the money appropriated by any enactment of Congress shall, in the absence of express authorization by Congress, be used directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, whether before or after the introduction of any bill, measure, or resolution proposing such legislation, law, ratification, policy, or appropriation; but this shall not prevent officers or employees of the United States or of its departments or agencies from communicating to any such Members or official, at his request, or to Congress or such official, through the proper official channels, requests for legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business, or from making any communication whose prohibition by this section might, in the opinion of the Attorney General, violate the Constitution or interfere with the conduct of foreign policy, counter-intelligence, intelligence, or national security activities. Violations of this section shall constitute violations of section 1352(a) of title 31. In addition to the above, the related restrictions on the use of appropriated funds found in Div. F, § 402 of the Omnibus Appropriations Act of 2008 (P.L. 110-161) also apply.
4. **Anti-Deficiency Act.** Pursuant to 31 U.S.C. §1341 nothing contained in this Agreement shall be construed as binding the NPS to expend in any one fiscal year any sum in excess of appropriations made by Congress, for the purposes of this Agreement for that fiscal year, or other obligation for the further expenditure of money in excess of such appropriations.
5. **Minority Business Enterprise Development.** Pursuant to Executive Order 12432 it is national policy to award a fair share of contracts to small and minority firms. NPS is strongly committed to the objectives of this policy and encourages all Cooperators of its Cooperative Agreements to take affirmative steps to ensure such fairness by ensuring procurement procedures are carried out in accordance with the Executive Order.
6. **Assignment.** No part of this Agreement shall be assigned to any other party without prior written approval of the NPS and the Assignee.
7. **Member of Congress.** Pursuant to 41 U.S.C. § 22, no Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or adopted by or on behalf of the United States, or to any benefit to arise thereupon.
8. **Agency.** The Cooperator is not an agent or representative of the United States, the Department of the Interior, NPS, or the Park, nor will the Cooperator represent its self as such to third parties. NPS employees are not agents of the Cooperator and will not act on behalf of the Cooperator.
9. **Non-Exclusive Agreement.** This Agreement in no way restricts the Cooperator or NPS from entering into similar agreements, or participating in similar

activities or arrangements, with other public or private agencies, organizations, or individuals.

10. **Survival.** Any and all provisions which, by themselves or their nature, are reasonably expected to be performed after the expiration or termination of this Agreement shall survive and be enforceable after the expiration or termination of this Agreement. Any and all liabilities, actual or contingent, which have arisen during the term of and in connection with this Agreement shall survive expiration or termination of this Agreement.
11. **Partial Invalidity.** If any provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement or the application of such provision to the parties or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby and each provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.
12. **Captions and Headings:** The captions, headings, article numbers and paragraph numbers appearing in this Agreement are inserted only as a matter of convenience and in no way shall be construed as defining or limiting the scope or intent of the provision of this Agreement nor in any way affecting this Agreement.
13. **No Employment Relationship.** This Agreement is not intended to and shall not be construed to create an employment relationship between NPS and Cooperator or its representatives. No representative of Cooperator shall perform any function or make any decision properly reserved by law or policy to the Federal government.
14. **No Third-Party Rights.** This Agreement creates enforceable obligations between only NPS and Cooperator. Except as expressly provided herein, it is not intended nor shall it be construed to create any right of enforcement by or any duties or obligation in favor of persons or entities not a party to this Agreement.
15. **Foreign Travel.** The Cooperator 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. Special Provisions

1. **Public Information and Endorsements.**
 - a. Cooperator shall not publicize or otherwise circulate promotional material (such as advertisements, sales brochures, press releases, speeches, still and motion pictures, articles, manuscripts or other publications) which states or implies governmental, Departmental, bureau, or government employee endorsement of a business, product, service, or position which the Cooperator represents. No release of information relating to this award may state or imply that the Government approves of the Cooperator's work products, or considers

- the Cooperator's work product to be superior to other products or services.
- b. All information submitted for publication or other public releases of information regarding this project shall carry the following disclaimer.
 - c. The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Government. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Government.
 - d. Cooperator must obtain prior Government approval for any public information releases concerning this award which refer to the Department of the Interior or any bureau or employee (by name or title). The specific text, layout photographs, etc. of the proposed release must be submitted with the request for approval.
 - e. Cooperator further agrees to include this provision in a subaward to a subrecipient, except for a subaward to a State government, a local government, or to a federally recognized Indian tribal government.
- 2. Publications of Results of Studies.** No party will unilaterally publish a joint publication without consulting the other party. This restriction does not apply to popular publications of previously published technical matter. Publications pursuant to this Agreement may be produced independently or in collaboration with others; however, in all cases proper credit will be given to the efforts of those parties contribution to the publication. In the event no agreement is reached concerning the manner of publication or interpretation of results, either party may publish data after due notice and submission of the proposed manuscripts to the other. In such instances, the party publishing the data will give due credit to the cooperation but assume full responsibility for any statements on which there is a difference of opinion.
- 3. Rights in Data.** The Cooperator must grant the United States of America a royalty-free, non-exclusive and irrevocable license to publish, reproduce and use, and dispose of in any manner and for any purpose without limitation, and to authorize or ratify publication, reproduction or use by others, of all copyrightable material first produced or composed under this Agreement by the Cooperator, its employees or any individual or concern specifically employed or assigned to originate and prepare such material.
- 4. Retention and Access Requirements for Records.** All Cooperator financial and programmatic records, supporting documents, statistical records, and other grants-related records shall be maintained and available for access in accordance with 2 CFR Part 200.333-200.337.
- 5. Audit Requirements.**
- a. Non-Federal entities that expend \$750,000 or more during a year in Federal awards shall have a single or program-specific audit conducted for that year in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501-7507) and 2 CFR Part 200, Subpart F, which is available at <http://www.ecfr.gov/cgi-bin/text-idx?SID=fd6463a517ceea3fa13e665e525051f4&node=sp2.1.200.f&rgn=div6>

- b. Non-Federal entities that expend less than \$750,000 for a fiscal year in Federal awards are exempt from Federal audit requirements for that year, but records must be available for review or audit by appropriate officials of the Federal agency, pass-through entity, and General Accounting Office (GAO).
 - c. Audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits. Additional audit requirements applicable to this agreement are found at 2 CFR Part 200, Subpart F, as applicable. Additional information on single audits is available from the Federal Audit Clearinghouse at <http://harvester.census.gov/sac/>.
- 6. Procurement Procedures.** It is a national policy to place a fair share of purchases with minority business firms. The Department of the Interior is strongly committed to the objectives of this policy and encourages all Cooperators of its grants and cooperative agreements to take affirmative steps to ensure such fairness. Positive efforts shall be made by Cooperators to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Cooperators of Federal awards shall take all of the following steps to further this goal:
- a. Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
 - b. Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
 - c. Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - d. Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - e. Use the services and assistance, as appropriate, of such organizations as the Small Business Development Agency in the solicitation and utilization of small business, minority-owned firms and women's business enterprises.
- 7. Prohibition on Text Messaging and Using Electronic Equipment Supplied by the Government while Driving.** Executive Order 13513, Federal Leadership On Reducing Text Messaging While Driving, was signed by President Barack Obama on October 1, 2009. This Executive Order introduces a Federal Government-wide prohibition on the use of text messaging while driving on official business or while using Government-supplied equipment. **Additional guidance enforcing the ban will be issued at a later date.** In the meantime, please adopt and enforce policies that immediately ban text messaging while driving company-owned or –rented vehicles, government-owned or leased vehicles, or while driving privately owned vehicles when on official government business or when performing any work for or on behalf of the government.

- 8. Seat Belt Provision.** The Cooperator is encouraged to adopt and enforce on-the-job seat belt use policies and programs for their employees when operating company-owned, rented, or personally owned vehicles. These measures include, but are not limited to, conducting education, awareness, and other appropriate programs for their employees about the importance of wearing seat belts and the consequences of not wearing them.
- 9. Trafficking in Persons.** This term of award is pursuant to paragraph (g) of Section 106 of the Trafficking Victims Protections Act of 2000, as amended (2 CFR §175.15).
- a. Provisions applicable to a Cooperator that is a private entity.
1. You as the Cooperator, your employees, subCooperators under this award, and subrecipients' employees may not-
 - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
 - ii. Procure a commercial sex act during the period of time that the award is in effect; or
 - iii. Use forced labor in the performance of the award or subawards under the award.
 2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity-
 - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
 - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either:
 - a. Associated with performance under this award; or
 - b. Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (NonProcurement)," as implemented by our agency at 2 CFR part 1400.
- b. Provision applicable to a Cooperator other than a private entity. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a private entity-
1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
 2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either:
 - i. Associated with performance under this award; or
 - ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 CFR part 180, "OMB Guidelines to Agencies on Governmentwide Debarment

and Suspension (NonProcurement),” as implemented by our agency at 2 CFR part 1400.

- c. Provisions applicable to any Cooperator.
 - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
 - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
 - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 USC 7104(g)), and
 - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
 - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
 - 1. “Employee” means either:
 - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this awards; or
 - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
 - 2. “Forced labor” means labor obtained by any of the following methods: The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
 - 3. “Private entity” means:
 - i. Any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 CFR 175.25; and
 - ii. Includes:
 - a. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 CFR 175.25(b).
 - b. A for-profit organization.
 - 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 USC 7102).

10. Cooperator Employee Whistleblower Rights and Requirement to Inform Employees of Whistleblower Rights.

- a. This award and employees working on this financial assistance agreement will be subject to the whistleblower rights and remedies in the pilot program on Award Cooperator employee whistleblower protections

established at 41 U.S.C. 4712 by section 828 of the National Defense Authorization Act for Fiscal Year 2013 (Pub. L. 112-239).

- b. The Award Cooperator shall inform its employees in writing, in the predominant language of the workforce, of employee whistleblower rights and protections under 41 U.S.C. 4712.
- c. The Award Cooperator shall insert the substance of this clause, including this paragraph (c), in all subawards or subcontracts over the simplified acquisition threshold, 42 CFR § 52.203-17 (as referenced in 42 CFR § 3.908-9).

11. Reporting Subawards and Executive Compensation

- a. Reporting of first-tier subawards.
 - 1. Applicability. Unless you are exempt as provided in paragraph D. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery Act funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph E. of this award term).
 - 2. Where and when to report.
 - i. You must report each obligating action described in paragraph A.1. of this award term to <http://www.fsrcs.gov>.
 - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2014, the obligation must be reported by no later than December 31, 2014.)
 - 3. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrcs.gov> specify.
- b. Reporting Total Compensation of Cooperator Executives.
 - 1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
 - i. The total Federal funding authorized to date under this award is \$25,000 or more;
 - ii. In the preceding fiscal year, you received—
 - a. 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities

- Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
2. Where and when to report. You must report executive total compensation described in paragraph A.1. of this award term:
 - i. As part of your registration profile at <https://www.sam.gov>.
 - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of total compensation of subrecipient executives.
1. Applicability and what to report. Unless you are exempt as provided in paragraph D. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - i. In the subrecipient's preceding fiscal year, the subrecipient received—
 - a. 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - b. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the Cooperator.
 - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

- d. Exemptions.
1. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:
 - i. Subawards, and
 - ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
1. Entity means all of the following, as defined in 2 CFR part 25:
 - i. A Governmental organization, which is a State, local government, or Indian tribe;
 - ii. A foreign public entity;
 - iii. A domestic or foreign nonprofit organization;
 - iv. A domestic or foreign for-profit organization;
 - v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
 2. Executive means officers, managing partners, or any other employees in management positions.
 3. Subaward:
 - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the Cooperator award to an eligible subrecipient.
 - ii. The term includes your procurement of property and services needed to carry out the project or program. The term does not include procurement of incidental property and services needed to carry out the award project or program.
 - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
 4. Subrecipient means an entity that:
 - i. Receives a subaward from you (the Cooperator) under this award; and
 - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
 5. Total compensation means the cash and noncash dollar value earned by the executive during the Cooperator's or subrecipient's preceding fiscal year and includes 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 the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or

medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.

- iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- v. Above-market earnings on deferred compensation which is not tax-qualified.
- vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

12. Conflict of Interest

- a. The Cooperator must establish safeguards to prohibit its employees and Subrecipients from using their positions for purposes that constitute or present the appearance of a personal or organizational conflict of interest. The Cooperator is responsible for notifying the Awarding Officer in writing of any actual or potential conflicts of interest that may arise during the life of this award. Conflicts of interest include any relationship or matter which might place the Cooperator or its employees in a position of conflict, real or apparent, between their responsibilities under the agreement and any other outside interests. Conflicts of interest may also include, but are not limited to, direct or indirect financial interests, close personal relationships, positions of trust in outside organizations, consideration of future employment arrangements with a different organization, or decision-making affecting the award that would cause a reasonable person with knowledge of the relevant facts to question the impartiality of the Cooperator and/or Cooperator's employees and Subrecipients in the matter.
- b. The Awarding Officer and the servicing Ethics Counselor will determine if a conflict of interest exists. If a conflict of interest exists, the Awarding Officer will determine whether a mitigation plan is feasible. Mitigation plans must be approved by the Awarding Officer in writing.
- c. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR § 200.338, Remedies/or Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

13. Minimum Wages Under Executive Order 13658 (January 2015)

MINIMUM WAGES UNDER EXECUTIVE ORDER 13658 (JANUARY 2015)

(a) *Definitions.* As used in this clause—

“United States” means the 50 states and the District of

Columbia. “Worker”—

(1) Means any person engaged in performing work on, or in connection with, an agreement covered by [Executive Order 13658](#), and

(i) Whose wages under such agreements are governed by the Fair Labor Standards Act (29 U.S.C. chapter 8), the Service Contract Labor Standards statute (41 U.S.C. chapter 67), or the Wage Rate Requirements (Construction) statute (40 U.S.C. chapter 31, subchapter IV),

(ii) Other than individuals employed in a bona fide executive, administrative, or professional capacity, as those terms are defined in [29 C.F.R. § 541](#),

(iii) Regardless of the contractual relationship alleged to exist between the individual and the employer.

(2) Includes workers performing on, or in connection with, the agreement whose wages are calculated pursuant to special certificates issued under [29 U.S.C. § 214\(c\)](#).

(3) Also includes any person working on, or in connection with, the agreement and individually registered in a bona fide apprenticeship or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of Apprenticeship.

(b) Executive Order Minimum Wage rate.

(1) The non-Federal entity shall pay to workers, while performing in the United States, and performing on, or in connection with, this agreement, a minimum hourly wage rate determined by the Secretary of the Department of Labor on an annual basis (currently \$10.20 per hour as of January 1, 2017).

(2) The non-Federal entity shall adjust the minimum wage paid, if necessary, annually thereafter, to meet the Secretary of Labor's annual E.O. minimum wage. The Administrator of the Department of Labor's Wage and Hour Division (the Administrator) will publish annual determinations in the Federal Register no later than 90 days before the effective date of the new E.O. minimum wage rate. The Administrator will also publish the applicable E.O. minimum wage on www.wdol.gov (or any successor Web site) and on all wage

determinations issued under the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute. The applicable published E.O. minimum wage is incorporated by reference into this agreement.

(3) (i) The non-Federal entity may request a price adjustment only after the effective date of the new annual E.O. minimum wage determination. Prices will be adjusted only if labor costs increase as a result of an increase in the annual E.O. minimum wage, and for associated labor costs and relevant subaward costs. Associated labor costs shall include increases or decreases that result from changes in social security and unemployment taxes and workers' compensation insurance, but will not otherwise include any amount for general and administrative costs, overhead, or profit.

(ii) Subrecipients may be entitled to adjustments due to the new minimum wage, pursuant to paragraph (b)(2). Non-Federal entities shall consider any Subrecipient requests for such price adjustment.

(iii) The Financial Assistance Awarding Officer will not adjust the agreement price under this clause for any costs other than those identified in paragraph (b)(3)(i) of this clause, and will not provide duplicate price adjustments with any price adjustment under clauses implementing the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute.

(4) The non-Federal entity warrants that the prices in this agreement do not include allowance for any contingency to cover increased costs for which adjustment is provided under this clause.

(5) The non-Federal entity shall pay, unconditionally to each worker, all wages due free and clear without subsequent rebate or kickback. The non-Federal entity may make deductions that reduce a worker's wages below the E.O. minimum wage rate only if done in accordance with [29 C.F.R. § 10.23](#), Deductions.

(6) The non-Federal entity shall not discharge any part of its minimum wage obligation under this clause by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Labor Standards statute, the cash equivalent thereof.

(7) Nothing in this clause shall excuse the non-Federal entity from compliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the E.O. minimum wage. However, wage increases under such other laws or municipal ordinances are not subject to price adjustment under this subpart.

(8) The non-Federal entity shall pay the E.O. minimum wage rate whenever it is higher than any applicable collective bargaining agreement(s) wage rate.

(1) The non-Federal entity shall follow the policies and procedures in 29 C.F.R. § 10.24(b) and 10.28 for treatment of workers engaged in an occupation in which they customarily and regularly receive more than \$30 a month in tips.

(b) (1) This clause applies to workers as defined in paragraph (a). As provided in that definition—

(i) Workers are covered regardless of the contractual relationship alleged to exist between the non-Federal entity or subrecipient and the worker;

(ii) Workers with disabilities whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(c) are covered; and

(iii) Workers who are registered in a bona fide apprenticeship program or training program registered with the Department of Labor's Employment and Training Administration, Office of Apprenticeship, or with a State Apprenticeship Agency recognized by the Office of

Apprenticeship, are covered.

(2) This clause does not apply to—

(i) Fair Labor Standards Act (FLSA) – covered individuals performing in connection with contracts covered by the E.O., i.e. those individuals who perform duties necessary to the performance of the agreement, but who are not directly engaged in performing the specific work called for by the agreement, and who spend less than 20 percent of their hours worked in a particular workweek performing in connection with such agreements;

(ii) Individuals exempted from the minimum wage requirements of the FLSA under 29 U.S.C. § 213(a) and 214(a) and (b), unless otherwise covered by the Service Contract Labor Standards statute, or the Wage Rate Requirements (Construction) statute. These individuals include but are not limited to—

(A) Learners, apprentices, or messengers whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(a).

(B) Students whose wages are calculated pursuant to special certificates issued under 29 U.S.C. § 214(b).

(C) Those employed in a bona fide executive, administrative, or professional capacity (29 U.S.C. § 213(a)(1) and 29 C.F.R. § part 541).

(c) Notice. The non-Federal entity shall notify all workers performing work on, or in connection with, this agreement of the applicable E.O. minimum wage rate under this clause. With respect to workers covered by the Service Contract Labor Standards statute or the Wage Rate Requirements (Construction) statute, the Contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers whose wages are governed by the FLSA, the non-Federal entity

shall post notice, utilizing the poster provided by the Administrator, which can be obtained at www.dol.gov/whd/govcontracts, in a prominent and accessible place at the worksite. Non-Federal entities that customarily post notices to workers electronically may post the notice electronically provided the electronic posting is displayed prominently on any Web site that is maintained by the non-Federal entity, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

(d) Payroll Records.

(1) The non-Federal entity shall make and maintain records, for three years after completion of the work, containing the following information for each worker:

(i) Name, address, and social security number;

(ii) The worker's occupation(s) or classification(s);

(iii) The rate or rates of wages paid;

(iv) The number of daily and weekly hours worked by each worker;

(v) Any deductions made; and

(vi) Total wages paid.

(2) The non-Federal entity shall make records pursuant to paragraph (e) (1) of this clause available for inspection and transcription by authorized representatives of the Administrator. The non-Federal entity shall also make such records available upon request of the Contracting Officer.

(3) The non-Federal entity shall make a copy of the agreement available, as applicable, for inspection or transcription by authorized representatives of the Administrator.

(4) Failure to comply with this paragraph (e) shall be a violation of 29 C.F.R. § 10.26 and this agreement. Upon direction of the Administrator or upon the Financial Assistance Awarding Officer's own action, payment shall be withheld until such time as the noncompliance is corrected.

(5) Nothing in this clause limits or otherwise modifies the non-Federal entity's payroll and recordkeeping obligations, if any, under the Service Contract Labor Standards statute, the Wage Rate Requirements (Construction) statute, the Fair Labor Standards Act, or any other applicable law.

(e) Access. The non-Federal entity shall permit authorized representatives of the Administrator to conduct investigations, including interviewing workers at the worksite during normal working hours.

(f) Withholding. The Financial Assistance Awarding Officer, upon his or her own action or upon written request of the Administrator, will withhold funds or cause funds to be withheld, from the non-Federal entity under this or any other Federal agreement with the same non-Federal entity, sufficient to pay workers the full amount of wages required by this clause.

(g) Disputes. Department of Labor has set forth in 29 C.F.R. § 10.51, Disputes concerning non-Federal entity compliance, the procedures for resolving disputes concerning a non-Federal entity's compliance with Department of Labor regulations at 29 C.F.R. § 10. Such disputes shall be resolved in accordance with those. This includes disputes between the non-Federal entity (or any of its Subrecipients) and the contracting agency, the Department of Labor, or the workers or their representatives.

(h) Antiretaliation. The non-Federal entity shall not discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to compliance with the E.O. or this clause, or has testified or is about to testify in any such proceeding.

(i) Subcontractor compliance. The non-Federal entity is responsible for Subrecipient compliance with the requirements of this clause and may be held liable for unpaid wages due Subrecipient workers.

Subawards. The non-Federal entity shall include the substance of this clause, including this paragraph (k) in all subawards, regardless of dollar value, that are subject to the Service

