

LEGAL OFFICE

OHIO ENVIRONMENTAL PROTECTION AGENCY

**Portsmouth Gaseous Diffusion Plant
P.O. Box 700
Piketon, Pike County, Ohio**

COST RECOVERY SETTLEMENT

By: Seny Lobsenz Date: 1/4/17

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PROVISION

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ATTACHMENT – DOE Grant #DE-EM0004290

PREAMBLE

It is agreed to by the Parties hereto as follows:

I. JURISDICTION

1. These Director's Final Findings and Orders ("Orders") are issued to the United States Department of Energy (DOE), pursuant to the authority vested in the Director of Ohio EPA under Ohio Revised Code ("ORC") §§ 3734.13, 3734.20, 6111.03, and 3745.01 and DOE enters into these Orders pursuant to Section 646 of the Department of Energy Organization Act (Pub. L. 95-91, as amended; 42 United States Code 7256).

II. PARTIES BOUND

2. These Orders shall apply to and be binding upon Respondent and its successors in interest liable under Ohio law.

3. Except as otherwise provided by law, no change in ownership or legal status of the Respondent including, but not limited to, any transfer of assets or real or personal property shall in any way alter Respondent's obligations under these Orders.

III. DEFINITIONS

4. Unless otherwise expressly provided herein, all terms used in these Orders or in any appendices shall have the same meaning as defined in ORC §§ 3734 and 6111, the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the rules promulgated thereunder. Whenever the terms listed below are used in these Orders, the following definitions shall apply:

- a. "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9601 et seq.
- b. "Contaminant" and "Contamination" means (1) any "hazardous waste" under ORC § 3734.01(J) or Section 1004(5) of RCRA, 42 USC § 6903(5); (2) any "industrial waste" under ORC § 6111.01(C); (3) any "other wastes" under ORC § 6111.01(D), including any release of one or more of the same
- c. "Day" means a calendar day unless expressly stated to be a business day. "Business day" shall mean a day other than a Saturday, Sunday, or state holiday. In computing any period of time under these Orders, where the last day would fall on a Saturday, Sunday, or state holiday, the period shall run until the close of the next business day.
- d. "Facility" means the U.S. Department of Energy Portsmouth Gaseous Diffusion Plant located at Piketon, Pike County, Ohio.
- e. "Ohio EPA" means the Ohio Environmental Protection Agency and its designated representatives.
- f. "Orders" means these Director's Final Findings and Orders.
- g. "Paragraph" means a portion of these Orders identified by an Arabic numeral or an uppercase or lowercase letter.
- h. "Parties" means Respondent and the Ohio EPA.
- i. "Respondent" means the United States Department of Energy (DOE).
- j. "Response Costs" means all costs incurred by Ohio EPA's oversight role to ensure compliance with the following that includes but is not limited to, payroll costs, contractor costs, travel costs, direct costs, overhead costs, legal and enforcement related costs, oversight costs, laboratory costs, and the costs of reviewing or

developing plans, reports, and other items pursuant to the consent decree, the Integration Order, or the DUF6 Orders, verifying the Work, or otherwise implementing or enforcing the consent decree, the Integration Order, or the DUF6 Orders.

- k. "Section" means a portion of these Orders identified by a roman numeral.
- l. "Site" means the Facility and surrounding property owned by Respondent in Piketon, Ohio where the treatment, storage, and/or disposal of hazardous waste, and/or the discharge to waters of the state of industrial waste or other wastes have occurred, including any other area where such hazardous wastes, industrial wastes, and/or other wastes have migrated or threaten to migrate.

IV. FINDINGS

5. The Director of Ohio EPA has determined the following findings:

- a. The Portsmouth Gaseous Diffusion Plant (GDP) is located on approximately 3,714 acres of federally owned land in Piketon, Ohio.
- b. The GDP was owned and operated by the U.S. Atomic Energy Commission, Energy Research and Development Administration and Respondent from 1954 until 1993. United States Enrichment Corporation (USEC) continued uranium enrichment at the GDP from 1993 until May 2001.
- c. The ownership of all the Facility, excluding certain personal property and fixtures, is retained by Respondent.
- d. On August 31, 1989, Respondent entered into a consent decree with Ohio EPA to perform a Resource Conservation and Recovery Act (RCRA) Facility Investigation and Corrective Measures Study at the Facility (consent decree). The aforementioned consent decree was filed as C2-89-732.
- e. On August 11, 1994, the United States Environmental Protection Agency (U.S. EPA), Respondent, and Ohio EPA entered into an administrative consent order pursuant to the RCRA and CERCLA to address conditions at the Facility, including the agreement that Respondent would reimburse Ohio EPA for its costs directly related to implementation of the order (1994 Orders).
- f. On June 12, 1997, U.S. EPA, Respondent, and Ohio EPA entered into another administrative consent order, which replaced the 1994 Orders (Third Party Order). Respondent again agreed to reimburse Ohio EPA for costs directly related to the implementation of the Third Party Order. The Third Party Order outlined oversight responsibilities of U.S. EPA and Ohio EPA.

- g. On February 21, 1998, Respondent entered into Director's Final Findings and Orders with Ohio EPA for management of depleted uranium hexafluoride at the Facility. These orders were modified on March 28, 2011 and October 1, 2013 (DUF6 Orders).
- h. On March 17, 1999, Respondent entered into Director's Final Findings and Orders with Ohio EPA for the integration of groundwater monitoring, surveillance, and maintenance programs that had previously been addressed pursuant to RCRA and/or Ohio's solid waste laws and rules, which streamlined oversight of various units at the Facility (Integration Order). The Integration Order was revised on December 16, 2011.
- i. On March 15, 2001, Ohio EPA issued a hazardous waste permit to Respondent (04-66-0680). The permit was renewed on March 25, 2011.
- j. On April 13, 2010, Respondent entered into Director's Final Findings and Orders with Ohio EPA for Respondent to perform removal action, remedial investigation and feasibility study, and remedial design and action to develop Records of Decision for the decontamination and decommissioning of buildings at the Site develop a Record of Decision for the disposal status for wastes generated during D&D (D&D Orders). The records of decision to decontaminate and decommission the buildings and disposal of waste meeting Waste Acceptance Criteria in and On-Site Disposal Cell are dated July 30, 2015 and June 30, 2015, respectively. The D&D Orders were modified on September 12, 2011 and July 16, 2012.
- k. On February 19, 2016, U.S. EPA requested that the parties consider termination of the Third Party Order due to changes in the regulatory landscape since the signing of the orders in 1994 and 1997 respectively. As such, the Parties have agreed to terminate the Third Party Order provided these Orders are in the place for Ohio EPA to continue to recover its appropriate Response Costs from Respondent.
- l. Respondent has directly or indirectly allowed Contamination and/or directed the placement and/or disposal of Contaminants at the Site.
- m. The Site is a hazardous waste facility, solid waste facility or other location where hazardous waste was treated, stored or disposed.
- n. Because of their quantity, concentration, physical or chemical characteristics, the Contaminants found at the Site are "hazardous waste" as defined under ORC § 3734.01(J) or Section 1004(5) of RCRA, 42 USC § 6903(5).
- o. Hazardous substances at the Site include, but are not limited to, polychlorinated biphenyls, radionuclides, chlorinated hydrocarbons, lead, and mercury.

- p. The Contaminants found at the Site are "industrial waste" or "other wastes" as defined under ORC §§ 6111.01(C) and (D).
- q. The ground and surface waters at the Site are "waters of the state" as defined in ORC § 6111.01(H).
- r. Respondent is a "person" as defined under ORC §§ 3734.01(G) and 6111.01(I).
- s. Conditions at the Site constitute a substantial threat to public health or safety or are causing or contributing or threatening to cause or contribute to air or water pollution or soil contamination as provided in ORC § 3734.20(B).
- t. Ohio EPA has incurred Response Costs and continues to incur Response Costs associated with this Site.

V. GENERAL PROVISIONS

6. Objectives of the Parties

The objective of the Parties in entering into these Orders is the reimbursement of Response Costs incurred by Ohio EPA, not already covered by the D&D Orders, in connection with the Site for Ohio EPA's oversight and support activities associated with, but not limited to, environmental restoration, corrective actions, waste management and multi-media environmental monitoring activities specifically applicable to the consent decree, Integration Orders, and DUF6 Orders, and relevant sampling and investigational work plans pertaining to the ongoing site restoration and clean-up. Activities are further outlined in the DOE Grant #DE-EM0004290 [30 June 2016], which is attached and is incorporated by reference and includes any future updates to the Grant as agreed upon by the Parties.

7. Commitment of Respondent

Respondent agrees to pay Ohio EPA's Response Costs in accordance with Section VI. of these Orders for Response Costs incurred by Ohio EPA in connection with the Site.

VI. REIMBURSEMENT OF COSTS

8. Ohio EPA incurs Response Costs in connection with the Site. Respondent shall reimburse Ohio EPA for all Response Costs incurred after the effective date of the Orders in accordance with Attachment C of DOE Grant #DE-EM0004290. Ohio EPA will provide to DOE an itemized statement detailing costs incurred to support the monthly reimbursement request.

VII. ACCESS TO INFORMATION

9. Upon request, Respondent shall provide to Ohio EPA within fourteen (14) days, copies of all documents and information related to payment, or proof of payment, for Response Costs under these Orders.

VIII. MODIFICATIONS

10. These Orders may be modified by agreement of the Parties. Modifications shall be in writing, signed by the authorized representative of the Respondent and by the Director, and shall be effective on the date entered in the Journal of the Director of Ohio EPA.

IX. AGREEMENT NOT TO REFER

11. Provided Respondent complies with these Orders, Ohio EPA agrees not to refer Respondent to the Ohio Attorney General's Office for enforcement, or take administrative enforcement action against Respondent for payment of Response Costs incurred by Ohio EPA with respect to the Site.

X. OTHER CLAIMS

12. Nothing in these Orders shall constitute or be construed as a release from any claim, cause of action, or demand in law or equity against any person, firm, partnership, or corporation not a party to these Orders, for any liability arising from, or related to, events or conditions at the Site.

XI. RESERVATION OF RIGHTS

13. Ohio EPA reserves the right to seek legal and/or equitable relief to recover Response Costs incurred by Ohio EPA with respect to this Site.

14. Respondent reserves any rights it may have to raise any legal or equitable defense in any action brought by Ohio EPA to recover Response Costs incurred by Ohio EPA with respect to the Site.

15. Nothing herein shall be construed as a waiver, delegation or compromise of any Ohio EPA authority under RCRA, CERCLA, or any other statute.

XII. TERMINATION

16. Respondent's obligations under these Orders shall terminate when Respondent certifies in writing and demonstrates to the satisfaction of Ohio EPA that Respondent has performed all obligations, i.e., all payments of Response Costs have been completed, under these Orders and the Chief of Ohio EPA's Division of Environmental Response and

Revitalization acknowledges, in writing, the termination of these Orders. Respondent's certification shall be signed by a responsible official of Respondent and contain the following attestation, "I certify that the information contained in or accompanying this certification is true, accurate, and complete." If Ohio EPA does not agree that all obligations have been performed, then Ohio EPA will notify Respondent in a timely manner of Respondent's submission, in which case Respondent shall have an opportunity to address any such deficiencies and seek termination as described above. The termination of Respondent's obligations under these Orders shall not terminate the Parties' rights and obligations under the Reservation of Rights, Other Claims, and Agreement Not to Refer Sections of these Orders.

XIII. WAIVER AND AGREEMENT

17. In order to resolve disputed claims, without admission of fact, violation, or liability, Respondent consents to the issuance of these Orders, and agrees to comply with these Orders.

18. Respondent hereby waives the right to appeal these Orders or otherwise seek administrative or judicial review of the issuance, terms and conditions, and service of these Orders either in law or equity.

19. Notwithstanding the waiver herein of Respondent's right to appeal or seek administrative or judicial review, Ohio EPA and Respondent agree if these Orders are appealed by any other party to the Environmental Review Appeals Commission, or any court, Respondent retains the right to intervene and participate in such appeal. In such event, Respondent shall continue to comply with these Orders notwithstanding such appeal and intervention unless these Orders are stayed, vacated or modified.

XIV. EFFECTIVE DATE

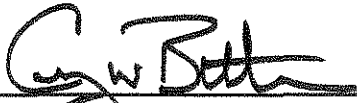
20. The effective date of these Orders shall be the date these Orders are entered in the Journal of the Director of Ohio EPA.

XV. SIGNATORY AUTHORITY

21. Each undersigned representative of a Party to these Orders certifies that he or she is fully authorized to enter into these Orders and to legally bind such Party to these Orders.

IT IS SO ORDERED AND AGREED:

OHIO ENVIRONMENTAL PROTECTION AGENCY



Craig W. Butler, Director
Ohio Environmental Protection Agency

1/3/17

Date

IT IS SO AGREED:

U.S. DEPARTMENT OF ENERGY

BY:



Robert E. Edwards III
Manager
U.S. Department of Energy
Portsmouth/Paducah Project Office


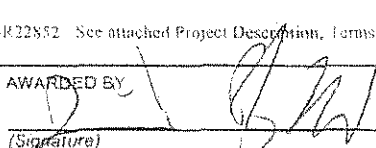
DEC - 8 2016

Date

ATTACHMENT

U.S. DEPARTMENT OF ENERGY
NOTICE OF FINANCIAL ASSISTANCE AWARD

Under the authority of Public Law 95-91 (42 U.S.C. 7254 & 7256) and PL 95-224 (41 U.S.C. 508)

| | | | |
|--|--|--|---------------------------------|
| 1. PROJECT TITLE Ohio State Environmental Monitoring Program Applied to DOE | | 2. INSTRUMENT TYPE <input checked="" type="checkbox"/> GRANT <input type="checkbox"/> COOPERATIVE AGREEMENT | |
| 3. RECIPIENT (Name, address, zip code) Ohio Environmental Protection Agency Lazarus Government Center P.O. Box 1049 Columbus, Ohio 43216-1049 | | 4. INSTRUMENT NO. DE-EM0004290 | 5. AMENDMENT NO. 0000 |
| 8. RECIPIENT PROJECT DIRECTOR (Name, phone and E-mail) Mr. Dustin Tschudy, Site Coordinator dustin.tschudy@epa.ohio.gov, (v)740/380-5253, (f)740/385-6490 | | 6. BUDGET PERIOD FROM: 7/1/16 THRU: 8/31/17 | |
| 9. RECIPIENT BUSINESS OFFICER (Name, phone and E-mail) Mr. Steven Snyder, Fiscal Officer steven.snyder@epa.state.oh.us, (v)614/644-2076, (f)614/644-1078 | | 7. PROJECT PERIOD FROM: 7/1/16 THRU: 8/31/17 | |
| 10. TYPE OF AWARD <input checked="" type="checkbox"/> NEW <input type="checkbox"/> CONTINUATION <input type="checkbox"/> RENEWAL <input type="checkbox"/> REVISION <input type="checkbox"/> INCREMENTAL FUNDING | | 11. DOE PROJECT OFFICER (Name, address, phone and E-mail) Ms. Kristi Wiehle, Environmental Protection Specialist Portsmouth Operations Oversight Group P.O. Box 700, 3932 U.S. 23 Highway Pikeston, OH 45661 kristi.wiehle@lex.doe.gov, (v)740/897-5020, (f)740/897-2892 | |
| 12. DOE AWARD ADMINISTRATOR (Name, address, phone and E-mail) Mr. Daniel D. Burke, Contracting Officer Portsmouth/Paducah Project Office 1017 Majestic Drive, Suite # 200 Lexington, KY 40513-1869 daniel_burke@lex.doe.gov, (v)859-219-4052, (f)859/219-4097/4098/4099 | | 13. RECIPIENT TYPE <input checked="" type="checkbox"/> STATE GOV'T <input type="checkbox"/> INDIAN TRIBAL GOV'T <input type="checkbox"/> HOSPITAL <input type="checkbox"/> FOR PROFIT ORGANIZATION <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> LOCAL GOV'T <input type="checkbox"/> INSTITUTION OF HIGHER EDUCATION <input type="checkbox"/> OTHER NONPROFIT ORGANIZATION <input type="checkbox"/> C <input type="checkbox"/> P <input type="checkbox"/> SP <input type="checkbox"/> OTHER (Specify) _____ | |
| 14. ACCOUNTING AND APPROPRIATIONS DATA a. Approp Symbol b. B & R # c. FT/APP/OC 89X5231.91(03000) EU02261BO(1110443) ADSPAD103(0002608) | | 15. EMPLOYER I.D. a. TIN: (EIN 31-1334820) b. DUNS: 86-917-2372 | |
| 16. BUDGET AND FUNDING INFORMATION | | | |
| a. CURRENT BUDGET PERIOD INFORMATION (1) DOE Funds Obligated This Action \$ 120,000.00 (2) DOE Funds Authorized for Carry Over \$ 0.00 (3) DOE Funds Previously Obligated in this Budget Period \$ 0.00 (4) DOE Share of Total Approved Budget \$ 616,806.00 (5) Recipient Share of Total Approved Budget \$ 0.00 (6) Total Approved Budget \$ 616,806.00 | | b. CUMULATIVE DOE OBLIGATIONS (1) This Budget Period [Total of lines a. (1) and a. (3)] \$ 120,000.00 (2) Prior Budget Periods \$ 0.00 (3) Project Period to Date [Total of lines b. (1) and b. (2)] \$ 120,000.00 | |
| 17. TOTAL ESTIMATED COST OF PROJECT, INCLUDING DOE FUNDS TO FFRC: \$ 3,084,030.00 (This is the current estimated cost of the project. It is not a promise to award nor an authorization to expend funds in this amount.) | | | |
| 18. AWARD AGREEMENT TERMS AND CONDITIONS This award/agreement consists of this form plus the following: a. Special terms and conditions. b. Applicable program regulations (specify) N/A (Date) _____ c. DOE Assistance Regulations, 10 CFR Part 600 at http://ecfr.gpoaccess.gov or, if the award is a grant to a Federal Demonstration Partnership (FDP) institution, the FDP Terms & Conditions and the DOE FDP Agency Specific Requirements at http://www.nsf.gov/awards/managing/fed_dem_part/ep d. Application/proposal as approved by DOE e. National Policy Assurances to Be Incorporated as Award Terms in effect on date of award at http://grants.or.doe.gov | | | |
| 19. REMARKS This is a new Financial Assistance (F-A) Agreement replacing Grant No. DE-FG05-01OR22852. See attached Project Description, Terms and Conditions, etc. | | | |
| 20. EVIDENCE OF RECIPIENT ACCEPTANCE  (Signature of Authorized Recipient Official) (Date) Craig W. Butler _____ (Name) Director _____ (Title) | | 21. AWARDED BY  (Signature) 6/30/16 Daniel D. Burke _____ (Name) Contracting Officer _____ (Title) | |

State of Ohio Environmental Monitoring Program Applied to DOE
Ohio Environmental Protection Agency
Project Description
July 1, 2016 to June 30, 2021

Summary:

Ohio Environmental Protection Agency (Ohio EPA) is responsible for enforcing state laws and regulations related to solid and hazardous waste management, water and air quality, and protection of human health and the environment. Ohio EPA will serve as the primary liaison with the Department of Energy (DOE) at the Portsmouth Gaseous Diffusion Plant (PORTS), Piketon, Ohio, between Ohio EPA Division of Environmental Response and Revitalization (DERR), Ohio Department of Health (ODH), and Ohio Emergency Management Agency (OEMA). Ohio EPA will provide resources to support discussions establishing the regulatory framework and process to be used to accomplish work activities of the PORTS applicable to the Consent Decree, Three Party Order, Integration Order, Natural Resource Damage Order, Depleted Uranium Hexafluoride (DUF₆) Order, Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) Decommissioning and Decontamination (D&D) Order (Attachment 1 Buildings/Structures Associated with D&D DFF&O Order), and relevant sampling and investigational work plans pertaining to the ongoing site restoration/cleanup, potential natural resource restoration projects, and relevant sampling and investigational work plans pertaining to the ongoing site restoration and cleanup (Attachment 2 Generic List of High Level DOE Deliverables to Ohio EPA for Review).

Ohio EPA (DERR) will:

Coordinate the activities of the Ohio EPA, ODH, and OEMA with regard to Environmental Restoration, Corrective Actions, Waste Management, and Multi-Media Environmental Monitoring activities specifically applicable to the Consent Decree, Three Party Order, Integration Order, DUF₆ Order, CERCLA D&D Order, Natural Resource Damage Order and relevant sampling and investigational work plans pertaining to the ongoing D&D actions, site restoration, cleanup activities and potential natural resource restoration projects. Responsible to coordinate activities and the Memorandum of Understanding between the above listed state agencies requirements. Provide expertise in regards to review comments and assessment of investigatory data, reports, risk assessments, ecological risk assessments, feasibility studies, interim actions, and final remedial actions. Provide expertise in regards to engineering remedial design, research, review, and distribute information regarding treatability studies and pertinent technologies to the DOE PORTS. The Ohio EPA DERR will also perform the following tasks:

- Maintain filing, distribution of documents, records, and schedules associated with the Ohio EPA's involvement with the DOE PORTS.
- Coordinate collection and analyze split/duplicate samples of environmental media. Review and assess data collection, validate and review reporting methods relating to the Consent Decree, Three Party Order, DUF₆ Order, Integration Order, and CERCLA D&D Order requirements.
- Develop and provide analytical contracts capable of analyzing all pertinent parameters including organics, inorganics and nuclides (i.e., gross alpha, beta, and gamma emitting

nuclides) relating to the Consent Decree as well as other relevant Orders pertaining to the PORTS. Coordinate and communicate district sampling request with the appropriate contract laboratories.

- Provide a central point of contact for all Natural Resource Damage (NRD) Order and associated Natural Resource Restoration Plan (NRRP) projects, as well as coordinate all necessary activities between the trustees and all stakeholders for the implementation of an NRD Order. DOE shall provide no funding for enforcement related activities.
- Task the Division of Surface Water (DSW) to evaluate proposed remedial alternatives for compliance with applicable wastewater pollution requirements.
- Task the DSW to assess possible impacts on aquatic ecosystems in the vicinity of the DOE facility based on the biological sampling and correlate impacts with sediments and surface water data relating to remediation activities and/or Consent Decree requirements.
- Task the Division of Drinking and Ground Waters (DDAGW) to review and provide comment on proposed Consent Decree remedial alternatives, work plans, five-year reviews, groundwater reports, and other documents submitted for compliance with the Integrated Groundwater Work Plan and all other relevant documents pertaining to the ongoing remedial activities at the site.
- Task DDAGW to review each document for statistical verification, completeness, and to ensure that DOE is in compliance with the appropriate Federal and State requirements. The DDAGW shall also be available for conference calls and meetings as tasked by DERR.
- Coordinate with the Division of Materials and Hazardous Waste Management (DMHWM) to ensure that the ongoing remedial activities conducted under the Consent Decree meet the substantive requirements of the Resource Conservation and Recovery Act (RCRA) and corresponding State requirements.
- Coordinate with the Division of Air Pollution Control (DAPC) as necessary on remedial projects to ensure that DOE meets State and Federal requirements and rules regarding asbestos related issues, air permits, air permit requirements, and required licenses.
- Coordinate with the DSW, DDAGW, DMHWM, and DAPC to attend meetings including, but not limited to, Public Information Meetings (PIMs) and all necessary meetings for the completion of D&D actions. Review and, if appropriate, provide comments on documentation and designs including but not limited to work plans, sampling plans, Engineering Evaluation/Cost Analysis (EE/CA), Action Memorandums, Removal Action Work Plans, Remedial Investigation/Feasibility Study (RI/FS), Records of Decision (ROD), Remedial Design/Remedial Action (RD/RA), etc. Review and, if appropriate, provide comments on documentation and provide expertise regarding remedial activity pertaining to the Consent Decree and all subsequent D&D activities as required for the implementation of the CERCLA D&D Order at the site.
- Coordinate with the necessary Ohio EPA personnel to attend meetings including, but not limited, to PIMs and all necessary meetings for the completion of D&D activities associated with the On-site Disposal Cell (OSDC). Review and, if appropriate, provide

comments on documentation and designs including, but not limited to, work plans, sampling plans, Waste Acceptance Criteria (WAC), Remedial Investigation/Feasibility Study (RI/FS), Records of Decision (ROD), and Remedial Design/Remedial Action (RD/RA) work plans, etc.

- Coordinate with the necessary Ohio EPA personnel to attend meetings including, but not limited, to PIMs and all necessary meetings regarding the Consent Decree. Review and, if appropriate, provide comments on documentation and designs including, but not limited to, work plans, sampling plans, Corrective Measures Studies (CMS), Preferred Plans, Decision Documents, and Corrective Measures Investigations (CMI), etc.
- Provide, organize, and conduct PIMs with concerned citizens and local government when appropriate in conjunction with Ohio EPA's Public Information Center (PIC) and prepare news releases on issues associated with the Consent Decree requirements.
- Coordinate with the DOE Public Information Office, as well as contractors, on issues associated with remediation and the Consent Decree requirements, as well as CERCLA D&D Order requirements.
- Provide, utilize, and oversee a detailed time accounting system to assess DOE facilities site-specific costs.
- Maintain, distribute, and coordinate financial information to other State agencies and DOE.
- Collect financial data to provide quarterly Federal Financial Reports and to ensure all financial obligations and reporting are met.
- Maintain DOE documents for entry into Emergency and Remedial Response general files; set-up and maintain immediate receipt of documents in DOE files.
- Plan and coordinate with appropriate Ohio EPA staff to implement all activities associated with the D&D of the PORTS as required in the CERCLA D&D Order. This effort should consist of meetings with DOE and contractors to plan the scope of activities. Maintain an oversight role for all D&D activities to ensure compliance with the CERCLA D&D Order, the Consent Decree, NRD Order, where appropriate, and all State and Federal rules, requirements and regulations to ensure safe and compliant D&D for the site.
- Review and coordinate comment of all required submitted documentation as noted in the CERCLA D&D Order. This effort will require coordination with DOE, USEPA, ODH, OEMA, and stakeholders, etc.
- Participate in all necessary public meetings and/or forums including Site Specific Advisory Board (SSAB) and SSAB committee meetings and any other public outreach as necessary to inform and educate stakeholders and the public of cleanup activities at the site.
- Participate and attend training necessary to remain compliant with all DOE Environmental Management (EM) activities and/or any other training necessary.
- Continue to develop and maintain an Emergency Response Staff, available 24-hours per day, for notification of DOE emergencies, staff the State Emergency Operations Center

and Assessment facility to support emergency response, mobilize the state response, assess all incidents, and make protective recommendations to local governments.

ODH as tasked by DERR shall:

- Provide health physics oversight, including radiological risk assessment/dose assessment of environmental radioactive contaminants.
- Provide health physics oversight for sampling, surveillance, monitoring, and data and information collection pertaining to radiological material.
- Participate in public information meetings conducted by Ohio EPA.
- Participate in meetings with DOE, USEPA, and Ohio EPA regarding remediation and D&D activities.
- ODH shall provide Ohio EPA with accurate and timely cost information for activities performed. ODH shall provide Ohio EPA detailed expense reports concerning all expenditures related to the grant on a monthly basis.

OEMA will:

- Provide all planning, coordination, and act as liaison for emergency management activities relating to all actual or potential off-site transportation events. This includes both incoming and outgoing shipments of radioactive materials, mixed waste, and hazardous materials/waste. These activities will include, but are not necessarily limited to, emergency planning, training, communications, drills and exercises, hazards analysis, warning systems, and public information.
- Provide emergency planning, evaluate, revise, complete and maintain, as necessary, the multi-jurisdictional State Emergency Operations Plan (EOP) Emergency Support Function (ESF) #10, including its' Hazardous Materials Incident Annex, DOE Appendix, and Radiological Transportation Appendix.
- Provide training in coordination with DOE and the affected counties. OEMA shall develop a training plan (i.e., implementation procedures) based on the state plan and conduct training to support local and state governments' capability to respond to emergency situations.
- Organize/work with local governments and state agencies to develop and maintain an organization necessary to respond to protect the lives, environment, and property of citizens in and around the PORTS.
- Develop and be responsible for and maintain communication systems that ensure a continuity of communication with all levels of government and DOE during emergencies. This component is initiated/activated during the release/post-release time frame.
- Coordinate with Ohio EPA certain actions that are needed to enable state and local governments to adequately respond to protect the citizens of Ohio from emergencies that

could occur at DOE facilities in the state. OEMA shall coordinate the development of the state and local government off-site Emergency Response Program for the DOE facility located in Portsmouth and others as necessary.

- OEMA shall provide Ohio EPA with accurate and timely cost information for activities performed. OEMA shall provide Ohio EPA detailed expense reports concerning all expenditures related to the grant on a monthly basis.

**GRANT #DE-EM0004290
DOE TERMS AND CONDITIONS
STATE GOVERNMENT**

**MONITORING PROGRAM APPLIED TO DOE
FOR THE PORTSMOUTH GASEOUS DIFFUSION PLANT
WITH THE OHIO ENVIRONMENTAL PROTECTION AGENCY**

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GRANT # DE-EM0004290
DOE TERMS AND CONDITIONS
FOR STATE GOVERNMENT
MONITORING PROGRAM APPLIED TO DOE
FOR THE PORTSMOUTH GASEOUS DIFFUSION PLANT
WITH THE OHIO ENVIRONMENTAL PROTECTION AGENCY

1. Explanation:

These general terms and conditions do not restate all the provisions of applicable statutes and regulations, nor do they represent an exhaustive listing of all requirements applicable to this grant. These terms and conditions are emphasized by inclusion here, because they could be frequently invoked by the Department of Energy (DOE).

2. Grantee Adherence to Grant Terms and Conditions:

The grantee's signature on the Notice of Financial Assistance Award (NFAA) signifies the grantee's agreement to all terms and conditions of the award. Should the grantee believe modification of any of the terms and conditions of this award is necessary, an authorized official of the grantee organization or, in the case of an individual, the grantee, must submit a written request on its own behalf, or on behalf of any subgrant recipient or applicant, for prior approval by the Contracting Officer.

Following this procedure is very important because many of the terms and conditions of the grant are required by statute and must be enforced by the DOE.

3. Resolution of Conflicting Conditions:

Any apparent inconsistency between Federal statutes and regulations and the terms and conditions contained in this award must be referred to the DOE Award Administrator identified in Block 12 of the NFAA for guidance.

4. Precedence of Requirements:

The requirements of these terms and conditions take precedence over all other requirements of the award found in DOE Orders and Notices, but do not take precedence over the requirements of law or regulations. Any apparent contradiction of law or regulations stated herein should be presumed to be in error until awardee has sought and received clarification from the Contracting Officer, whose signature appears on the face of this award.

5. Order of Precedence:

This Grant is subject to the laws and regulations of the United States. Any inconsistency or conflict in the terms and conditions specified in this Grant shall be resolved according to the following order of precedence:

- a) The Federal statute authorizing this award, or any other Federal statutes or regulations directly affecting performance of this Grant;
- b) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR 200 as amended by the DOE additions at 2 CFR 910;

- c) These terms and conditions; and
- d) Other terms and conditions contained within this Grant and any attachments.

6. Financial Assistance Rules:

2 CFR 200 - UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

7. Statutes and Regulations:

This Grant is subject to all applicable laws and regulations of the United States that apply to assistance instruments without regard of whether they are specifically referenced herein. **The following OMB circulars have been consolidated into 2 CFR 200 which is incorporated into this Grant by reference:**

- (a) OMB Circular A-110 - Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations (2 CFR 215);
- (b) OMB Circular A-122 - Cost Principles for Nonprofit Organizations (2 CFR 230); and
- (c) OMB Circular A-133 - Audits of States, Local Governments, and Non-Profit Organizations.

8. Federal, State, and Municipal Requirements:

You must obtain any required permits and comply with applicable federal, state, and municipal laws, codes, and regulations for work performed under this award.

9. Grantee Certifications and Assurances:

- a) Nondiscrimination in Federally Assisted Programs. In accordance with the below laws and regulations issued pursuant hereto, the Applicant agrees to assure that no person in the United States shall, on the ground of race, color, national origin, sex, age, or disability, be excluded from participation in, be denied benefits of, or be otherwise subjected to discrimination under any program or activity in which the Applicant receives Federal Assistance from the Department of Energy:
 - 1) Title VI of the Civil Rights Act of 1964, Pub. L. 88-352;
 - 2) Section 16 of the Federal Energy Administration Act of 1974, Pub. L. 93-275;
 - 3) Section 601 of the Energy Reorganization Act of 1974, Pub. L. 93-438;
 - 4) Title IX of the Education Amendments of 1972, as amended, Pub. L. 92-318, Pub. L. 93-568, and Pub. L. 94-482;
 - 5) Section 504 of the Rehabilitation Act of 1973, Pub. 93-112;
 - 6) the Age Discrimination Act of 1975, Pub. L. 94-135;
 - 7) Title VIII of the Civil Rights Act of 1968, Pub. L. 90-248;
 - 8) the Department of Energy Organization Act of 1977, Pub. L. Act of 1976, as amended, Pub. L. 94-385.
- b) Recipient Assurance of Compliance, DOE F 1600.5, is to be provided with renewal applications.

- c) Government-wide Debarment and Suspension (Non-procurement): 2 CFR 180 as amended by the DOE additions at 2 CFR 901. Recipient certification is to be provided with renewal and continuation applications.
- d) Lobbying: Source: Public Law 101-21 and FR 52306-52332, December 20, 1989. Recipient certification is to be provided with renewal and continuation applications exceeding \$100,000.

10. Recipient-Authorized Signatures for prior Approval Requests:

All requests for prior approval assistance must be signed by an individual who is authorized to act for the recipient organization. The signature of the project director (unless authorized) is insufficient to obtain action on a prior approval request, although countersignature by the project director is not discouraged. Requests for budget revisions shall be made using the same budget format as used in applying for the grant and must be supported by a narrative justification. Other prior approval requests may be made by letter. Prior approval requests should be addressed to the contracting officer named on the face page of this financial assistance award.

11. Allowable Costs:

- a) In accordance with the applicable cost principles cited below, the allowable costs of this grant shall consist of the actual allowable direct costs incident to performance of the project, plus the allocable portion of the allowable indirect costs, if any, of the organization, less applicable credits. The allowable costs shall not exceed the amount shown on the face page of this grant award for the total approved budget for the current budget period (block 16a(6)(1), DOE F 4600.1, "Notice of Financial Assistance Award"). 2 CFR 200 Section E – Cost Principles: General Provisions for Selected Items of Cost applies (2 CFR 200.420 through 200.475).
- b) The allocability of costs for work performed under this grant and any subsequent subgrant will be determined in accordance with the Federal cost principles applicable to the recipient or subrecipient in effect on the date of award of the grant or subgrant, except as modified by other provisions of this grant or the subgrant. The recipient or subrecipient shall specify in any cost-reimbursement contract under the grant or subgrant the applicable cost principles cited in this provision that apply to the contractor.
- c) The Federal cost principles applicable to specific types of recipients, subrecipients, and contractors under grants, subgrants, and contracts are as follows:
 - 1) 2 CFR 200 Section E – Cost Principles: Special Considerations for States, Local Governments and Indian Tribes (2 CFR 200.416 through 200.417).
 - 2) 2 CFR 200 Section E – Cost Principles: Special Considerations for Institutions of Higher Education (2 CFR 200.418 through 200.419).

12. Standards for Financial and Program Management:

2 CFR 200.300 through 200.309 prescribe standards for performance management, financial management systems, internal controls, methods for making payments and rules for satisfying cost sharing and matching requirements, accounting for program income, revision of budget and program plans, and period of performance. Specifically, Standards for Financial Management (2 CFR 200.302) is detailed below:

- a) Each state must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and the other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations, and the terms and conditions of the Federal award. See also 2 CFR 200.450 Lobbying.
- b) The financial management system of each non-Federal entity must provide for the following (see also 2 CFR 200.333 Retention requirements for records, 2 CFR 200.334 Requests for transfer of records, 2 CFR 200.335 Methods for collection, transmission and storage of information, 2 CFR 200.336 Access to records, and 2 CFR 200.337 Restrictions on public access to records):
 - 1) Identification, in its accounts, of all Federal awards received and expended and the Federal programs under which they were received. Federal program and Federal award identification must include, as applicable, the CFDA title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any.
 - 2) Accurate, current, and complete disclosure of the financial results of each Federal award or program in accordance with the reporting requirements set forth in 2 CFR 200.327 Financial reporting and 2 CFR 200.328 Monitoring and reporting program performance. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient must not be required to establish an accrual accounting system. This recipient may develop accrual data for its reports on the basis of an analysis of the documentation on hand. Similarly, a pass-through entity must not require a subrecipient to establish an accrual accounting system and must allow the subrecipient to develop accrual data for its reports on the basis of an analysis of the documentation on hand.
 - 3) Records that identify adequately the source and application of funds for federally-funded activities. These records must contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest and be supported by source documentation.
 - 4) Effective control over, and accountability for, all funds, property, and other assets. The non-Federal entity must adequately safeguard all assets and assure that they are used solely for authorized purposes. See 2 CFR 200.303 Internal controls.
 - 5) Comparison of expenditures with budget amounts for each Federal award.
 - 6) Written procedures to implement the requirements of 2 CFR 200.305 Payment.
 - 7) Written procedures for determining the allowability of costs in accordance with Subpart E—Cost Principles of this part and the terms and conditions of the Federal award.

13. Term of the Agreement:

The term of this agreement is reflected on the award/cover page. If all funds are expended prior to the end of the term (including recipient contributions, both cash and in-kind), the parties have no obligation to continue and will cease performance at that point. Articles in this agreement which by their express terms or by necessary implication, apply for periods of time other than as specified in this article shall be given effect, notwithstanding this article.

14. Key Personnel:

(a) Recipient personnel considered essential and key to the work performed hereunder are as follows:

| <u>Name</u> | <u>Title</u> | <u>Telephone</u> |
|----------------|------------------|------------------|
| Dustin Tschudy | Site Coordinator | (740)380-5253 |

(b) During the next ninety (90) days of performance, the Recipient shall make no substitutions of key personnel unless the substitution is necessitated by illness, death, or termination of employment. The Recipient shall notify the Contracting Officer within fifteen (15) calendar days after the occurrence of any of these events and provide the information required by paragraph (d) below. After the initial ninety (90) calendar day period, the Recipient shall submit the information required by paragraph (d) to the Contracting Officer at least fifteen (15) days prior to making any permanent substitutions.

(c) The personnel specified in this clause are essential to the project. Before removing or replacing any key personnel, the Recipient shall notify the Contracting Officer reasonably in advance and shall submit justification (including proposed substitutions) in sufficient detail to permit evaluation of the impact on the project. No key personnel may be substituted without the Contracting Officer's approval. Such approval shall be obtained in advance of the substitution, except that the Contracting Officer may ratify a substitution, which, because of exigent circumstances, was made before the Recipient could request and/or obtain Contracting Officer's approval.

(d) The Recipient shall provide a detailed explanation of the circumstances necessitating the proposed substitutions, complete resumes for the proposed substitutes, and any additional information requested by the Contracting Officer. Proposed substitutes should have comparable qualifications to those of the persons being replaced. The Contracting Officer will notify the grantee within fifteen (15) calendar days after receipt of all required information of the decision on substitutions. This clause will be modified to reflect any approved changes of the key personnel.

15. Extending the Project Period:

If the parties agree, the term of this agreement may be extended beyond the project period reflected on the award/cover page, if funds are still available, and the projects have not been completed and/or there are additional environmental projects that warrant the continuation of this grant. Any extension shall be formalized through amendment of the agreement by the DOE Contracting Officer and the recipient.

16. Cost Sharing:

The Recipient and the Government agree to share the allowable project costs, as costs are incurred, in accordance with the following ratio:

| | |
|------------|------|
| DOE: | 100% |
| Recipient: | 0% |
| Total: | 100% |

17. Recipient Submissions:

All recipient submissions (applications, reports, and requests) are to be addressed to the Contracting Officer except as otherwise specified in writing by an authorized DOE official or as determined by the Contracting Officer.

All requests for approval must be signed by an individual who is authorized to act for the recipient organization. The signature of the project director (unless also a corporate officer or otherwise authorized) is insufficient to obtain action on approval requests, although counter signature by the project director is not discouraged. Requests for budget revisions shall be made using the same budget format as used in applying for the grant and must be supported by a narrative justification. Other approval requests may be made by letter.

18. Publications (July 2008):

- (a) Participants are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- (b) An acknowledgment of Federal support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment: "This material is based upon work supported by the Department of Energy under Award Number DE-EM0004290."

Disclaimer: "This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof."

19. Statement of Federal Stewardship (2008):

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

20. Maximum DOE Obligation:

DOE's maximum legal obligation to the recipient is the sum as delineated in Block # 16 on DOE Form 4600.1, NFAA. DOE shall not be obligated to make any additional, supplemental, continuation, renewal or other award for the same or any other purpose.

21. Incremental Funding and Maximum Obligation (July 2008):

If at any time during the award a budget period is funded on an incremental basis, the maximum obligation of the DOE is limited to the amount shown in Block 16.b.(3) "CUMULATIVE DOE OBLIGATIONS Project Period to Date" on the Notice of Financial Assistance Award. Ohio Environmental Protection Agency is not obligated to continue performance of the project beyond the total amount shown in Block 16.b.(3) and your pro rata share of the project costs, if cost sharing is required.

Subject to the availability of additional funds, DOE anticipates obligating the total amount shown in Block 16.b.(3) for the current budget period.

22. Funding:

(a) General. The project period during which DOE expects to provide award support for an approved project shall be specified in the award document.

(b) Budget period and continuation awards. If the project period is 12 months or less, the budget period and the project period shall be coextensive. Multiyear awards, including formula awards, shall generally be funded annually within the approved project period. Funding for each budget period within the project period shall be contingent on DOE approval of a continuation application submitted in accordance with a schedule specified by DOE. A continuation application shall include:

(1) A statement of technical progress or status of the project to date;

(2) A detailed description of the awardee's plans for the conduct of the project during the coming year; and

(3) A detailed budget for the upcoming budget period, including an estimate of unobligated balances. A detailed budget need not be submitted if the new or renewal application contained future-year budgets sufficiently detailed to allow DOE to review and approve the categories and elements of cost. Should the award have a change in scope or significant change in the budget, DOE may request a detailed budget.

(4) DOE shall review a continuation application for the adequacy of the awardee's progress and planned conduct of the project in the subsequent budget period. DOE shall not require a continuation application to compete against any other application. The amount and award of continuation funding is subject to the availability of appropriations.

(c) Renewal awards. Discretionary renewal awards may be made either on the basis of a solicitation or on a noncompetitive basis. If DOE proposes to restrict eligibility for a discretionary renewal award to the incumbent recipient, the noncompetitive award must be justified in accordance with 2 CFR 910.126

(c)(2). Renewal applications must be submitted no later than 6 months prior to the scheduled expiration of the project period unless a program rule or other published instruction establishes a different application deadline.

(d) Extensions. Unless otherwise specified in the award terms and conditions, recipients of financial assistance awards, except recipients of SBIR awards, may extend the expiration date of the final budget period of the project (thereby extending the project period) if additional time beyond the established expiration date is needed to assure adequate completion of the original scope of work within the funds already made available. A single extension, which shall not exceed twelve (12) months, may be made for this purpose, and must be made prior to the originally established expiration date. The recipient must notify the cognizant DOE Contracting Officer in the awarding office in writing within ten (10) days of making the extension. See 2 CFR 200.308 (d)(2).

23. Continuation Application and Funding – Awards Under 2 CFR Part 200 as Amended by 2 CFR Part 910 (December 2014):

a) Continuation Application. A continuation application is a non-competitive application for an additional budget period within a previously approved project period. At least 90 days before the end of each budget period, you must submit your continuation application to the DOE Program Manager

whose name is in block 15 of the Award Agreement and to the Agreements Officer/Administrator whose name is in block 25 and address is listed in block 16 of the Award Agreement,

Your continuation application must include the following information:

- 1) A report on your progress towards meeting the objectives of the project, including any significant findings, conclusions, or developments, and an estimate of any unobligated balances remaining at the end of the budget period. If the remaining unobligated balance is estimated to exceed 20 percent of the funds available for the budget period, explain why the excess funds have not been obligated and how they will be used in the next budget period.
 - 2) A detailed budget and supporting justification for the upcoming budget period if additional funds are requested, a reduction of funds is anticipated, or a budget for the upcoming budget period was not approved at the time of award
 - 3) A description of your plans for the conduct of the project during the upcoming budget period, if there are changes from the DOE approved application.
- b) Continuation Funding. Continuation funding is contingent on (1) availability of funds appropriated by Congress for the purpose of this program; (2) the availability of future-year budget authority; (3) substantial progress towards meeting the objectives of your approved application; (4) submittal of required reports; and (5) compliance with the terms and conditions of the award.

24. Acknowledgment of Federal Funding:

When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing this project, the Recipient shall clearly state: (1) the percentage of the total cost of the project which will be financed with Federal money; and (2) the dollar amount of Federal funds for the project.

25. Profit or Fee:

In accordance with DOE policy, no fee or profit may be charged to this Grant.

26. Modification of Grant:

The only method by which this Grant can be modified is by a formal, written modification signed by the Contracting Officer. No other communications, whether oral or in writing, shall modify this Grant.

27. Revision of Budget and Program Plans:

(a) The approved budget for the Federal award summarizes the financial aspects of the project or program as approved during the Federal award process. It may include either the Federal and non-Federal share (see §200.43 Federal share) or only the Federal share, depending upon Federal awarding agency requirements. It must be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget or project scope or objective, and request prior approvals from Federal awarding agencies for budget and program plan revisions, in accordance with this section.

(c)(1) For non-construction Federal awards, recipients must request prior approvals from Federal awarding agencies for one or more of the following program or budget-related reasons:

(i) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(ii) Change in a key person specified in the application or the Federal award.

(iii) The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(iv) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 CFR part 31, “Contract Cost Principles and Procedures,” as applicable.

(v) The transfer of funds budgeted for participant support costs as defined in §200.75 Participant support costs to other categories of expense.

(vi) Unless described in the application and funded in the approved Federal awards, the subawarding, transferring or contracting out of any work under a Federal award, including fixed amount subawards as described in §200.332 Fixed amount subawards. This provision does not apply to the acquisition of supplies, material, equipment or general support services.

(vii) Changes in the approved cost-sharing or matching provided by the non-Federal entity.

(viii) The need arises for additional Federal funds to complete the project.

(2) No other prior approval requirements for specific items may be imposed unless an exception has been approved by OMB. See also §§200.102 Exceptions and 200.407 Prior written approval (prior approval).

(d) Except for requirements listed in paragraph (c)(1) of this section, the Federal awarding agency is authorized, at its option, to waive prior written approvals required by paragraph (c) this section. Such waivers may include authorizing recipients to do any one or more of the following:

(1) Incur project costs 90 calendar days before the Federal awarding agency makes the Federal award. Expenses more than 90 calendar days pre-award require prior approval of the Federal awarding agency. All costs incurred before the Federal awarding agency makes the Federal award are at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover such costs). See also §200.458 Pre-award costs.

(2) Initiate a one-time extension of the period of performance by up to 12 months unless one or more of the conditions outlined in paragraphs (d)(2)(i) through (iii) of this section apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised period of performance at least 10 calendar days before the end of the period of performance specified in the Federal award. This one-time extension may not be exercised merely for the purpose of using unobligated balances. Extensions require explicit prior Federal awarding agency approval when:

(i) The terms and conditions of the Federal award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

- (3) Carry forward unobligated balances to subsequent periods of performance.
- (4) For Federal awards that support research, unless the Federal awarding agency provides otherwise in the Federal award or in the Federal awarding agency's regulations, the prior approval requirements described in paragraph (d) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (d)(2) applies.
- (e) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for Federal awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. The Federal awarding agency cannot permit a transfer that would cause any Federal appropriation to be used for purposes other than those consistent with the appropriation.
- (f) All other changes to non-construction budgets, except for the changes described in paragraph (c) of this section, do not require prior approval (see also §200.407 Prior written approval (prior approval)).
- (g) For construction Federal awards, the recipient must request prior written approval promptly from the Federal awarding agency for budget revisions whenever paragraph (g)(1), (2), or (3) of this section applies.
- (1) The revision results from changes in the scope or the objective of the project or program.
- (2) The need arises for additional Federal funds to complete the project.
- (3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Subpart E—Cost Principles of this part.
- (4) No other prior approval requirements for budget revisions may be imposed unless an exception has been approved by OMB.
- (5) When a Federal awarding agency makes a Federal award that provides support for construction and non-construction work, the Federal awarding agency may require the recipient to obtain prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.
- (h) When requesting approval for budget revisions, the recipient must use the same format for budget information that was used in the application, unless the Federal awarding agency indicates a letter of request suffices.
- (i) Within 30 calendar days from the date of receipt of the request for budget revisions, the Federal awarding agency must review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency must inform the recipient in writing of the date when the recipient may expect the decision.

28. Site Visits July (2008):

DOE authorized representatives have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. You must provide, and must require your subawardees to provide, reasonable access to facilities, office space, resources, and assistance for the safety and convenience of the government representatives in the

performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

29. Non-Federal Audits:

- a) Basic rule. Recipients and subrecipients are responsible for obtaining audits in accordance with the Single Audit Act Amendments of 1996 (31 U.S.C. 7501–7507) and 2 CFR 200 Subpart F – Audit Requirements. The audits shall be made by an independent auditor in accordance with generally accepted government auditing standards covering financial audits.
- b) Subrecipients. State or local governments, as those terms are defined for purposes of the Single Audit Act Amendments of 1996, that provide Federal awards to a subrecipients, which expends \$750,000 or more (or other amount as specified by OMB) in Federal awards in a fiscal year, shall:
 - 1) Determine whether State or local subrecipients have met the audit requirements of the Act and whether subrecipients covered by 2 CFR 200 Subpart F – Audit Requirements have met the audit requirements of the Act. Commercial contractors (private for-profit and private and governmental organizations) providing goods and services to State and local governments are not required to have a single audit performed. State and local governments should ensure that the procurement, receipt, and payment for goods and services by contractors comply with Federal statutes, regulations, and the terms and conditions of Federal awards.
 - 2) Determine whether the subrecipient spent Federal assistance funds provided in accordance with applicable laws and regulations. This may be accomplished by reviewing an audit of the subrecipient made in accordance with the Act, 2 CFR 200 Subpart F – Audit Requirements, or through other means (e.g., program reviews) if the subrecipient has not had such an audit;
 - 3) At the completion of the audit, the auditee must prepare, in a document separate from the auditor's findings described in 2 CFR 200.516 Audit findings, a corrective action plan to address each audit finding included in the current year auditor's reports. The corrective action plan must provide the name(s) of the contact person(s) responsible for corrective action, the corrective action planned, and the anticipated completion date. If the auditee does not agree with the audit findings or believes corrective action is not required, then the corrective action plan must include an explanation and specific reasons. Corrective action plan, along with other elements of Reporting Package (2 CFR 200.512 (c)) must be submitted within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine months after the end of the audit period. If the due date falls on a Saturday, Sunday, or Federal holiday, the reporting package is due the next business day.
 - 4) Consider whether subrecipient audits necessitate adjustment of the recipient's own records; and
 - 5) Require each subrecipient to permit independent auditors to have access to the records and financial statements.

30. Access to Records:

Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report. The United States Government shall have access to records in accordance with closeout requirements for governmental entities and 2 CFR 200.333 through 337.

31. Restrictions on Public Access to Information:

No Federal awarding agency may place restrictions on the non-Federal entity that limit public access to the records of the non-Federal entity pertinent to a Federal award, except for protected personally identifiable information (PII) or when the Federal awarding agency can demonstrate that such records will be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) or controlled unclassified information pursuant to Executive Order 13556 if the records had belonged to the Federal awarding agency. The Freedom of Information Act (5 U.S.C. 552) (FOIA) does not apply to those records that remain under a non-Federal entity's control except as required under §200.315 Intangible property. Unless required by Federal, state, local, and tribal statute, non-Federal entities are not required to permit public access to their records. The non-Federal entity's records provided to a Federal agency generally will be subject to FOIA and applicable exemptions.

32. Remedies for Noncompliance:

- a) If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Federal awarding agency or pass-through entity may impose additional conditions, as described in 2 CFR 200.207 Specific conditions. If the Federal awarding agency or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, the Federal awarding agency or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:
 - 1) Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Federal awarding agency or pass-through entity,
 - 2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
 - 3) Wholly or partly suspend or terminate the Federal award,
 - 4) Initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency regulations
 - 5) Withhold further Federal awards for the project or program, or
 - 6) Take other remedies that may be legally available.
- b) Hearings, appeals. Upon taking any remedy for non-compliance, the Federal awarding agency must provide the non-Federal entity an opportunity to object and provide information and documentation challenging the suspension or termination action, in accordance with written processes and procedures published by the Federal awarding agency. The Federal awarding agency or pass-through entity must comply with any requirements for hearings, appeals or other administrative proceedings to which the non-Federal entity is entitled under any statute or regulation applicable to the action involved.
- c) Effects of suspension and termination. Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:
 - 1) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and

- 2) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.
- d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude recipient or subrecipient from being subject to "Debarment and Suspension" under E.O. 12549 (see 2 CFR 200.212).

33. Noncompliance:

- a) Except for noncompliance with nondiscrimination requirements under #9 "Recipient Certifications & Assurances", whenever DOE determines that a recipient has not complied with the applicable requirements of this part, with the requirements of any applicable program statute or rule, or with any other term or condition of the award, a DOE Contracting Officer shall provide to the recipient (by certified mail, return receipt requested) a written notice setting forth:
 - 1) The factual and legal bases for the determination of noncompliance;
 - 2) The corrective actions and the date (not less than 30 days after the date of the notice) by which they must be taken.
 - 3) Which of the actions authorized under 2 CFR 200.207(4)(b)(1) or 2 CFR 200.338 of this part DOE may take if the recipient does not achieve compliance within the time specified in the notice, or does not provide satisfactory assurances that actions have been initiated which will achieve compliance in a timely manner.
- b) DOE may take any of the actions set forth in 2 CFR 200.207(4)(b)(1) or 2 CFR 200.338 of this part concurrent with the written notice required under paragraph (a) of this section or with less than 30 days written notice to the recipient whenever:
 - 1) There is evidence the award was obtained by fraud;
 - 2) The recipient ceases to exist or becomes legally incapable of performing its responsibilities under the financial assistance award; or

There is a serious mismanagement or misuse of financial assistance award funds necessitating immediate action.

34. Research Misconduct:

- a) A recipient is responsible for maintaining the integrity of research of any kind under an award from DOE including the prevention, detection, and remediation of research misconduct, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this section.

For purposes of this section, the following definitions are applicable:

- 1) Adjudication means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.
- 2) Fabrication means making up data or results and recording or reporting them.

- 3) Falsification means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.
- 4) Finding of Research Misconduct means a determination, based on a preponderance of the evidence that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.
- 5) Inquiry means information gathering and initial fact-finding to determine whether an allegation or apparent instance of misconduct warrants an investigation.
- 6) Investigation means the formal examination and evaluation of the relevant facts.
- 7) Plagiarism means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.
- 8) Research means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.
- 9) Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results, but does not include honest error or differences of opinion.
- 10) Research record means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.
- 11) Unless otherwise instructed by the Contracting Officer, the recipient must conduct an initial inquiry into any allegation of research misconduct. If the recipient determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer and, unless otherwise instructed, the recipient must:
 - i. Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted;
 - ii. Inform the Contracting Officer if an initial inquiry supports an investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication. When an investigation is complete, the recipient will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the recipient's adjudicating official, and the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response to the recommendations (if any).
 - iii. If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

- b) The Department may elect to act in lieu of the recipient in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that:
 - 1) The research organization is not prepared to handle the allegation in a manner consistent with this section;
 - 2) The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;
 - 3) DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or,
 - 4) The allegation involves possible criminal misconduct.
- c) DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the recipient's good faith administration of this section and the effectiveness of its remedial actions and sanctions shall be positive considerations and shall be taken into account as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.
- d) In conducting the activities in paragraph (c) of this section, the recipient and the Department, if it elects to conduct the inquiry or investigation, shall adhere to the following guidelines:
 - 1) Safeguards for information and subjects of allegations. The recipient shall provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the recipient without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The recipient shall also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.
 - 2) Objectivity and expertise. The recipient shall select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must not be the same individual(s) who conducted the inquiry or investigation, and must be separate organizationally from the element that conducted the inquiry or investigation.
 - 3) Timeliness. The recipient shall coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be complete within 60 days of receipt of the record of investigation.
 - 4) Confidentiality. To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.
 - 5) Remediation and sanction. If the recipient finds that research misconduct has occurred, it shall assess the seriousness of the misconduct and its impact on the research completed or in process. The recipient must take all necessary corrective actions. Such action may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The recipient must

coordinate remedial actions with the Contracting Officer. The recipient must also consider whether personnel sanctions are appropriate. Any such sanction must be consistent with any applicable personnel laws, policies, and procedures, and must take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

- e) By executing this agreement, the recipient provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements and definitions of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of allegations of research misconduct.
- f) The recipient must insert or have inserted the substance of this section, including paragraph (g), in subawards at all tiers that involve research.

35. Suspension and Termination:

- a) Under the provisions of 2 CFR 200.339, DOE may suspend or terminate the award, in whole or in part (1) if a recipient fails to comply with the terms and conditions of the Federal award, (2) for cause, or (3) for any reason by mutual agreement between DOE and the recipient upon the request of either party.
- b) Normally, DOE action to suspend or terminate an award for cause will be taken only after DOE has informed the recipient of any deficiency on its part and given the recipient an opportunity to correct it. However, DOE may immediately suspend or terminate the award without prior notice when it believes such action is necessary to protect the interests of the Government. Notification of Termination is in accordance with 2 CFR 200.340.
- c) Costs to the non-Federal entity resulting from obligations incurred by the non-Federal entity during a suspension or after termination of a Federal award or subaward are not allowable unless the Federal awarding agency or pass-through entity expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if:
 - (1) The costs result from obligations which were properly incurred by the non-Federal entity before the effective date of suspension or termination, are not in anticipation of it; and
 - (2) The costs would be allowable if the Federal award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.
- d) Final allowable costs under a termination settlement shall be in accordance with the terms of the award, including this term, and the appropriate Federal cost principles. In no event will the total of payments under a terminated award exceed the amount obligated by DOE or the DOE pro rata share when cost-sharing was required, whichever is less.
- e) Within 90 days after the termination of the grant, the recipient shall submit any final financial, performance, and other reports required by the terms and conditions of the award. (See 2 CFR 200.328 (b)(1))
- f) A notice of termination other than by mutual agreement may be subject to review according to the provisions of 2 CFR 200.341, Opportunities to object, hearings and appeals.

36. Debarment and Suspension:

Applicants, recipients, subrecipients, and contractors under financial assistance awards may be debarred and suspended for the causes and in accordance with the procedures set forth in 2 CFR 213.

37. Collection of Amounts Due:

- a) Any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award constitute a debt to the Federal Government. If not paid within 90 calendar days after demand, the Federal awarding agency may reduce the debt by:
 - 1) Making an administrative offset against other requests for reimbursements;
 - 2) Withholding advance payments otherwise due to the non-Federal entity; or
 - 3) Other action permitted by Federal statute.

Except where otherwise provided by statutes or regulations, the Federal awarding agency will charge interest on an overdue debt in accordance with the Federal Claims Collection Standards (31 CFR parts 900 through 999). The date from which interest is computed is not extended by litigation or the filing of any form of appeal.

38. Lobbying Restrictions:

By accepting funds under this award, you agree that none of the funds obligated on the award shall be expended, directly or indirectly, to influence congressional action on any legislation or appropriation matters pending before Congress, other than to communicate to Members of Congress as described in 18 U.S.C. 1913. This restriction is in addition to those prescribed elsewhere in statute and regulation.

39. Officials Not to Benefit:

No member of or delegate to Congress, or resident commissioner, shall be admitted to any share or part of this Grant, or to any benefit arising from it, in accordance with 41 U.S.C. 22.

40. Subawards and Contracts/Subcontracts:

The applicable Federal cost principles for subawards and contracts/subcontracts under this Grant can be found under 2 CFR 200 Subpart E – Cost Principles.

41. Site Access Requirements:

You are responsible for obtaining access rights to properties not within DOE's control.

42. Liabilities and Losses:

DOE, by issuing this grant, assumes no liability with respect to any damages or loss arising out of any activities undertaken with the financial support provided herein. Neither does Ohio Environmental Protection Agency, by receipt of this Grant, assume any liabilities for any damages or loss, which would not otherwise attach to any activities of Ohio Environmental Protection Agency.

43. Out of State Travel:

Out of state or international travel outside of project budget approval, must be approved prior to such travel by the Contracting Officer.

44. Procurement by States:

When procuring property and services under a Federal award, a state must follow the same policies and procedures it uses for procurements from its non-Federal funds. The state will comply with §200.322 Procurement of recovered materials and ensure that every purchase order or other contract includes any clauses required by section §200.326 Contract provisions. All other non-Federal entities, including subrecipients of a state, will follow §§200.318 General procurement standards through 200.326 Contract provisions.

45. Subgrants:

- a) Ensure that every subaward is clearly identified to the subrecipient as a subaward and includes the following information at the time of the subaward and if any of these data elements change, include the changes in subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward. Required information includes:
 - 1) Federal Award Identification.
 - 2) All requirements imposed by the pass-through entity on the subrecipient so that the Federal award is used in accordance with Federal statutes, regulations and the terms and conditions of the Federal award.
 - 3) Any additional requirements that the pass-through entity imposes on the subrecipient in order for the pass-through entity to meet its own responsibility to the Federal awarding agency including identification of any required financial and performance reports;
 - 4) An approved federally recognized indirect cost rate negotiated between the subrecipient and the Federal Government or, if no such rate exists, either a rate negotiated between the pass-through entity and the subrecipient (in compliance with this part), or a de minimis indirect cost rate as defined in 2 CFR 200.414 Indirect (F&A) costs, paragraph (f) of this part.
 - 5) A requirement that the subrecipient permit the pass-through entity and auditors to have access to the subrecipient's records and financial statements as necessary for the pass-through entity to meet the requirements of this part; and
 - 6) Appropriate terms and conditions concerning closeout of the subaward.

46. Recipient Acquired Property:

Attachment C includes a list of property already acquired and/or authorized for acquisition under this award. The Recipient shall manage property acquired under this award in accordance with 2 CFR 200.310 through and including 2 CFR 200.316, and provide reports as prescribed therein.

47. Supplies (December 2014):

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

48. Property Trust Relationship (December 2014):

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

See 2 CFR Part 200.316 for additional requirements pertaining to real property, equipment, and intangible property acquired or improved under a Federal award.

49. Notice Regarding the Purchase of American-Made Equipment and Products -- Sense of Congress:

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

50. Federal-Owned and Exempt Property:

- a) (a) Title to federally-owned property remains vested in the Federal Government. The non-Federal entity must submit annually an inventory listing of federally-owned property in its custody to the Federal awarding agency. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Federal awarding agency for further Federal agency utilization.
- b) If the Federal awarding agency has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Federal awarding agency must issue appropriate instructions to the non-Federal entity.
- c) Exempt Property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

51. Definitions for FAR/DEAR Clauses:

In reading, any of the Federal Acquisition Regulation (FAR) and Department of Energy Acquisition Regulation (DEAR) patent and data clauses selected for inclusion in this award, the term “contract” when referring to a prime contract shall be read as “award.” The term “contractor” shall be read as referring to the “recipient.” The term “subcontract” shall be read as “subaward or a procurement contract under an award or subaward and/or a procurement subcontract under an recipient’s or subrecipient’s contract.” The term “acquisition” with respect to the Long Form Patent Rights Clause shall be read as “retention.” The terms “offerors” and “quoters” shall be read as “applicants,” and “proposal” and “quotation” shall be read as “application.”

52. Intellectual Property and Contact Information:

(a) The intellectual property provisions applicable to this award are provided as an attachment to this award or are referenced in Block 19 of the Notice of Financial Assistance Award. A list of all intellectual property provisions may be found at <http://energy.gov/gc/standard-intellectual-property-ip-provisions-financial-assistance-awards>.

(b) Questions regarding intellectual property matters should be referred to the DOE Award Administrator identified in Block 12 of the NFAA and the Patent Counsel designated as the service provider for the DOE office that issued the award. The IP Service Providers List is found at <http://energy.gov/gc/downloads/intellectual-property-ip-service-providers-acquisition-and-assistance-transactions>

53. 52.227-1 Authorization and Consent (Dec 2007) with ALT I (Apr 1984):

(a) The Government authorizes and consents to all use and manufacture, in performing this contract or any subcontract at any tier, of any invention described in and covered by a United States patent—

(1) Embodied in the structure or composition of any article the delivery of which is accepted by the Government under this contract; or

(2) Used in machinery, tools, or methods whose use necessarily results from compliance by the Contractor or a subcontractor with (i) specifications or written provisions forming a part of this contract or (ii) specific written instructions given by the Contracting Officer directing the manner of performance, the entire liability to the Government for infringement of a patent of the United States shall be determined solely by the provisions of the indemnity clause, if any, included in this contract or any subcontract hereunder (including any lower-tier subcontract), and the Government assumes liability for all other infringement to the extent of the authorization and consent herein above granted.

(b) The Contractor shall include the substance of this clause, including this paragraph (b), in all subcontracts that are expected to exceed the simplified acquisition threshold. However, omission of this clause from any subcontract, including those at or below the simplified acquisition threshold, does not affect this authorization and consent.

Alternate I (Apr 1984)

(a) The Government authorizes and consents to all use and manufacture of any invention described in and covered by a United States patent in the performance of this contract or any subcontract at any tier.

54. 952.227-11 Patent Rights--Retention by the Contractor (Short Form)
(March 1995):

(a) Definitions.

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at Section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(7) "Agency licensing regulations" and "agency regulations concerning the licensing of Government-owned inventions" mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocation of principal rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) Invention disclosure, election of title, and filing of patent application by Contractor.

(1) The Contractor will disclose each subject invention to the Department of Energy (DOE) within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or

public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the DOE, the Contractor will promptly notify that agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying DOE within 2 years of disclosure to DOE. However, in any case where publication, on sale or public use has initiated the 1-year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by DOE to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure, election, and filing under subparagraphs (c)(1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) Conditions when the Government may obtain title. The Contractor will convey to the Federal agency, upon written request, title to any subject invention

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that DOE may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) Minimum rights to Contractor and protection of the Contractor right to file.

(1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR

Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations concerning the licensing of Government owned inventions, any decision concerning the revocation or modification of the license.

(f) Contractor action to protect the Government's interest.

(1) The Contractor agrees to execute or to have executed and promptly deliver to DOE all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to DOE when requested under paragraph (d) of this clause and to enable the government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify DOE of any decision not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with Government support under (identify the contract) awarded by the United States Department of Energy. The Government has certain rights in the invention."

(g) Subcontracts.

(1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The contractor shall include in all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work the patent rights clause at 952.227-13.

(3) In the case of subcontracts, at any tier, DOE, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) Reporting on utilization of subject inventions. The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received, by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceeding undertaken by that agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), DOE agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) Preference for United States industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by DOE upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) March-in rights. The Contractor agrees that, with respect to any subject invention in which it has acquired title, DOE has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and, if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if DOE determines that

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) Special provisions for contracts with nonprofit organizations. If the Contractor is a nonprofit organization, it agrees that

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions; provided, that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when DOE deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when that Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(l) Communications.

(1) The contractor shall direct any notification, disclosure, or request to DOE provided for in this clause to the DOE patent counsel assisting the DOE contracting activity, with a copy of the communication to the Contracting Officer.

(2) Each exercise of discretion or decision provided for in this clause, except subparagraph (k)(4), is reserved for the DOE Patent Counsel and is not a claim or dispute and is not subject to the Contract Disputes Act of 1978.

(3) Upon request of the DOE Patent Counsel or the contracting officer, the contractor shall provide any or all of the following:

- (i) a copy of the patent application, filing date, serial number and title, patent number, and issue date for any subject invention in any country in which the contractor has applied for a patent;
- (ii) a report, not more often than annually, summarizing all subject inventions which were disclosed to DOE individually during the reporting period specified; or
- (iii) a report, prior to closeout of the contract, listing all subject inventions or stating that there were none.

55. 952.227-13 Patent Rights--Acquisition by the Government (Sept 1997):

(a) Definitions.

"Invention", as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Practical application", as used in this clause, means to manufacture, in the case of a composition or product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or Government regulations, available to the public on reasonable terms.

"Subject invention", as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the course of or under this contract.

"Patent Counsel", as used in this clause, means the Department of Energy Patent Counsel assisting the procuring activity.

"DOE patent waiver regulations", as used in this clause, means the Department of Energy patent waiver regulations at 41 CFR 9-9.109- 6 or successor regulations. See 10 CFR Part 784.

"Agency licensing regulations" and "applicable agency licensing regulations", as used in this clause, mean the Department of Energy patent licensing regulations at 10 CFR Part 781.

(b) Allocations of principal rights.

(1) Assignment to the Government. The Contractor agrees to assign to the Government the entire right, title, and interest throughout the world in and to each subject invention, except to the extent that rights are retained by the Contractor under subparagraph (b)(2) and paragraph (d) of this clause.

(2) Greater rights determinations.

(i) The contractor, or an employee-inventor after consultation with the Contractor, may request greater rights than the nonexclusive license and the foreign patent rights provided in paragraph (d) of this clause on identified inventions in accordance with the DOE patent waiver regulations. A request for a determination of whether the Contractor or the employee-inventor is entitled to acquire such greater rights must be submitted to the Patent Counsel with a copy to the Contracting Officer at the time of the first disclosure of the invention pursuant to subparagraph (e)(2) of this clause, or not later than 8 months thereafter, unless a longer period is authorized in writing by the Contracting Officer for good cause shown in writing by the Contractor. Each determination of greater rights under this contract shall be subject to paragraph (c) of this clause, unless otherwise provided in the greater rights determination, and to the reservations and conditions deemed to be appropriate by the Secretary of Energy or designee.

(ii) Within two (2) months after the filing of a patent application, the Contractor shall provide the filing date, serial number and title, a copy of the patent application (including an English-language version if filed in a language other than English), and, promptly upon issuance of a patent, provide the patent number and issue date for any subject invention in any country for which the Contractor has been granted title or the right to file and prosecute on behalf of the United States by the Department of Energy.

(iii) Not less than thirty (30) days before the expiration of the response period for any action required by the Patent and Trademark Office, notify the Patent Counsel of any decision not to continue prosecution of the application.

(iv) Upon request, the Contractor shall furnish the Government an irrevocable power to inspect and make copies of the patent application file.

(c) Minimum rights acquired by the Government.

(1) With respect to each subject invention to which the Department of Energy grants the Contractor principal or exclusive rights, the Contractor agrees as follows:

(i) The Contractor hereby grants to the Government a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced each subject invention throughout the world by or on behalf of the Government of the United States (including any Government agency).

(ii) The Contractor agrees that with respect to any subject invention in which DOE has granted it title, DOE has the right in accordance with the procedures in the DOE patent waiver regulations (10 CFR Part 784) to require the Contractor, an assignee, or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request, DOE has the right to grant such a license itself if it determines that (A) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use; (B) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees; (C) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or (D) Such action is necessary because the agreement required by paragraph (i) of this clause has neither been obtained nor waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(iii) The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as DOE may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by DOE in connection with any march-in proceedings undertaken by that agency in accordance with subparagraph (c)(1)(ii) of this clause. To the extent data or information supplied under this section is considered by the Contractor, its licensee, or assignee to be privileged and confidential and is so marked, the Department of Energy agrees that, to the extent permitted by law, it will not disclose such information to persons outside the Government.

(iv) The Contractor agrees, when licensing a subject invention, to arrange to avoid royalty charges on acquisitions involving Government funds, including funds derived through a Military Assistance Program of the Government or otherwise derived through the Government, to refund any amounts received as royalty charges on a subject invention in acquisitions for, or on behalf of, the Government, and to provide for such refund in any instrument transferring rights in the invention to any party.

(v) The Contractor agrees to provide for the Government's paid-up license pursuant to subparagraph (c)(1)(i) of this clause in any instrument transferring rights in a subject invention and to provide for the granting of licenses as required by subparagraph (c)(1)(ii) of this clause, and for the reporting of utilization information as required by subparagraph (c)(1)(iii) of this clause, whenever the instrument transfers principal or exclusive rights in a subject invention. (2) Nothing contained in this paragraph (c) shall be deemed to grant to the Government any rights with respect to any invention other than a subject invention.

(d) Minimum rights to the Contractor.

(1) The Contractor is hereby granted a revocable, nonexclusive, royalty-free license in each patent application filed in any country on a subject invention and any resulting patent in which the Government obtains title, unless the Contractor fails to disclose the subject invention within the times specified in subparagraph (e)(2) of this clause. The Contractor's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the Contractor is a part and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of DOE except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by DOE to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions in 37 CFR Part 404 and agency licensing regulations. This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical applications and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of DOE to the extent the Contractor, its licensees, or its domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, DOE will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by DOE for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(4) The Contractor may request the right to acquire patent rights to a subject invention in any foreign country where the Government has elected not to secure such rights, subject to the conditions in subparagraphs (d)(4)(i) through (d)(4)(vii) of this clause. Such request must be made in writing to the Patent Counsel as part of the disclosure required by subparagraph (e)(2) of this clause, with a copy to the DOE Contracting Officer. DOE approval, if given, will be based on a determination that this would best serve the national interest.

(i) The recipient of such rights, when specifically requested by DOE, and three years after issuance of a foreign patent disclosing the subject invention, shall furnish DOE a report stating: (A) The commercial use that is being made, or is intended to be made, of said invention, and (B) The steps taken to bring the invention to the point of practical application or to make the invention available for licensing.

(ii) The Government shall retain at least an irrevocable, nonexclusive, paid-up license to make, use, and sell the invention throughout the world by or on behalf of the Government (including any Government agency) and States and domestic municipal governments, unless the Secretary of Energy or designee determines that it would not be in the public interest to acquire the license for the States and domestic municipal governments.

(iii) If noted elsewhere in this contract as a condition of the grant of an advance waiver of the Government's title to inventions under this contract, or, if no advance waiver was granted but a waiver of the Government's title to an identified invention is granted pursuant to subparagraph (b)(2) of this clause upon a determination by the Secretary of Energy that it is in the Government's best interest, this license shall include the right of

the Government to sublicense foreign governments pursuant to any existing or future treaty or agreement with such foreign governments.

(iv) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right to terminate the foreign patent rights granted in this subparagraph (d)(4) in whole or in part unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee that effective steps necessary to accomplish substantial utilization of the invention have been taken or within a reasonable time will be taken.

(v) Subject to the rights granted in subparagraphs (d)(1), (2), and (3) of this clause, the Secretary of Energy or designee shall have the right, commencing four years after foreign patent rights are accorded under this subparagraph (d)(4), to require the granting of a nonexclusive or partially exclusive license to a responsible applicant or applicants, upon terms reasonable under the circumstances, and in appropriate circumstances to terminate said foreign patent rights in whole or in part, following a hearing upon notice thereof to the public, upon a petition by an interested person justifying such hearing: (A) If the Secretary of Energy or designee determines, upon review of such material as he deems relevant, and after the recipient of such rights or other interested person has had the opportunity to provide such relevant and material information as the Secretary or designee may require, that such foreign patent rights have tended substantially to lessen competition or to result in undue market concentration in any section of the United States in any line of commerce to which the technology relates; or (B) Unless the recipient of such rights demonstrates to the satisfaction of the Secretary of Energy or designee at such hearing that the recipient has taken effective steps, or within a reasonable time thereafter is expected to take such steps, necessary to accomplish substantial utilization of the invention.

(vi) If the contractor is to file a foreign patent application on a subject invention, the Government agrees, upon written request, to use its best efforts to withhold publication of such invention disclosures for such period of time as specified by Patent Counsel, but in no event shall the Government or its employees be liable for any publication thereof.

(vii) Subject to the license specified in subparagraphs (d)(1), (2), and (3) of this clause, the contractor or inventor agrees to convey to the Government, upon request, the entire right, title, and interest in any foreign country in which the contractor or inventor fails to have a patent application filed in a timely manner or decides not to continue prosecution or to pay any maintenance fees covering the invention. To avoid forfeiture of the patent application or patent, the contractor or inventor shall, not less than 60 days before the expiration period for any action required by any patent office, notify the Patent Counsel of such failure or decision, and deliver to the Patent Counsel, the executed instruments necessary for the conveyance specified in this paragraph.

(e) Invention identification, disclosures, and reports.

(1) The Contractor shall establish and maintain active and effective procedures to assure that subject inventions are promptly identified and disclosed to Contractor personnel responsible for patent matters within 6 months of conception and/or first actual reduction to practice, whichever occurs first in the performance of work under this contract. These procedures shall include the maintenance of laboratory notebooks or equivalent records and other records as are reasonably necessary to document the conception and/or the first actual reduction to practice of subject inventions, and records that show that the procedures for identifying and disclosing the inventions are followed. Upon request, the Contractor shall furnish the Contracting Officer a description of such procedures for evaluation and for determination as to their effectiveness.

(2) The Contractor shall disclose each subject invention to the DOE Patent Counsel with a copy to the Contracting Officer within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters or, if earlier, within 6 months after the Contractor becomes aware that a subject invention has been made, but in any event before any on sale, public use, or publication of such invention known to the Contractor. The disclosure to DOE shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding, to the extent known at the time of the disclosure, of the nature, purpose, operation, and physical, chemical, biological, or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale, or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to DOE, the Contractor shall promptly notify Patent Counsel of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor. The report should also include any request for a greater rights determination in accordance with subparagraph (b)(2) of this clause. When an invention is disclosed to DOE under this paragraph, it shall be deemed to have been made in the manner specified in Sections (a)(1) and (a)(2) of 42 U.S.C. 5908, unless the Contractor contends in writing at the time the invention is disclosed that it was not so made.

(3) The Contractor shall furnish the Contracting Officer the following:

(i) Interim reports every 12 months (or such longer period as may be specified by the Contracting Officer) from the date of the contract, listing all subject inventions during that period, and including a statement that all subject inventions have been disclosed (or that there are not such inventions), and that such disclosure has been made in accordance with the procedures required by paragraph (e)(1) of this clause.

(ii) A final report, within 3 months after completion of the contracted work listing all subject inventions or containing a statement that there were no such inventions, and listing all subcontracts at any tier containing a patent rights clause or containing a statement that there were no such subcontracts.

(4) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (e)(2) of this clause.

(5) The Contractor agrees, subject to FAR 27.302(j), that the Government may duplicate and disclose subject invention disclosures and all other reports and papers furnished or required to be furnished pursuant to this clause.

(f) Examination of records relating to inventions.

(1) The Contracting Officer or any authorized representative shall, until 3 years after final payment under this contract, have the right to examine any books (including laboratory notebooks), records, and documents of the Contractor relating to the conception or first actual reduction to practice of inventions in the same field of technology as the work under this contract to determine whether

(i) Any such inventions are subject inventions;

(ii) The Contractor has established and maintains the procedures required by subparagraphs (e)(1) and (4) of this clause;

(iii) The Contractor and its inventors have complied with the procedures.

(2) If the Contracting Officer learns of an unreported Contractor invention which the Contracting Officer believes may be a subject invention, the Contractor may be required to disclose the invention to DOE for a determination of ownership rights.

(3) Any examination of records under this paragraph will be subject to appropriate conditions to protect the confidentiality of the information involved.

(g) Withholding of payment (NOTE: This paragraph does not apply to subcontracts).

(1) Any time before final payment under this contract, the Contracting Officer may, in the Government's interest, withhold payment until a reserve not exceeding \$50,000 or 5 percent of the amount of this contract, whichever is less, shall have been set aside if, in the Contracting Officer's opinion, the Contractor fails to

(i) Convey to the Government, using a DOE-approved form, the title and/or rights of the Government in each subject invention as required by this clause.

(ii) Establish, maintain, and follow effective procedures for identifying and disclosing subject inventions pursuant to subparagraph (e)(1) of this clause;

(iii) Disclose any subject invention pursuant to subparagraph (e)(2) of this clause;

(iv) Deliver acceptable interim reports pursuant to subparagraph (e)(3)(i) of this clause;
or

(v) Provide the information regarding subcontracts pursuant to subparagraph (h)(4) of this clause.

(2) Such reserve or balance shall be withheld until the Contracting Officer has determined that the Contractor has rectified whatever deficiencies exist and has delivered all reports, disclosures, and other information required by this clause.

(3) Final payment under this contract shall not be made before the Contractor delivers to the Contracting Officer all disclosures of subject inventions required by subparagraph (e)(2) of this clause, and acceptable final report pursuant to subparagraph (e)(3)(ii) of this clause, and the Patent Counsel has issued a patent clearance certification to the Contracting Officer.

(4) The Contracting Officer may decrease or increase the sums withheld up to the maximum authorized above. No amount shall be withheld under this paragraph while the amount specified by this paragraph is being withheld under other provisions of the contract. The withholding of any amount or the subsequent payment thereof shall not be construed as a waiver of any Government rights.

(h) Subcontracts.

(1) The contractor shall include the clause at 48 CFR 952.227-11 (suitably modified to identify the parties) in all subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work to be performed by a small business firm or domestic nonprofit organization, except where the work of the subcontract is subject to an Exceptional Circumstances

Determination by DOE. In all other subcontracts, regardless of tier, for experimental, developmental, demonstration, or research work, the contractor shall include this clause (suitably modified to identify the parties). The contractor shall not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) In the event of a refusal by a prospective subcontractor to accept such a clause the Contractor

(i) Shall promptly submit a written notice to the Contracting Officer setting forth the subcontractor's reasons for such refusal and other pertinent information that may expedite disposition of the matter; and

(ii) Shall not proceed with such subcontract without the written authorization of the Contracting Officer.

(3) In the case of subcontracts at any tier, DOE, the subcontractor, and Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and DOE with respect to those matters covered by this clause.

(4) The Contractor shall promptly notify the Contracting Officer in writing upon the award of any subcontract at any tier containing a patent rights clause by identifying the subcontractor, the applicable patent rights clause, the work to be performed under the subcontract, and the dates of award and estimated completion. Upon request of the Contracting Officer, the Contractor shall furnish a copy of such subcontract, and, no more frequently than annually, a listing of the subcontracts that have been awarded.

(5) The contractor shall identify all subject inventions of the subcontractor of which it acquires knowledge in the performance of this contract and shall notify the Patent Counsel, with a copy to the contracting officer, promptly upon identification of the inventions.

(i) Preference United States industry. Unless provided otherwise, no Contractor that receives title to any subject invention and no assignee of any such Contractor shall grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any products embodying the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement may be waived by the Government upon a showing by the Contractor or assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) Atomic energy.

(1) No claim for pecuniary award of compensation under the provisions of the Atomic Energy Act of 1954, as amended, shall be asserted with respect to any invention or discovery made or conceived in the course of or under this contract.

(2) Except as otherwise authorized in writing by the Contracting Officer, the Contractor will obtain patent agreements to effectuate the provisions of subparagraph (e)(1) of this clause from all persons who perform any part of the work under this contract, except nontechnical personnel, such as clerical employees and manual laborers.

(k) Background Patents.

(1) Background Patent means a domestic patent covering an invention or discovery which is not a

subject invention and which is owned or controlled by the Contractor at any time through the completion of this contract:

- (i) Which the contractor, but not the Government, has the right to license to others without obligation to pay royalties thereon, and

- (ii) Infringement of which cannot reasonably be avoided upon the practice of any specific process, method, machine, manufacture, or composition of matter (including relatively minor modifications thereof) which is a subject of the research, development, or demonstration work performed under this contract.

(2) The Contractor agrees to and does hereby grant to the Government a royalty-free, nonexclusive license under any background patent for purposes of practicing a subject of this contract by or for the Government in research, development, and demonstration work only.

(3) The Contractor also agrees that upon written application by DOE, it will grant to responsible parties, for purposes of practicing a subject of this contract, nonexclusive licenses under any background patent on terms that are reasonable under the circumstances. If, however, the Contractor believes that exclusive rights are necessary to achieve expeditious commercial development or utilization, then a request may be made to DOE for DOE approval of such licensing by the Contractor.

(4) Notwithstanding subparagraph (k)(3) of this clause, the contractor shall not be obligated to license any background patent if the Contractor demonstrates to the satisfaction of the Secretary of Energy or designee that:

- (i) a competitive alternative to the subject matter covered by said background patent is commercially available or readily introducible from one or more other sources; or

- (ii) the Contractor or its licensees are supplying the subject matter covered by said background patent in sufficient quantity and at reasonable prices to satisfy market needs, or have taken effective steps or within a reasonable time are expected to take effective steps to so supply the subject matter.

(l) Publication.

It is recognized that during the course of the work under this contract, the Contractor or its employees may from time to time desire to release or publish information regarding scientific or technical developments conceived or first actually reduced to practice in the course of or under this contract. In order that public disclosure of such information will not adversely affect the patent interests of DOE or the Contractor, patent approval for release of publication shall be secured from Patent Counsel prior to any such release or publication.

(m) Forfeiture of rights in unreported subject inventions.

(1) The Contractor shall forfeit and assign to the Government, at the request of the Secretary of Energy or designee, all rights in any subject invention which the Contractor fails to report to Patent Counsel within six months after the time the Contractor:

- (i) Files or causes to be filed a United States or foreign patent application thereon; or

- (ii) Submits the final report required by subparagraph (e)(2)(ii) of this clause, whichever is later.

(2) However, the Contractor shall not forfeit rights in a subject invention if, within the time specified in subparagraph (m)(1) of this clause, the Contractor:

(i) Prepares a written decision based upon a review of the record that the invention was neither conceived nor first actually reduced to practice in the course of or under the contract and delivers the decision to Patent Counsel, with a copy to the Contracting Officer; or

(ii) Contending that the invention is not a subject invention, the Contractor nevertheless discloses the invention and all facts pertinent to this contention to the Patent Counsel, with a copy to the Contracting Officer; or

(iii) Establishes that the failure to disclose did not result from the Contractor's fault or negligence.

(3) Pending written assignment of the patent application and patents on a subject invention determined by the Secretary of Energy or designee to be forfeited (such determination to be a final decision under the Disputes clause of this contract), the Contractor shall be deemed to hold the invention and the patent applications and patents pertaining thereto in trust for the Government. The forfeiture provision of this paragraph (m) shall be in addition to and shall not supersede other rights and remedies which the Government may have with respect to subject inventions.

56. 52.227-14 Rights in Data—General (Dec 2007) with ALT I and ALT V (Dec 2007) as amended by DEAR 927.409 (Jan 1999):

(a) Definitions. As used in this clause—

“Computer database” or “database means” a collection of recorded information in a form capable of, and for the purpose of, being stored in, processed, and operated on by a computer. The term does not include computer software.

“Computer software”—

(1) Means

(i) Computer programs that comprise a series of instructions, rules, routines, or statements, regardless of the media in which recorded, that allow or cause a computer to perform a specific operation or series of operations; and

(ii) Recorded information comprising source code listings, design details, algorithms, processes, flow charts, formulas, and related material that would enable the computer program to be produced, created, or compiled.

(2) Does not include computer databases or computer software documentation.

“Computer software documentation” means owner’s manuals, user’s manuals, installation instructions, operating instructions, and other similar items, regardless of storage medium, that explain the capabilities of the computer software or provide instructions for using the software.

“Data” means recorded information, regardless of form or the media on which it may be recorded. The term includes technical data and computer software. The term does not include information incidental to contract administration, such as financial, administrative, cost or pricing, or management information.

“Form, fit, and function data” means data relating to items, components, or processes that are sufficient to enable physical and functional interchangeability, and data identifying source, size, configuration, mating and attachment characteristics, functional characteristics, and performance requirements. For computer software it means data identifying source, functional characteristics, and performance requirements but specifically excludes the source code, algorithms, processes, formulas, and flow charts of the software.

“Limited rights” means the rights of the Government in limited rights data as set forth in the Limited Rights Notice of paragraph (g)(3) if included in this clause.

“Limited rights data” means data, other than computer software, that embody trade secrets or are commercial or financial and confidential or privileged, to the extent that such data pertain to items, components, or processes developed at private expense, including minor modifications.

“Restricted computer software” means computer software developed at private expense and that is a trade secret, is commercial or financial and confidential or privileged, or is copyrighted computer software, including minor modifications of the computer software.

“Restricted rights,” as used in this clause, means the rights of the Government in restricted computer software, as set forth in a Restricted Rights Notice of paragraph (g) if included in this clause, or as otherwise may be provided in a collateral agreement incorporated in and made part of this contract, including minor modifications of such computer software.

“Technical data” means recorded information (regardless of the form or method of the recording) of a scientific or technical nature (including computer databases and computer software documentation). This term does not include computer software or financial, administrative, cost or pricing, or management data or other information incidental to contract administration. The term includes recorded information of a scientific or technical nature that is included in computer databases (See 41 U.S.C. 403(8)).

“Unlimited rights” means the rights of the Government to use, disclose, reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly, in any manner and for any purpose, and to have or permit others to do so.

(b) Allocation of rights.

(1) Except as provided in paragraph (c) of this clause, the Government shall have unlimited rights in—

(i) Data first produced in the performance of this contract;

(ii) Form, fit, and function data delivered under this contract;

(iii) Data delivered under this contract (except for restricted computer software) that constitute manuals or instructional and training material for installation, operation, or routine maintenance and repair of items, components, or processes delivered or furnished for use under this contract; and

(iv) All other data delivered under this contract unless provided otherwise for limited rights data or restricted computer software in accordance with paragraph (g) of this clause.

(2) The Contractor shall have the right to—

(i) Assert copyright in data first produced in the performance of this contract to the extent provided in paragraph (c)(1) of this clause;

(ii) Use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, unless provided otherwise in paragraph (d) of this clause;

(iii) Substantiate the use of, add, or correct limited rights, restricted rights, or copyright notices and to take other appropriate action, in accordance with paragraphs (e) and (f) of this clause; and

(iv) Protect from unauthorized disclosure and use those data that are limited rights data or restricted computer software to the extent provided in paragraph (g) of this clause.

(c) Copyright—

(1) Data first produced in the performance of this contract.

(i) Unless provided otherwise in paragraph (d) of this clause, the Contractor may, without prior approval of the Contracting Officer, assert copyright in scientific and technical articles based on or containing data first produced in the performance of this contract and published in academic, technical or professional journals, symposia proceedings, or similar works. The prior, express written permission of the Contracting Officer is required to assert copyright in all other data first produced in the performance of this contract.

(ii) When authorized to assert copyright to the data, the Contractor shall affix the applicable copyright notices of 17 U.S.C. 401 or 402, and an acknowledgment of Government sponsorship (including contract number).

(iii) For data other than computer software, the Contractor grants to the Government and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted data to reproduce, prepare derivative works, distribute copies to the public, and perform publicly and display publicly by or on behalf of the Government. For computer software, the Contractor grants to the Government, and others acting on its behalf, a paid-up, nonexclusive, irrevocable, worldwide license in such copyrighted computer software to reproduce, prepare derivative works, and perform publicly and display publicly (but not to distribute copies to the public) by or on behalf of the Government.

(2) Data not first produced in the performance of this contract. The Contractor shall not, without the prior written permission of the Contracting Officer, incorporate in data delivered under this contract any data not first produced in the performance of this contract unless the Contractor—

(i) Identifies the data; and

(ii) Grants to the Government, or acquires on its behalf, a license of the same scope as set forth in paragraph (c)(1) of this clause or, if such data are restricted computer software, the Government shall acquire a copyright license as set forth in paragraph (g)(4) of this clause (if included in this contract) or as otherwise provided in a collateral agreement incorporated in or made part of this contract.

(3) Removal of copyright notices. The Government will not remove any authorized copyright notices placed on data pursuant to this paragraph (c), and will include such notices on all reproductions of the data.

(d) Release, publication, and use of data. The Contractor shall have the right to use, release to others, reproduce, distribute, or publish any data first produced or specifically used by the Contractor in the performance of this contract, except—

(1) As prohibited by Federal law or regulation (e.g., export control or national security laws or regulations);

(2) As expressly set forth in this contract; or

(3) If the Contractor receives or is given access to data necessary for the performance of this contract that contain restrictive markings, the Contractor shall treat the data in accordance with such markings unless specifically authorized otherwise in writing by the Contracting Officer.

(e) Unauthorized marking of data.

(1) Notwithstanding any other provisions of this contract concerning inspection or acceptance, if any data delivered under this contract are marked with the notices specified in paragraph (g)(3) or (g)(4) if included in this clause, and use of the notices is not authorized by this clause, or if the data bears any other restrictive or limiting markings not authorized by this contract, the Contracting Officer may at any time either return the data to the Contractor, or cancel or ignore the markings. However, pursuant to 41 U.S.C. 253d, the following procedures shall apply prior to canceling or ignoring the markings.

(i) The Contracting Officer will make written inquiry to the Contractor affording the Contractor 60 days from receipt of the inquiry to provide written justification to substantiate the propriety of the markings;

(ii) If the Contractor fails to respond or fails to provide written justification to substantiate the propriety of the markings within the 60-day period (or a longer time approved in writing by the Contracting Officer for good cause shown), the Government shall have the right to cancel or ignore the markings at any time after said period and the data will no longer be made subject to any disclosure prohibitions.

(iii) If the Contractor provides written justification to substantiate the propriety of the markings within the period set in paragraph (e)(1)(i) of this clause, the Contracting Officer will consider such written justification and determine whether or not the markings are to be cancelled or ignored. If the Contracting Officer determines that the markings

are authorized, the Contractor will be so notified in writing. If the Contracting Officer determines, with concurrence of the head of the contracting activity, that the markings are not authorized, the Contracting Officer will furnish the Contractor a written determination, which determination will become the final agency decision regarding the appropriateness of the markings unless the Contractor files suit in a court of competent jurisdiction within 90 days of receipt of the Contracting Officer's decision. The Government will continue to abide by the markings under this paragraph (e)(1)(iii) until final resolution of the matter either by the Contracting Officer's determination becoming final (in which instance the Government will thereafter have the right to cancel or ignore the markings at any time and the data will no longer be made subject to any disclosure prohibitions), or by final disposition of the matter by court decision if suit is filed.

(2) The time limits in the procedures set forth in paragraph (e)(1) of this clause may be modified in accordance with agency regulations implementing the Freedom of Information Act (5 U.S.C. 552) if necessary to respond to a request thereunder.

(3) Except to the extent the Government's action occurs as the result of final disposition of the matter by a court of competent jurisdiction, the Contractor is not precluded by paragraph (e) of the clause from bringing a claim, in accordance with the Disputes clause of this contract, that may arise as the result of the Government removing or ignoring authorized markings on data delivered under this contract.

(f) Omitted or incorrect markings.

(1) Data delivered to the Government without any restrictive markings shall be deemed to have been furnished with unlimited rights. The Government is not liable for the disclosure, use, or reproduction of such data.

(2) If the unmarked data has not been disclosed without restriction outside the Government, the Contractor may request, within 6 months (or a longer time approved by the Contracting Officer in writing for good cause shown) after delivery of the data, permission to have authorized notices placed on the data at the Contractor's expense. The Contracting Officer may agree to do so if the Contractor—

(i) Identifies the data to which the omitted notice is to be applied;

(ii) Demonstrates that the omission of the notice was inadvertent;

(iii) Establishes that the proposed notice is authorized; and

(iv) Acknowledges that the Government has no liability for the disclosure, use, or reproduction of any data made prior to the addition of the notice or resulting from the omission of the notice.

(3) If data has been marked with an incorrect notice, the Contracting Officer may—

(i) Permit correction of the notice at the Contractor's expense if the Contractor identifies the data and demonstrates that the correct notice is authorized; or

(ii) Correct any incorrect notices.

(g) Protection of limited rights data and restricted computer software.

(1) The Contractor may withhold from delivery qualifying limited rights data or restricted computer software that are not data identified in paragraphs (b)(1)(i), (ii), and (iii) of this clause. As a condition to this withholding, the Contractor shall—

(i) Identify the data being withheld; and

(ii) Furnish form, fit, and function data instead.

(2) Limited rights data that are formatted as a computer database for delivery to the Government shall be treated as limited rights data and not restricted computer software.

(3) [Reserved]

(h) Subcontracting.

The Contractor shall obtain from its subcontractors all data and rights therein necessary to fulfill the Contractor's obligations to the Government under this contract. If a subcontractor refuses to accept terms affording the Government those rights, the Contractor shall promptly notify the Contracting Officer of the refusal and shall not proceed with the subcontract award without authorization in writing from the Contracting Officer.

(i) Relationship to patents or other rights.

Nothing contained in this clause shall imply a license to the Government under any patent or be construed as affecting the scope of any license or other right otherwise granted to the Government.

Alternate I (Dec 2007)

"Limited rights data" means data, other than computer software, developed at private expense that embody trade secrets or are commercial or financial and confidential or privileged.

Alternate V (Dec 2007)

(j) The Contractor agrees, except as may be otherwise specified in this contract for specific data deliverables listed as not subject to this paragraph, that the Contracting Officer may, up to three years after acceptance of all deliverables under this contract, inspect at the Contractor's facility any data withheld pursuant to paragraph (g)(1) of this clause, for purposes of verifying the Contractor's assertion of limited rights or restricted rights status of the data or for evaluating work performance. When the Contractor whose data are to be inspected demonstrates to the Contracting Officer that

there would be a possible conflict of interest if a particular representative made the inspection, the Contracting Officer shall designate an alternate inspector.

(k) Copyright. (1) Data first produced in the performance of the award. Except as otherwise specifically provided in this award, the Recipient may establish claim to copyright subsisting in any first produced in the performance of this award. When claim to copyright is made, the Recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship (including award number) to the data when such data are delivered to the Government, as well as when the data are published or deposited for registration as a published work in the U.S. Copyright Office. The Recipient grants to the Government a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so. The right to publish includes the right to distribute publicly. The right to use the work for Federal purposes includes the right to prepare derivative works.

(d)(3) The Recipient agrees not to establish claim to copyright in computer software first produced in the performance of this award without prior written permission of the Contracting Officer. When such permission is granted, the Contracting Officer shall specify appropriate terms to assure dissemination of the software. The Recipient shall promptly deliver to the Contracting Officer or to the DOE Patent Counsel designated by the Contracting Officer a duly executed and approved instrument fully confirmatory of all rights to which the Government is entitled, and other terms pertaining to the computer software to which claim to copyright is made.

57. 52.227-16 Additional Data Requirements (June 1987):

(a) In addition to the data (as defined in the clause at 52.227-14, Rights in Data—General clause or other equivalent included in this contract) specified elsewhere in this contract to be delivered, the Contracting Officer may, at any time during contract performance or within a period of 3 years after acceptance of all items to be delivered under this contract, order any data first produced or specifically used in the performance of this contract.

(b) The Rights in Data—General clause or other equivalent included in this contract is applicable to all data ordered under this Additional Data Requirements clause. Nothing contained in this clause shall require the Contractor to deliver any data the withholding of which is authorized by the Rights in Data—General or other equivalent clause of this contract, or data which are specifically identified in this contract as not subject to this clause.

(c) When data are to be delivered under this clause, the Contractor will be compensated for converting the data into the prescribed form, for reproduction, and for delivery.

(d) The Contracting Officer may release the Contractor from the requirements of this clause for specifically identified data items at any time during the 3-year period set forth in paragraph (a) of this clause.

58. 952.227-84 Right to Request Patent Waiver (Feb 1998):

Offerors have the right to request a waiver of all or any part of the rights of the United States in inventions conceived or first actually reduced to practice in performance of the contract that may be awarded as a result of this solicitation, in advance of or within 30 days after the effective date of contracting. Even where such advance waiver is not requested or the request is denied, the contractor will have a continuing right under the contract to request a waiver of the rights of the United States in identified inventions, i.e., individual inventions conceived or first actually reduced to practice in performance of the contract. Domestic small businesses and domestic nonprofit organizations normally will receive the patent rights clause at DEAR 952.227-1.1 which permits the contractor to retain title to such inventions, except under contracts for management or operation of a Government-owned research and development facility or under contracts involving exceptional circumstances or intelligence activities. Therefore, small businesses and nonprofit organizations normally need not request a waiver. See the patent rights clause in the draft contract in this solicitation. See DOE's patent waiver regulations at 10 CFR Part 784.

59. Stevens Amendment – Disclosure of Federal Participation:

Projects or programs funded in whole or in part with Federal grant money must credit the Federal government for the Federal government's portion of the financial support.

When issuing statements, press releases, requests, requests for proposal, bid solicitations, and other documents describing projects or programs funded in whole or in part with Federal money, all grantees receiving Federal funds, including but not limited to state and local governments, shall clearly state (1) the percentage of the total cost of the program or project which will be financed with Federal money, and (2) the dollar amount of Federal funds for the project or program.

60. Compliance with the Buy American Act:

In accepting this award, the Recipient agrees to comply with sections 2 through 4 of the Act of March 3, 1933 (41 U.S.C. 10a-10c, popularly known as the "Buy American Act"). The Recipient should review the provisions of the Act to ensure that expenditures made under this award are in accordance with it.

61. Paperwork Reduction:

The award is subject to the requirements of the Paperwork Reduction Act of 1980 as implemented by the Office of Management and Budget rules, "Controlling Paperwork Burdens on the Public" published as 5 CFR 1320. These requirements apply if the grantee will collect information from ten or more respondents at the specific request of DOE, or if the award requires specific DOE approval of the information collection or the collection procedures.

The grantee shall submit any proposed sponsored information collection to the Contracting Officer. The proposal shall be submitted at least 120 days prior to the intended date of information collection. DOE will seek the requisite approval from the Office of Management and Budget and will promptly notify the grantee of the disposition of the request.

62. Environmental, Safety and Health (ES&H) Performance of Work at DOE Facilities:

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

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

The recipient shall apply this provision to its sub-recipients and contractors.

63. Environmental Standards:

By accepting funds under this Grant, the Ohio State Environmental Protection Agency assures that it will comply with applicable Federal, State, and local environmental, safety, and health laws and regulations for work performed under this award:

(a) Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, et seq.) and Clean Water Act (33 U.S.C. 1251, et seq.), as implemented by Executive Order 11738 [3 CFR, 1971-1975 comp., p. 799] and Environmental Protection Agency (EPA) rules at 40 CFR Part 15. In accordance with the EPA rules, the recipient further agrees that it will:

(1) Not use any facility on the EPA's List of Violating Facilities in performing any award that is nonexempt under 40 CFR 15.5 (awards of less than \$100,000, and certain other awards, exempt from the EPA regulations), as long as the facility remains on the list.

(2) Notify the DOE if it intends to use a facility in performing this award that is on the List of Violating Facilities or that the recipient knows has been recommended to be placed on the List of Violating Facilities.

(b) Identify to the DOE 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 Environmental 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) 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.

(3) 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.).

64. National Environmental Policy Act (NEPA) Requirements (July 2008):

The recipient is restricted from taking any action using Federal funds, which would have an adverse affect on the environment or limit the choice of reasonable alternatives prior to DOE providing either a NEPA clearance or a final NEPA decision regarding this project. Prohibited actions include, but are not limited to, demolition of existing buildings, site clearing, ground breaking, construction, and/or detailed design.

If you move forward with activities that are not authorized for federal funding by the DOE Contracting Officer in advance of the final NEPA decision, you are doing so at risk of not receiving federal funding and such costs may not be recognized as allowable cost share.

If this award includes construction activities, you must submit an environmental evaluation report/evaluation notification form addressing NEPA issues prior to DOE initiating the NEPA process.

65. Resource Conversation and Recovery Act:

Under the Act (Pub. L. 94-580 codified at 42 U.S.C. 6962), any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247-254). Accordingly, state and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

66. Disputes and Appeals:

(a) Informal dispute resolution. Whenever practicable, DOE shall attempt to resolve informally any dispute over the award or administration of financial assistance. Informal resolution, including resolution through an alternative dispute resolution mechanism, shall be preferred over formal procedures available in 10 CFR Part 1024, to the extent practicable.

(b) Alternative dispute resolution (ADR). Before issuing a final determination in any dispute in which informal resolution has not been achieved, the Contracting Officer shall suggest that the other party consider the use of voluntary consensual methods of dispute resolution, such as mediation. The DOE dispute resolution specialist is available to provide assistance for such disputes, as are trained mediators of other federal agencies. ADR may be used at any stage of a dispute.

(c) Final determination. Whenever a dispute is not resolved informally or through an alternative dispute resolution process, DOE shall mail (by certified mail) a brief written determination signed by a Contracting Officer, setting forth DOE's final disposition of such dispute. Such determination shall contain the following information:

(1) A summary of the dispute, including a statement of the issues and of the positions taken by the Department and the party or parties to the dispute; and

(2) The factual, legal and, if appropriate, policy reasons for DOE's disposition of the dispute.

(d) Right of appeal.

(1) Except as provided in paragraph (f)(1) of this section, the final determination under paragraph (c) of this section may be appealed to the Financial Assistance Appeals Board (the Board) in accordance with the procedures set forth in 10 CFR part 1024.

(2) If the final determination under paragraph (c) of this section involves a dispute over which the Board has jurisdiction as provided in paragraph (f)(2) of this section, the Contracting Officer's determination shall state that, with respect to such dispute, the determination shall be the final decision of the Department unless, within 60 days, a written notice of appeal is filed.

(3) If the final determination under paragraph (c) of this section involves a dispute over which the Board has no jurisdiction as provided in paragraph (f)(1) of this section, the Contracting Officer's determination shall state that, effective immediately or on a later date specified therein, the determination shall, with respect to such dispute, be the final decision of the Department.

(e) Effect of appeal. The filing of an appeal with the Board shall not stay any determination or action taken by DOE which is the subject of the appeal. Consistent with its obligation to protect the interests of the Federal Government, DOE may take such authorized actions as may be necessary to preserve the status quo pending decision by the Board, or to preserve its ability to provide relief in the event the Board decides in favor of the appellant.

(f) Review on appeal.

(1) The Board shall have no jurisdiction to review:

(i) Any preaward dispute (except as provided in paragraph (f)(2)(ii) of this section), including use of any special restrictive condition pursuant to 600.114 or 600.212;

(ii) DOE denial of a request for a deviation under 600.4, 600.103, or 600.205 of this part;

(iii) DOE denial of a request for a budget revision or other change in the approved project under 600.125, 600.127, 600.222, or 600.230 of this part or under another term or condition of the award;

(iv) Any DOE action authorized under 600.162(a) (1), (2), (3) or (5); or 600.243 (a)(1), (a)(3) for suspensions only; or 600.162(a)(4) or 600.243(a)(4) for actions disapproving renewal applications or other requests for extension of time or additional funding for the same project when related to recipient noncompliance, or such actions authorized by program rule;

(v) Any DOE decision about an action requiring prior DOE approval under 600.144, or 600.236 of this part or under another term or condition of the award;

(vi) A DOE decision not to make a continuation award, which decision is based on the insufficiency of available appropriations;

(vii) Any matter which is under the jurisdiction of the Patent Compensation Board (10 CFR 780.3);

(viii) Any matter which may be heard by the Invention Licensing Appeals Board (10 CFR 781.65 and 781.66); and

(ix) Any other dispute not described in paragraph (f)(2) of this section.

(2) In addition to any right of appeal established by program rule, or by the terms and conditions (not inconsistent with paragraph (f)(1) of this section) of an award, the Board shall have jurisdiction to review:

(i) A DOE determination that the recipient has failed to comply with the applicable requirements of this part, the program statute or rules, or other terms and conditions of the award;

(ii) A DOE decision not to make a continuation award based on any of the determinations described in paragraph (f)(2)(i) of this section;

(iii) Termination of an award for cause, in whole or in part, by DOE;

(iv) A DOE determination that an award is void or invalid;

(v) The application by DOE of an indirect cost rate; and (vi) DOE disallowance of costs.

(3) In reviewing disputes authorized under paragraph (f)(2) of this section, the Board shall be bound by the applicable law, statutes, and rules, including the requirements of this part, and by the terms and conditions of the award.

(4) The decision of the Board shall be the final decision of the Department. (10 CFR 1024)

67. National Security: Classifiable Results Originating Under an Award **(December 2014):**

(a) This award is intended for unclassified, publicly releasable research. You will not be granted access to classified information. DOE/NNSA does not expect that the results of the research project will involve classified information. Under certain circumstances, however, a classification review of information originated under the award may be required. The Department may review research work generated under this award at any time to determine if it requires classification.

(b) Executive Order 12958 (60 Fed. Reg. 19,825 (1995)) states that basic scientific research information not clearly related to the national security shall not be classified. Nevertheless, some information concerning (among other things) scientific, technological, or economic matters relating to national security or cryptology may require classification. If you originate information during the course of this award that you believe requires classification, you must promptly:

(1) Notify the DOE Project Officer identified in Block 11 and the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award;

(2) Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P.O. Box A; Germantown, MD 20875-0963, for classification review.

(3) Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 30 days after receipt by the Director, Office of Classification and Information Control

(c) If you originate information concerning the production or utilization of special nuclear material (i.e., plutonium, uranium enriched in the isotope 233 or 235, and any other material so determined under section 51 of the Atomic Energy Act) or nuclear energy, you must:

(1) Notify the DOE Project Officer identified in Block 11 and the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award.

(2) Submit the information by registered mail directly to the Director, Office of Classification and Information Control, SO-10.2; U.S. Department of Energy; P. O. Box A; Germantown, MD 20875-0963 for classification review within 180 days of the date the recipient first discovers or first has reason to believe that the information is useful in such production or utilization.

(3) Restrict access to the information to the maximum extent possible until you are informed that the information is not classified, but no longer than 90 days after receipt by the Director, Office of Classification and Information Control.

(d) If DOE determines any of the information requires classification, you agree that the Government may terminate the award with consent of the recipient in accordance with 2 CFR part 200.339(a)(3). All material deemed to be classified must be forwarded to the DOE, in a manner specified by DOE.

(e) If DOE does not respond within the specified time periods, you are under no further obligation to restrict access to the information.

68. Controlled Unclassified Information:

The parties understand that information and materials provided pursuant to or resulting from this Grant may be export controlled, sensitive, for official use only, or otherwise protected by law, executive order or regulation. The Grantee is responsible for compliance with all applicable laws and regulations. Nothing in this Grant shall be construed to permit any disclosure in violation of those restrictions.

69. Reporting Requirements:

(a) Requirements. The reporting requirements for this award are identified on the Federal Assistance Reporting Checklist, DOE F 4600.2, attached to this award. Failure to comply with these reporting requirements is considered a material noncompliance with the terms of the award. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards by Federal agencies.

(b) Dissemination of scientific/technical reports. Scientific/technical reports submitted under this award will be disseminated on the Internet via the DOE Information Bridge (www.osti.gov/bridge), unless the report contains patentable material, protected data or SBIR/STTR data. Citations for journal articles produced under the award will appear on the DOE Energy Citations Database (www.osti.gov/energycitations).

(c) Restrictions. Reports submitted to the DOE Information Bridge must not contain any Protected Personal Identifiable Information (PII), limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release.

70. Monitoring and Reporting Program Performance:

- a) (a) Monitoring by the non-Federal entity. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. See also §200.331 Requirements for pass-through entities.
- b) Non-construction performance reports. The Federal awarding agency must use standard, OMB-approved data elements for collection of performance information (including performance progress reports, Research Performance Progress Report, or such future collections as may be approved by OMB and listed on the OMB Web site).
 - 1) The non-Federal entity must submit performance reports at the interval required by the Federal awarding agency or pass-through entity to best inform improvements in program outcomes and productivity. Intervals must be no less frequent than annually nor more frequent than quarterly except in unusual circumstances, for example where more frequent reporting is necessary for the effective monitoring of the Federal award or could significantly affect program outcomes. Annual reports must be due 90 calendar days after the reporting period; quarterly or semiannual reports must be due 30 calendar days after the reporting period. Alternatively, the Federal awarding agency or pass-through entity may require annual reports before the anniversary dates of multiple

year Federal awards. The final performance report will be due 90 calendar days after the period of performance end date. If a justified request is submitted by a non-Federal entity, the Federal agency may extend the due date for any performance report.

- 2) The non-Federal entity must submit performance reports using OMB-approved government-wide standard information collections when providing performance information. As appropriate in accordance with above mentioned information collections, these reports will contain, for each Federal award, brief information on the following unless other collections are approved by OMB:
 - i. A comparison of actual accomplishments to the objectives of the Federal award established for the period. Where the accomplishments of the Federal award can be quantified, a computation of the cost (for example, related to units of accomplishment) may be required if that information will be useful. Where performance trend data and analysis would be informative to the Federal awarding agency program, the Federal awarding agency should include this as a performance reporting requirement.
 - ii. The reasons why established goals were not met, if appropriate.
 - iii. Additional pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.
- c) Construction performance reports. For the most part, onsite technical inspections and certified percentage of completion data are relied on heavily by Federal awarding agencies and pass-through entities to monitor progress under Federal awards and subawards for construction. The Federal awarding agency may require additional performance reports only when considered necessary.
- d) Significant developments. Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the non-Federal entity must inform the Federal awarding agency or pass-through entity as soon as the following types of conditions become known:
 - 1) Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
 - 2) Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- e) The Federal awarding agency may make site visits as warranted by program needs.
- f) The Federal awarding agency may waive any performance report required by this part if not needed.

71. Progress Reports:

The Progress Report must provide a concise narrative assessment of the status of work and include the following information and any other information identified under Special Instructions on the Federal Assistance Reporting Checklist:

- (a) The DOE award number and name of the recipient
- (b) The project title and name of the project director/principal investigator
- (c) Date of report and period covered by the report

- (d) A comparison of the actual accomplishments with the goals and objectives established for the period and reasons why the established goals were not met.
- (e) A discussion of what was accomplished under these goals during this reporting period, including major activities, significant results, major findings or conclusions, key outcomes or other achievements. This section should not contain any proprietary data or other information not subject to public release. If such information is important to reporting progress, do not include the information, but include a note in the report advising the reader to contact the Principal Investigator or the Project Director for further information.
- (f) Cost Status. Show approved budget by budget period and actual costs incurred. If cost sharing is required break out by DOE share: recipient share, and total costs.
- (g) Schedule Status. List milestones, anticipated completion dates and actual completion dates. If you submitted a project management plan with your application, you must use this plan to report schedule and budget variance. You may use your own project management system to provide this information.
- (h) Any changes in approach or aims and reasons for change. Remember significant changes to the objectives and scope require prior approval by the contracting officer.
- (i) Actual or anticipated problems or delays and actions taken or planned to resolve them.
- (j) Any absence or changes of key personnel or changes in consortium/teaming arrangement.
- (k) A description of any product produced or technology transfer activities accomplished during this reporting period, such as:
- (1) Publications (list journal name, volume, issue); conference papers; or other public releases of results.
 - (2) Web site or other Internet sites that reflect the results of this project.
 - (3) Networks or collaborations fostered.
 - (4) Inventions/Patent Applications
 - (5) Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.

72. Scientific/Technical Reports:

- (a) Content. The final scientific/technical report must include the following information and any other information identified under Special Instructions on the Federal Assistance Reporting Checklist:
- (1) Identify the DOE award number; name of recipient; project title; name of project Director/ principal investigator; and consortium/teaming members.
 - (2) Display prominently on the cover of the report any authorized distribution limitation notices, such as patentable material or protected data. Reports delivered without such notices may be deemed to have been furnished with unlimited rights, and the Government assumes no liability for the disclosure, use or reproduction of such reports.

- (3.) Provide an executive summary, which includes a discussion of
- (i) how the research adds to the understanding of the area investigated;
 - (ii) the technical effectiveness and economic feasibility of the methods or techniques investigated or demonstrated; or
 - (iii) how the project is otherwise of benefit to the public. The discussion should be a minimum of one paragraph and written in terms understandable by an educated layman.
- (4) Provide a comparison of the actual accomplishments with the goals and objectives of the project.
- (5) Summarize project activities for the entire period of funding, including original hypotheses, approaches used, problems encountered and departure from planned methodology, and an assessment of their impact on the project results. Include, if applicable, facts, figures, analyses, and assumptions used during the life of the project to support the conclusions.
- (6). Identify products developed under the award and technology transfer activities, such as:
- (i) Publications (list journal name, volume, issue), conference papers, or other public releases of results.
 - (ii) Web site or other Internet sites that reflect the results of this project;
 - (iii) Networks or collaborations fostered;
 - (iv) Inventions/Patent Applications, licensing agreements; and
 - (v) Other products, such as data or databases, physical collections, audio or video, software or netware, models, educational aid or curricula, instruments or equipment.
- (7) For projects involving computer modeling, provide the following information with the final report:
- (i) Model description, key assumptions, version, source and intended use;
 - (ii) Performance criteria for the model related to the intended use;
 - (iii) Test results to demonstrate the model performance criteria were met (e.g., code verification/validation, sensitivity analyses, history matching with lab or field data, as appropriate);
 - (iv) Theory behind the model, expressed in non-mathematical terms;
 - (v) Mathematics to be used, including formulas and calculation methods;
 - (vi) Whether or not the theory and mathematical algorithms were peer reviewed, and, if so, include a summary of theoretical strengths and weaknesses;
 - (vii) Hardware requirements; and
 - (viii) Documentation (e.g., users guide, model code)

(b) Electronic Submission. The final scientific/technical report must be submitted electronically-via the DOE Energy Link System (E-Link) accessed at <http://www.osti.gov/mlink-2413>.

(1) Electronic Format. Reports must be submitted in the ADOBE PORTABLE DOCUMENT FORMAT (PDF) and be one integrated PDF file that contains all text, tables, diagrams, photographs, schematic, graphs, and charts.

(2) Submittal Form. The report must be accompanied by a completed electronic version of DOE Form 241.3, "U.S. Department of Energy (DOE), Announcement of Scientific and Technical Information (STI). " You can complete, upload, and submit the DOE F 241.3 online via E-Link. You are encouraged not to submit patentable material or protected data in these reports, but if there is such material or data in the report, you must:

(i) clearly identify patentable or protected data on each page of the report;

(ii) identify such material on the cover of the report; and

(iii) mark the appropriate block in Section K of the DOE F 24.1.3. Reports must not contain any limited rights data (proprietary data), classified information, information subject to export control classification, or other information not subject to release. Protected data is specific technical data, first produced in the performance of the award that is protected from public release for a period of time by the terms of the award agreement.

(3) Protected Personally Identifiable Information (PII). Management Reports or Scientific/Technical Reports must not contain any Protected PII. PII is any information about an individual which can be used to distinguish or trace an individual's identity. Some information that is considered to be PII is available in public sources such as telephone books, public websites, university listings, etc. This type of information is considered to be Public PII and includes, for example, first and last name, address, work telephone number, e-mail address, home telephone number, and general educational credentials. In contrast, Protected PII is defined as an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts, etc.

(c) Conference Papers/Proceedings:

(1) Content: The recipient must submit a copy of any conference papers/proceedings, with the following information:

(i) Name of conference;

(ii) Location of conference;

(iii) Date of conference; and

(iv) Conference sponsor.

(2) Electronic Submission. Scientific/technical conference paper/proceedings must be submitted electronically-via the DOE Energy Link System (E-Link) at <http://www.osti.gov/mlink-2413>. Non-scientific/technical conference papers/proceedings must be sent to the URL listed on the Reporting Checklist.

(3) Electronic Format. Conference papers/proceedings must be submitted in the ADOBE

PORTABLE DOCUMENT FORMAT (PDF) and be one integrated PDF file that contains all text, tables, diagrams, photographs, schematic, graphs, and charts.

(4) Submittal Form. Scientific/technical conference papers/proceedings must be accompanied by a completed DOE Form 241.3. The form and instructions are available on E-Link at <http://www.osti.gov/mlink-2413>. This form is not required for non-scientific or non-technical conference papers or proceedings.

(d) Software/Manual:

(1) Content. Unless otherwise specified in the award, the following must be delivered: source code, the executable object code and the minimum support documentation needed by a competent user to understand and use the software and to be able to modify the software in subsequent development efforts.

(2) Electronic Submission. Submissions may be submitted electronically via the DOE Energy Link System (E-Link) at <http://www.osti.gov/estsc/241-4pre.jsp>. They may also be submitted via regular mail to:

Energy Science and Technology Software Center
P.O. Box 1020
Oak Ridge, TN 37831

(3) Submittal Form. Each software deliverable and its manual must be accompanied by a completed DOE Form 241.4 "Announcement of U.S. Department of Energy Computer Software." The form and instructions are available on E-Link at <http://www.osti.gov/estsc/241-4pre.jsp>.

73. Special Status Report:

The recipient must report the following events by e-mail as soon as possible after they occur:

(a) Developments that have a significant favorable impact on the project.

(b) Problems, delays, or adverse conditions which materially impair the recipient's ability to meet the objectives of the award or which may require DOE to respond to questions relating to such events from the public. For example, the recipient must report any of the following incidents and include the anticipated impact and remedial action to be taken to correct or resolve the problem/condition:

- (1) Any single fatality or injuries requiring hospitalization of five or more individuals.
- (2) Any significant environmental permit violation.
- (3) Any verbal or written Notice of Violation of any Environmental, Safety, and Health statutes or regulations.
- (4) Any incident which causes a significant process or hazard control system failure.
- (5) Any event which is anticipated to cause a significant schedule slippage or cost increase.
- (6) Any damage to Government-owned equipment in excess of \$50,000.
- (7) Any other incident that has the potential for high visibility in the media.

74. Financial Reporting:

Recipients must complete the financial reports identified on the Reporting Checklist in accordance with the report instructions. A fillable version of the form is available at <http://www.whitehouse.gov/omb/grants/grantsforms.aspx>.

75. Closeout Procedures and Reports:

The Federal awarding agency or pass-through entity will close-out the Federal award when it determines that all applicable administrative actions and all required work of the Federal award have been completed by the non-Federal entity. This section specifies the actions the non-Federal entity and Federal awarding agency or pass-through entity must take to complete this process at the end of the period of performance.

- a) The non-Federal entity must submit, no later than 90 calendar days after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the Federal award. The Federal awarding agency or pass-through entity may approve extensions when requested by the non-Federal entity.
- b) Unless the Federal awarding agency or pass-through entity authorizes an extension, a non-Federal entity must liquidate all obligations incurred under the Federal award not later than 90 calendar days after the end date of the period of performance as specified in the terms and conditions of the Federal award.
- c) The Federal awarding agency or pass-through entity must make prompt payments to the non-Federal entity for allowable reimbursable costs under the Federal award being closed out.
- d) The non-Federal entity must promptly refund any balances of unobligated cash that the Federal awarding agency or pass-through entity paid in advance or paid and that are not authorized to be retained by the non-Federal entity for use in other projects. See OMB Circular A-129 and see 2 CFR 200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.
- e) Consistent with the terms and conditions of the Federal award, the Federal awarding agency or pass-through entity must make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.
- f) The non-Federal entity must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 CFR 200.310 Insurance coverage through 2 CFR 200.316 Property trust relationship and 2 CFR 200.329 Reporting on real property.
- g) The Federal awarding agency or pass-through entity should complete all closeout actions for Federal awards no later than one year after receipt and acceptance of all required final reports.
- h) Final Invention and Patent Report

The recipient must provide a DOE Form 2050.1 1, "PATENT CERTIFICATION." This form is available at <http://www.directives.doe.gov/pdfs/forms/2050-11.pdf> and <http://management.energy.gov/businessdoel/businessforms.htm>.

Property Certification:

The recipient must provide the Property Certification, including the required inventories of nonexempt property, located at <http://management.energy.gov/businessdoe/businessforms.htm>.

76. Subsequent Adjustments and Continuing Responsibilities:

- a) The closeout of a Federal award does not affect any of the following:
- 1) The right of the Federal awarding agency or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. The Federal awarding agency or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.
 - 2) The obligation of the non-Federal entity to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.
 - 3) Audit requirements in Subpart F—Audit Requirements of this part.
 - 4) Property management and disposition requirements in Subpart D—Post Federal Award Requirements of this part, 2 CFR 200.310 Insurance Coverage through 2 CFR 200.316 Property trust relationship.
 - 5) Records retention as required in Subpart D—Post Federal Award Requirements of this part, 2 CFR 200.333 Retention requirements for records through 2 CFR 200.337 Restrictions on public access to records.

After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in paragraph (a) of this section, including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

77. Other Reporting:

(a) Annual Indirect Cost Proposal and Reconciliation:

- (1) Requirement -- In accordance with the applicable cost principles, the recipient must submit an annual indirect cost proposal, reconciled to its financial statements, within six months after the close of the fiscal year, unless the award is based on a predetermined or fixed indirect rate(s), or a fixed amount for indirect or facilities and administration (F&A) costs.
- (2) Cognizant Agency -- The recipient must submit its annual indirect cost proposal directly to the cognizant agency for negotiating and approving indirect costs.

(b) Annual Inventory of Federally Owned Property:

- (1) Requirement -- If at any time during the award the recipient is provided Government-furnished property or acquires property with project funds and the award specifies that the property vests in the Federal Government (i.e. federally owned property), the recipient must submit an annual inventory of this property to the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award no later than October 30th of each calendar year, to cover an annual reporting period ending on the preceding September 30th.
- (2) Content of Inventory -- The inventory must include a description of the property, tag number, acquisition date, location of property, and acquisition cost, if purchased with project funds. The report must list all federally owned property, including property located at subcontractor's facilities or other locations.

78. Document Availability:

Consistent with applicable requirements, DOE will promptly make available (or provide access) to the Ohio Environmental Protection Agency all DOE documents or reviews that are within the scope of this Agreement.

79. Notice of Invoice Processing by Support Contractor(s):

A support service contractor performs the function of processing all invoices submitted to the Oak Ridge Financial Service Center, against its awards. Therefore, this contractor has access to your business confidential cost/rate information. A special provision in this contractor's award requires the confidential treatment by all contractor employees of all business confidential information of other contractors and financial assistance recipients to which they have access.

80. Payment Procedures – Reimbursement Through the Automated Clearinghouse (ACH) Vendor Inquiry Payment Electronic Reporting System (Vipers):

- a. Method of Payment – Payment will be made by reimbursement through ACH.
- b. Requesting Reimbursement -- Requests for reimbursements must be made electronically through Department of Energy's Oak Ridge Financial Service Center (ORFSC) VIPERS. To access and use VIPERS, you must enroll at <https://finweb.oro.doe.gov/vipers.htm>. Detailed instructions on how to enroll are provided on the web site.

For non-construction awards, you must submit a Standard Form (SF) 270, "Request for Advance or Reimbursement" at <https://finweb.oro.doe.gov/vipers.htm> and attach a file containing appropriate supporting documentation. The file attachment must show the total federal share claimed on the SF 270, the non-federal share claimed for the billing period if cost sharing is required, and cumulative expenditures to date (both Federal and non-Federal) for each of the following categories: salaries/wages and fringe benefits; equipment; travel; participant/training support costs, if any; other direct costs, including subawards/contracts; and indirect costs. For construction awards, you must submit a SF 271, "Outlay Report and Request for Reimbursement for Construction Programs," through VIPERS.

- c. Timing of submittals -- Submittal of the SF 270 or SF 271 should coincide with your normal billing pattern, but not more frequently than every two weeks. Requests for reimbursement must be limited to the amount of disbursements made during the billing period for the federal share of direct project costs and the proportionate share of any allowable indirect costs incurred during that billing period.
- d. Adjusting payment requests for available cash -- You must disburse any funds that are available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries, credits, discounts, and interest earned on any of those funds before requesting additional cash payments from DOE.
- e. Payments -- The DOE approving official will approve the invoice as soon as practicable but not later than 30 days after your request is received, unless the billing is improper. Upon receipt of an invoice payment authorization from the DOE approving official, the ORFSC will disburse payment to you. You may check the status of your payments at the VIPER web site. All payments are made by electronic funds transfer to the bank account identified on the ACH Vendor/Miscellaneous Payment Enrollment Form (SF 3881) that you filed.

81. Annual Indirect Cost Proposal and Reconciliation (Oct 2004):

(a) In accordance with the applicable cost principles, you must submit an annual indirect cost proposal, reconciled to your financial statements, within six months after the close of each fiscal year, unless you have negotiated a predetermined or fixed indirect rate(s), or fixed amount for indirect or facilities and administration (F&A) costs.

(b) The Ohio Environmental Protection Agency should submit its annual indirect cost proposal directly to the cognizant agency for negotiating and approving indirect costs. If DOE is the cognizant agency, send your proposal to the Cognizant Department of Energy Office (CDO). If the Ohio Environmental Protection Agency does not have a cognizant agency or if the Ohio Environmental Protection Agency does not know the DOE CDO, contact the DOE Award Administrator identified in Block 12 of the Notice of Financial Assistance Award.

82. Re-budgeting and Recovery of Indirect Costs:

(a) If actual allowable indirect costs are less than those budgeted and funded under the award, you may use the difference to pay additional allowable direct costs during the project period. If at the completion of the award the Government's share of total allowable costs (i.e., direct and indirect), is less than the total costs reimbursed, you must refund the difference.

(b) Recipients are expected to manage their indirect costs. DOE will not amend an award solely to provide additional funds for changes in indirect cost rates (See "Incremental Funding and Maximum Obligation article). DOE recognizes that the inability to obtain full reimbursement for indirect costs means the recipient must absorb the under recovery. Such under recovery may be allocated as part of the organization's required cost sharing.

83. Appendix II to Part 200 – Contract Provisions:

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- a) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
- b) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
- c) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."
- d) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as

supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

- e) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
- f) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
- g) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- h) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

- i) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- j) See 2 CFR 200.322 Procurement of recovered materials.

84. National Policy Assurances to be Incorporated as Award Terms:

Please go to <http://www.nsf.gov/awards/managing/rte.jsp> for most recent terms

85. Contracting Officer (CO) and Contracting Officer Representative (COR) Responsibilities under the Grant:

The COR is responsible for general administration of the grant and advising the CO as to the recipient's compliance or noncompliance with the grant. In addition, the COR is responsible for the grant day-to-day monitoring and supervision of the grant, of ensuring that the work conforms to the requirements of this grant and such other responsibilities and authorities as may be specified in the grant. It is understood and agreed that the COR shall not have authority to make any changes in the specifications/project description or terms and conditions of the grant without written modification executed by the CO.

The recipient may be held fully responsible for any changes not authorized in advance, in writing, by the CO, may be denied compensation or other relief for any additional work performed that is not so authorized, and may also be required, at no additional cost to the DOE, to take all corrective action necessitated by reason of the unauthorized changes.

The CO is the only person authorized to approve changes in any of the requirements of the grant resulting from the solicitation. The recipient shall not comply with any order, directive or request that changes or modifies the requirements of the grant, unless issued in writing and signed by the CO.

In the event the recipient effects any change at the instruction or request of any person other than the CO, the change will be considered to have been made without authority, and no adjustment will be made in the recipient invoice to cover any price increase incurred as a result thereof.

The PPPO COR for this grant will be:

Kristi Wiehle
Portsmouth/Paducah Project Office (PPPO)
3930 U.S. RTE. 23 S.
Piketon, OH 45661
Phone: 740-897-5020
E-mail: Kristi.wiehle@lex.doe.gov

The PPPO CO for this grant will be:

Daniel D. Burke
Portsmouth/Paducah Project Office (PPPO)
1017 Majestic Drive, Suite 200
Lexington, KY 40513
Phone: 859-219-4052
E-mail: daniel.burke@lex.doe.gov

86. Historic Preservation:

Prior to the expenditure of Federal funds to alter any structure or site, the Recipient is required to comply with the requirements of Section 106 of the National Historic Preservation Act (NHPA), consistent with DOE's 2009 letter of delegation of authority regarding the NHPA. Section 106 applies to historic properties that are listed in or eligible for listing in the National Register of Historic Places. In order to fulfill the requirements of Section 106, the recipient must contact the State Historic Preservation Officer (SHPO), and, if applicable, the Tribal Historic Preservation Officer (THPO), to coordinate the Section 106 review outlined in 36 CFR Part 800. SHPO contact information is available at the following link: <http://www.ncshpo.org/find/index.htm>. THPO contact information is available at the following link: <http://www.nathpo.org/map.html>.

Section 110(k) of the NHPA applies to DOE funded activities. Recipients shall avoid taking any action that results in an adverse effect to historic properties pending compliance with Section 106.

Recipients should be aware that the DOE Contracting Officer will consider the recipient in compliance with Section 106 of the NHPA only after the Recipient has submitted adequate background documentation to the SHPO/THPO for its review, and the SHPO/THPO has provided written concurrence to the Recipient that it does not object to its Section 106 finding or determination. Recipient shall provide a copy of this concurrence to the Contracting Officer.

87. Reporting Subawards and Executive Compensation:

a) Reporting of first-tier subawards.

- 1) Applicability. Unless the Recipient is exempt as provided in paragraph d. of this award term, the Recipient must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery 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. The Recipient must report each obligating action described in paragraph a.1. of this award term to <https://www.fsrs.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, 2010, the obligation must be reported by no later than December 31, 2010.)
- 3) What to report. The Recipient must report the information about each obligating action that the submission instructions posted at <https://www.fsrs.gov> specify.

b) Reporting Total Compensation of Recipient Executives.

- 1) Applicability and what to report. The Recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, if
 - i. The total Federal funding authorized to date under this Award is \$25,000 or more;
 - ii. In the preceding fiscal year, the Recipient received;

- A. 80 percent or more of the Recipient's annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
 - B. \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); 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. The Recipient must report executive total compensation described in paragraph b.1. of this award term:
 - i. As part of the Recipient's 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 the Recipient is exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, the Recipient shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if:
 - 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. The Recipient must report subrecipient executive total compensation described in paragraph c.1. of this award term:
 - i. To the recipient.
 - ii. By the end of the month following the month during which the Recipient makes the subaward. For example, if a subaward is obligated on any date during the month of

October of a given year (i.e., between October 1 and 31), the Recipient must report any required compensation information of the subrecipient by November 30 of that year.

d) Exemptions.

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

- 1) Subawards and;
- 2) 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;
- ii. 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 the Recipient received this award and that the recipient awards to an eligible subrecipient.
- ii. The term does not include the Recipient's procurement of property and services needed to carry out the project or program.
- iii. A subaward may be provided through any legal agreement, including an agreement that the Recipient or a subrecipient considers a contract.

4) Subrecipient means an entity that:

- i. Receives a subaward from the Recipient under this award; and
- ii. Is accountable to the Recipient 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 recipient'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.

- ii. 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.
- iii. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
- iv. Above-market earnings on deferred compensation which is not tax-qualified.

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.

88. System for Award Management and Universal Identifier Requirements:

a) Requirement for Registration in the System for Award Management (SAM)

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

If the Recipient had an active registration in the CCR, it has an active registration in SAM.

b) Requirement for Data Universal Numbering System (DUNS) Numbers

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

- 1) Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from the Recipient unless the entity has provided its DUNS number to the Recipient.
- 2) May not make a subaward to an entity unless the entity has provided its DUNS number to the Recipient.

i. Definitions

For purposes of this award term:

- 1) System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM Internet site (currently at <https://www.sam.gov>).
- 2) Data Universal Numbering System (DUNS) number means the nine-digit number established and assigned by Dun and Bradstreet, Inc. (D&B) to uniquely identify business entities. A DUNS number may be obtained from D&B by telephone (currently 866-705-5711) or the Internet (currently at <http://fedgov.dnb.com/webform>).

3) Entity, as it is used in this award term, means all of the following, as defined at 2 CFR Part 25, subpart C:

- 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; and
- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.

4) 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 the Recipient received this Award and that the Recipient awards to an eligible subrecipient.
- ii. The term does not include the Recipient's procurement of property and services needed to carry out the project or program.
- iii. A subaward may be provided through any legal agreement, including an agreement that the Recipient considers a contract.

5) Subrecipient means an entity that:

- i. Receives a subaward from the Recipient under this Award; and

Is accountable to the Recipient for the use of the Federal funds provided by the subaward.

89. Final Incurred Cost Audit (December 2014):

In accordance with 2 CFR Part 200 as amended by 2 CFR Part 910, DOE reserves the right to initiate a final incurred cost audit on this award. If the audit has not been performed or completed prior to the closeout of the award, DOE retains the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

90. Indemnity:

The Recipient shall indemnify the Government and its officers, agents, or employees for any and all liability, including litigation expenses and attorneys' fees, arising from suits, actions, or claims of any character for death, bodily injury, or loss of or damage to property or to the environment, resulting from the project, except to the extent that such liability results from the direct fault or negligence of Government officers, agents or employees, or to the extent such liability may be covered by applicable allowable costs provisions.

91. Conference Spending (February 2015):

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

92. Insurance Coverage:

See 2 CFR 200.310 for insurance requirements for real property and equipment acquired or improved with Federal funds.

93. Real Property:

Subject to the conditions set forth in 2 CFR Part 200.311, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.311 before disposing of the property.

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

See 2 CFR Part 200.311 for additional requirements pertaining to real property acquired or improved under a Federal award.

Also see 2 CFR Part 910.360 for amended requirements for Real Property for For-Profit recipients.

94. Equipment:

Subject to the conditions provided in 2 CFR Part 200.313, title to equipment (property) acquired under a Federal award will vest conditionally with the non-Federal entity.

The non-Federal entity cannot encumber this property and must follow the requirements of 2 CFR Part 200.313 before disposing of the property.

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

Equipment must be used by the non-Federal entity in the program or project for which it was acquired as long as it is needed, whether or not the project or program continues to be supported by the Federal

award. When no longer needed for the originally authorized purpose, the equipment may be used by programs supported by the Federal awarding agency in the priority order specified in 2 CFR Part 200.313(c)(1)(i) and (ii).

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

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

Disposition will be made as follows:

- a) items of equipment with a current fair market value of \$5,000 or less may be retained, sold, or otherwise disposed of with no further obligation to the Federal awarding agency;
- b) Non-Federal entity may retain title or sell the equipment after compensating the Federal awarding agency as described in 2 CFR Part 200.313(e)(2); or (c) transfer title to the Federal awarding agency or to an eligible third Party as specified in CFR Part 200.313(e)(3).

See 2 CFR Part 200.313 for additional requirements pertaining to equipment acquired under a Federal award. Also see 2 CFR Part 200.439 Equipment and other capital expenditures.

See 2 CFR Part 910.360 for amended requirements for Equipment for For-Profit recipients.

95. Supplies:

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

96. Nondisclosure and Confidentiality Agreements Assurances:

(1) By entering into this agreement, the undersigned attests that Ohio EPA does not and will not require its employees or contractors to sign internal nondisclosure or confidentiality agreements or statements prohibiting or otherwise restricting its employees or contractors from lawfully reporting waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.

(2) The undersigned further attests that Ohio EPA does not and will not use any Federal funds to implement or enforce any nondisclosure and/or confidentiality policy, form, or agreement it uses unless it contains the following provisions:

a. *"These provisions are consistent with and do not supersede, conflict with, or otherwise alter the employee obligations, rights, or liabilities created by existing statute or Executive order relating to (1) classified information, (2) communications to Congress, (3) the reporting to an Inspector General of a violation of any law, rule, or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety, or (4) any other whistleblower protection. The definitions, requirements, obligations, rights, sanctions, and liabilities created by controlling Executive orders and statutory provisions are incorporated into this agreement and are controlling."*

b. The limitation above shall not contravene requirements applicable to Standard Form 312, Form 4414, or any other form issued by a Federal department or agency governing the nondisclosure of classified information.

97. Award Term and Condition for Recipient Integrity and Performance Matters:

a) Reporting of Matters Related to Recipient Integrity and Performance

1) General Reporting Requirement

If the total value of your currently active Financial Assistance awards, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

2) Proceedings About Which You Must Report

Submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a Financial Assistance, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five year period; and
- iii. Is one of the following:

3) A criminal proceeding that resulted in a conviction, as defined in paragraph 5 of this award term and condition;

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

5) An administrative proceeding, as defined in paragraph 5. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or

6) Any other criminal, civil, or administrative proceeding if:

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

7) Reporting Procedures

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph 2 of this award term and condition. You do not need to submit the information a second time under assistance awards that you received if you already provided the information through SAM because you were required to do so under Federal procurement contracts that you were awarded.

8) Reporting Frequency

During any period of time when you are subject to the requirement in paragraph 1 of this award term and condition, you must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that you have not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, Financial Assistance awards, (including cooperative agreement awards) with a cumulative total value greater than \$10,000,000, must disclose semiannually any information about the criminal, civil, and administrative proceedings.

9) Definitions

For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or Financial Assistance awards. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- iii. Total value of currently active Financial Assistance awards, cooperative agreements, and procurement contracts includes—
 - A. Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
 - B. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

Attachment A

Buildings/Structures Associated with the D&D DFF&O Order
Table 1: Buildings and Structures Included within the Scope of the
Removal Actions at PORTS

| |
|---|
| Removal Action: X-626 Recirculating Cooling Water Complex Action Memorandum (AM) |
| Facility Identification/Name of Buildings and Structures |
| X-626-1 Recirculating Water Pump House |
| X-626-2 Cooling Tower |

| |
|--|
| Removal Action: Plant Support Buildings and Structures AM |
| Facility Identification/Name of Buildings and Structures |
| X-104 Guard Headquarters |
| X-106C New Fire Training Building |
| X-108H Pike Avenue Portal |
| X-109A Personnel Monitoring Station |
| X-109B Personnel Monitoring Station |
| X-343 Feed Vaporization and Sampling Building |
| X-530A High Voltage Switch Yard |
| X-530B Switch House |
| X-530C Test and Repair Building |
| X-530D Oil House |
| X-530E Valve House |
| X-530F Valve House |
| X-611 Water Treatment Plant |
| X-611C Filter Building |
| X-611D Recarbonization Instrumentation Building |
| X-611E Clear Well and Chlorine Building |
| X-612 Elevated Storage Tank |
| X-614A Sewage Pumping Station |
| X-614B Sewage Pumping Station |
| X-618 North Holding Pond Storage Building |
| X-621 Coal Pile Treatment Facility |
| X-640-1 Fire Water Pump House |
| X-640-2 Elevated Storage Tank |
| X-735A Landfill Utility Building |
| X-743 Lumber Storage Facility |
| X-744G Bulk Storage Building |
| X-744H Bulk Storage Building |
| X-744J Bulk Storage Building |
| X-744L Stores and Maintenance Warehouse |
| X-744W Surplus and Salvage Warehouse |
| X-750 Mobile Equipment Maintenance Shop |
| X-750A Garage Storage Building |
| X-752 Warehouse |
| X-752AT 1-5 Trailer Complex |

Table 2. Buildings and Structures Included within the Scope of the Process Buildings and Complex Facilities D&D Evaluation Project at PORTS

| Facility Identification/Name Buildings and Structures |
|--|
| X-104A Indoor Firing Range Building |
| X-104B Protective Forces Office Trailer |
| X-104C Protective Forces Shower/Locker Trailer |
| X-108A South Portal and Shelter-Drive Gate |
| X-108B North Portal and Shelter |
| X-108E Construction Entrance Portal |
| X-108J West Security Portal |
| X-108K North Security Portal |
| X-108L East Security Portal |
| X-111A SNM Monitoring Portal |
| X-111B SNM Monitoring Portal |
| X-114A Outdoor Firing Range |
| X-120H Weather Station |
| X-202 Roads |
| X-204-1 Railroad and Railroad Overpass (excluding DUF6 utilized track) |
| X-206A North Main Parking Lot |
| X-206B South Main Parking Lot |
| X-206E Construction Parking Lot |
| X-206H Pike Avenue Parking Lot |
| X-206J South Office Parking Lot |
| X-208 Security Fence |
| X-208A Boundary Fence |
| X-208B SNM Security Fence |
| X-210 Sidewalks |
| X-215A Electrical Distribution to Process Buildings |
| X-215B Electrical Distribution to Other Areas |
| X-215C Exterior Lighting |
| X-215D Electrical Power Tunnels |
| X-220A Instrumentation Tunnels |
| X-220B1 Process Instrumentation Lines |
| X-220B2 Carrier Communication Systems |
| X-220B3 Water Supply Telemetry Lines |
| X-220C Superior American Alarm System |
| X-220D1 General Telephone System |
| X-220D2 Process Telephone System |
| X-220D3 Emergency Telephone System |
| X-220E1 Evacuation PA System |
| X-220E2 Process PA System |
| X-220E3 Power Public Address System |
| X-220F Plant Radio System |
| X-220G Pneumatic Dispatch System |
| X-220H McCalloh Alarm System |
| X-220J Radiation Alarm System |
| X-220K Cascade Automatic Data Processing System |
| X-220L Classified Computer System |

**Table 2. Buildings and Structures Included within the Scope of the Process
Buildings
and Complex Facilities D&D Evaluation Project at PORTS (Continued)**

| Facility Identification/Name Buildings and Structures |
|--|
| X-220N Security Alarm and Surveillance System |
| X-220P MSR System |
| X-220R Public Warning Siren System |
| X-220S Power Operations SCADA System |
| X-230 Water Supply Line |
| X-230A Sanitary and Fire Water Distribution System |
| X-230A3 Ambient Air Monitoring Station |
| X-230A6 Ambient Air Monitoring Station |
| X-230A8 Ambient Air Monitoring Station |
| X-230A9 Ambient Air Monitoring Station |
| X-230A10 Ambient Air Monitoring Station |
| X-230A12 Ambient Air Monitoring Station |
| X-230A15 Ambient Air Monitoring Station |
| X-230A23 Ambient Air Monitoring Station |
| X-230A24 Ambient Air Monitoring Station |
| X-230A28 Ambient Air Monitoring Station |
| X-230A29 Ambient Air Monitoring Station |
| X-230A36 Ambient Air Monitoring Station |
| X-230A37 Ambient Air Monitoring Station |
| X-230A40 Ambient Air Monitoring Station |
| X-230A41 Ambient Air Monitoring Station |
| X-230B Sanitary Sewers |
| X-230C Storm Sewers |
| X-230D Softened Water Distribution System |
| X-230F Raw Water Supply Line |
| X-230G RCW System |
| X-230H Fire Water Distribution System |
| X-230J-1 Monitoring Station |
| X-230J2 South Environmental Sample Station |
| X-230J3 West Environmental Sampling Building for Intermittent Containment Basin |
| X-230J4 Environmental Air Sampling Station |
| X-230J5 West Holding Pond Oil Separation Station |
| X-230J6 Northeast Holding Pond Monitoring Facility and Secondary Oil Collection Building |
| X-230J7 East Monitor Facility (East Holding Pond Oil Separation Building) |
| X-230M Clean Test Site |
| X-232A Nitrogen Distribution System |
| X-232B Dry Air Distribution System |
| X-232C1 Tie Line X-342 to X-330 |
| X-232C2 Tie Line X-330 to X-326 |
| X-232C3 Tie Line X-330 to X-333 |
| X-232C4 Tie Line X-326 to X-770 |

**Table 2. Buildings and Structures Included within the Scope of the Process
Buildings
and Complex Facilities D&D Evaluation Project at PORTS (Continued)**

| Facility Identification/Name Buildings and Structures |
|--|
| X-232C5 Tie Line X-343 to X-333 |
| X-232D Steam and Condensate System |
| X-232E Freon Distribution System |
| X-232F Fluorine Distribution System |
| X-232G Support for Distribution Lines |
| X-235 South Groundwater Collection System |
| X-237 Little Beaver Groundwater Collection System |
| X-240 RCW System (Cathodic Protection System) |
| X-300 Plant Control Facility |
| X-300A Process Monitoring Building |
| X-300B Plant Control Facility Carport |
| X-300C Emergency Communications Antenna |
| X-326 Process Building and Instrumentation Tunnel |
| X-330 Process Building and Instrumentation Tunnel |
| X-333 Process Building and Instrumentation Tunnel |
| X-342A Feed Vaporization Building |
| X-342B Fluorine Storage Building |
| X-344A UF6 Sampling Facility |
| X-344H Security Portal |
| X-345 SNM Storage Building |
| X-501 Substation |
| X-501A Substation |
| X-502 Substation |
| X-515 330 kV Tie Line Between X-530 and X-533 |
| X-530G GCEP Oil Pumping Station |
| X-530T1 Office Trailer |
| X-533H Personnel Monitoring Station |
| X-533 T1 Trailer |
| X-533 T2 Trailer |
| X-533 T3 Trailer |
| X-533 T4 Trailer |
| X-540 Telephone Building |
| X-600A Coal Yard (structures) |
| X-600D Utilities Maintenance Field Office |
| X-605 Sanitary Water Control House |
| X-605A Well Field |
| X-608 Raw Water Pump House |
| X-608A Well Field |
| X-608B Well Field |
| X-611A Old Lime Sludge Lagoon (structures) |
| X-611B Lagoon (structures) |
| X-611B1 Lagoon Supernatant Pumping Station |
| X-611B2 Lagoon Supernatant Pumping Station |
| X-611B3 Lagoon Supernatant Pumping Station |

Table 2. Buildings and Structures Included within the Scope of the Process

**Buildings
and Complex Facilities D&D Evaluation Project at PORTS (Continued)**

| Facility Identification/Name Buildings and Structures |
|--|
| X-614D South Sewage Lift Station |
| X-614P North East Sewage Lift Station |
| X-614Q Sewage Booster Pump Station |
| X-617 South Holding Pond pH Control Facility |
| X-622 South Groundwater Treatment Facility |
| X-623 North Groundwater Treatment Building |
| X-624 Little Beaver Groundwater Treatment Facility |
| X-625 Groundwater Passive Treatment Facility |
| X-627 Groundwater Pump & Treatment Facility |
| X-633 T1 Trailer |
| X-633 T2 Trailer |
| X-633 T3 Trailer |
| X-640-1A Substation (required for Fire Services) |
| X-640-2A Elevated Water Tank Auxiliary Building |
| X-670 Dry Air Plant |
| X-670A Cooling Tower |
| X-675 Plant Nitrogen Station |
| X-680 Blowdown Sample and Treatment Building |
| X-690 Steam Plant |
| X-700 Converter Shop & Cleaning Building |
| X-700A Air Conditioning Equipment Building |
| X-700B Sandblast Facility and Observation Booth |
| X-701E Neutralization Building |
| X-701F Effluent Monitoring Facility |
| X-705 Decontamination Building |
| X-705D Heat Booster Pump Building |
| X-705E Oxide Conversion Area |
| X-710 Technical Service Building |
| X-710A Technical Service Gas Manifold Shed |
| X-710B Explosion Test Facility |
| X-720 Maintenance & Stores Building |
| X-720B Radio Base Station |
| X-720C Paint & Storage Building |
| X-720 T01 Office Trailer |
| X-721 Radiation Instrument Calibration |
| X-741 Oil Drum Storage Facility |
| X-742 Gas Cylinder Storage Facility |
| X-744K Warehouse-K |
| X-744N Warehouse N Non-UEA |
| X-744P Warehouse P Non-UEA |
| X-744Q Warehouse Q Non-UEA |
| X-744V Surplus and Salvage Clean Storage Area |
| X-744Y Waste Storage Area |
| X-744Y T1 Trailer |

**Table 2. Buildings and Structures Included within the Scope of the Process
Buildings
and Complex Facilities D&D Evaluation Project at PORTS (Continued)**

| Facility Identification/Name Buildings and Structures | |
|---|---|
| X-744Y T2 Trailer | |
| X-744Y T3 Trailer | |
| X-744Y T4 Trailer | |
| X-744Y T5 Trailer | |
| X-744Y T6 Trailer | |
| X-744Y T8 Trailer | |
| X-744Y T9 Trailer | |
| X-745B Toll Enrichment Gas Yard | |
| X-745D Cylinder Storage Yard | |
| X-745F North Process Gas Stockpile Yard | |
| X-745G-2 Cylinder Storage Yard | |
| X-747 Clean Scrap Yard | |
| X-747B Material Storage Yard Pads and Equipment | |
| X-747C Material Storage Yard Pads and Equipment | |
| X-747D Material Storage Yard Pads and Equipment | |
| X-747E Material Storage Yard Pad | |
| X-747H1 Loading Pad | |
| X-747J Decontamination Storage Yard | |
| X-748 Truck Scale | |
| X-751 GCEP Mobile Equipment Garage | |
| X-760 T1 Trailer | |
| X-760 T2 Trailer | |
| X-1000 Administration Building | |
| X-1000T1 Training Trailer | |
| X-1007 Fire Station | |
| X-1107BV Interplant Vehicle Portal | |
| X-2230T1 Recirculating Heating Water System (East of Valve Pit "A" and "B") | |
| X-2232E Gas Pipeline | |
| X-6619 Sewage Treatment Plant | |
| XT-800 GCEP Construction Office Pad | |
| XT-847 Warehouse | |
| B Pad in Field East of X-109A (near X-740) | |
| C Old Switch Yard West of X-109A Pad (near X-740) | |
| E X-700 "0000" Compressor Base Foundation | |
| H Old Firing Range Shed | |
| I Peter Kiewit Powder Magazine | |
| J X-1000 Pavilion | |
| GCEP = Gas Centrifuge Enrichment Plant MSR = maintenance service request PA = public address RCW = recirculating cooling water | SCADA = Supervisory Control and Data Acquisition SNM = special nuclear material UEA = uranium enrichment area |

Table 2. Buildings and Structures Included within the Scope of the Process

**Buildings
and Complex Facilities D&D Evaluation Project at PORTS (Continued)**

| Facility Identification/Name Buildings and Structures |
|---|
| Slabs and Below-grade Structures Remaining from Previous Actions |
| X-100 Administration Building (slab and below-grade structures) |
| X-105 Electronic Maintenance Building (front apron/concrete pad and driveway) |
| X-106B Old Fire Training Building (slab and below-grade water tank) |
| X-120 Old Weather Station (footers) |
| X-230J1 East Environmental Sampling Building (slab) |
| X-230J8 Environmental Storage Building (slab) |
| X-342C Waste HF Neutralization Pit (below-grade structures) |
| X-344C Hydrogen Fluoride Storage Building (foundations and piers) |
| X-344D HF Neutralization Pit (below grade) |
| X-344E Gas Ventilation Stack (below grade) |
| X-344F Safety Building (below-grade structures) |
| X-530A High Voltage Switchyard (grounding systems and underground cables) |
| X-530B Switch House (slab and below-grade structures) |
| X-530C Test and Repair Building (below-grade structures) |
| X-530D Oil House (below-grade structures) |
| X-530E Valve House (slab and below-grade structures) |
| X-530F Valve House (slab and below-grade structures) |
| X-600 Steam Plant (slab and below-grade structures) |
| X-611 Water Treatment Plant (slab and below-grade structures) |
| X-611C Filter Building (slab and below-grade structures) |
| X-611E Clear Well & Chlorine Building (slab and below-grade structures) |
| X-612 Elevated Storage Tank (below-grade structures) |
| X-614A Sewage Pumping Station (slab and below-grade structures) |
| X-614B Sewage Pumping Station (slab and below-grade structures) |
| X-615 Old Sewage Treatment Plant (foundations and piers) |
| X-616 Liquid Effluent Control Facility (foundations and piers) |
| X-626-1 Recirculating Water Pump House (slab and below-grade structures) |
| X-626-2 Cooling Tower (below-grade structures) |
| X-630-1 Recirculating Water Pump House (slab and below-grade structures) |
| X-630-2A Cooling Tower (below-grade structures) |
| X-630-2B Cooling Tower (below-grade structures) |
| X-630-3 Acid Handling Station (saddles and basin) |
| X-640-1 Fire Water Pump House (slab and below-grade structures) |
| X-640-2 Elevated Storage Tank (below-grade structures) |
| X-701A Lime House (below-grade structures) |
| X-701D Water De-ionization Facility (below-grade structures) |
| X-720A Maintenance and Stores Gas Manifold Shed (below-grade structures) |
| X-746 Material Receiving and Inspection (portions of above- and below-grade structures) |
| X-747A Material Storage Yard (below-grade structures) |
| X-747G Precious Metal Scrap Yard (below-grade structures) |

**Table 2. Buildings and Structures Included within the Scope of the Process
Buildings
and Complex Facilities D&D Evaluation Project at PORTS (Continued)**

| Facility Identification/Name Buildings and Structures |
|---|
| X-747H NW Contaminated Scrap Yard (below-grade structures) |
| X-750 Mobile Equipment Maintenance Shop (slab and below-grade structures) |

Attachment B

Generic List of High Level DOE Deliverables to Ohio EPA for Review

| |
|--|
| 1. Monthly Environmental Remediation (ER) Technical Progress Reports |
| 2. Quarterly ER Progress Reports |
| 3. Quarterly Surveillance & Maintenance Inspection Reports |
| 4. X-735 Annual Leachate Management Monitoring Report |
| 5. Annual Groundwater Monitoring Report |
| 6. Annual Site TCE Plume Map |
| 7. Integrated Groundwater Monitoring Plan (IGWMP) |
| 8. Integrated Surveillance and Maintenance Plan (ISMP) |
| 9. RCRA Corrective Action Work Plans |
| 10. Remediation/Excavation & Interim Remedial Measure Plans |
| 11. RCRA Corrective Action Completion Reports |
| 12. 5-Year Remedy Reviews: X-611A Prairie; X-749B PK Landfill, 5Unit Area, X-231A Cap and X-231B Cap (Quad I Groundwater Investigative Area); X-734 Landfills; and X-749/120 Area Groundwater Plume |
| 13. Design Packages for OSDC |
| 14. OSDC Construction Completion Reports |
| 15. Sampling Analysis Plans in Support of the DFF&O for D&D and the Consent Decree |
| 16. DFF&O Quarterly and Annual Reports |
| 17. DFF&O Removal Action Work Plans |
| 18. DFF&O Remedial Design and Remedial Action Work Plans |
| 19. Preferred Plans |
| 20. Records of Decision/Decision Documents |
| 21. D&D Completion Reports |
| 22. DFF&O Supporting Documents |
| 23. Waste Acceptance Criteria Documents |
| 24. Corrective Measures Investigations/Corrective Measures Studies |
| 25. Remedial Design and Remedial Action Excavation Work Plans (Natural Resource Restoration Project support documents) |

ATTACHMENT C**FEDERAL ASSISTANCE REPORTING CHECKLIST AND INSTRUCTIONS**

| | | | |
|--|--|---------------|---|
| 1. Identification Number: DE-EM004290 | 2. Program/Project Title: Ohio State Environmental Monitoring Program Applied to DOE | | |
| 3. Recipient: Ohio Environmental Protection Agency (Ohio EPA) | | | |
| 4. Reporting Requirements: | Frequency | No. of Copies | Addressees |
| MANAGEMENT REPORTING | | | |
| <input checked="" type="checkbox"/> Monthly Invoices | M | 1 | Submitted via Vipers Submitted to CO and COR |
| <input checked="" type="checkbox"/> Progress Report | Q | 2 | |
| <input type="checkbox"/> Public Awareness Progress Report | | | |
| <input type="checkbox"/> Annual Summary Report | | | |
| <input checked="" type="checkbox"/> Special Status Report * | As Required | 2 | Submitted to CO and COR |
| SCIENTIFIC/TECHNICAL REPORTING (Reports/Products must be submitted with appropriate DOE F 241.3. The 241 forms are available at www.osti.gov/etlink .) | | | |
| <u>Report/Product</u> | <u>Form</u> | | |
| <input checked="" type="checkbox"/> Project Specific Environmental Sampling/Monitoring Plan | As Required | 1 | Submitted to COR |
| <input type="checkbox"/> Monthly Technical Progress Report | | | |
| <input type="checkbox"/> Topical Report | | | |
| <input type="checkbox"/> Conference papers/proceedings | | | |
| <input type="checkbox"/> Software/Manual | | | |
| <input type="checkbox"/> Symposium Plan | | | |
| FINANCIAL REPORTING | | | |
| <input checked="" type="checkbox"/> SF-425, Federal Financial Report | Y | 2 | Submitted to CO and COR |
| CLOSEOUT REPORTING | | | |
| <input checked="" type="checkbox"/> Contractor/Grantee Acquired Property Certification | Y | 2 | Submitted to CO and COR |
| <input checked="" type="checkbox"/> Final Technical Report/Closeout (see Special Instructions)** | F | 2 | Submitted to CO and COR |
| OTHER REPORTING | | | |
| <input checked="" type="checkbox"/> Annual Indirect Cost Proposal | Y | 1 | Submitted to CO |
| FREQUENCY CODES AND DUE DATES: M- Monthly; within 15 days of the end of the calendar month F - Final; 90 calendar days after expiration or termination of the award. Y - Yearly; 90 days after the end of the reporting period. S - Semiannually; within 30 days after end of reporting period. Q - Quarterly; within 60 days after end of the reporting period. | | | |
| 5. Special Instructions: See attached addendum. <div style="text-align: right; font-size: small;"> DOE F 4600.2 (12/04) All Other Editions Are Obsolete </div> | | | |

Addendum
Special Instructions for Attachment C

5. Special Instructions:

All reporting can be submitted electronically via e-mail.

* Special Status Report -- Provides notice of problems, delays, or adverse conditions, which materially impair the awardee's ability to meet the objectives of the award or developments that have a significant favorable impact on the project. The report must include the necessary corrective action to be taken to correct or resolve any problem or adverse condition.

**Final Technical/Closeout Report -- This report should be submitted upon completion of all project activities outlining the closure of the project. (2 copies) Address is as follows:

US DOE Portsmouth/Paducah Project Office
c/o Contracting Officer
1017 Majestic Drive, Lexington, KY 40513

Form DOE F 241.3 is available at <http://www.osti.gov/mlink-2413>

Form DOE F 241.4 is available at <http://www.osti.gov/estsc/2414pre.jsp>

