14. Inconsistency with Federal Law

If Subrecipient believes that any term or condition of this Agreement is inconsistent with federal law or regulation, Subrecipient is required to immediately send written notice to OEMR with the following information: (i) the award number; (ii) the name and contact information (postal address, telephone number, and email address) for the individual to whom OEMR should direct any inquiries regarding this matter; and (iii) a detailed description of the apparent inconsistency.

15. OEMR Stewardship

OEMR will oversee project activities performed under this award. This includes conducting site visits, reviewing reports, providing technical assistance, providing temporary intervention in unusual circumstances to address deficiencies that develop during the project, assuring compliance with terms and conditions, and reviewing technical performance after project completion to ensure that Subrecipient accomplishes project objectives.

16. Davis-Bacon Act

Subrecipient shall comply 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). Subrecipient shall insert Davis-Bacon contract clauses, as set forth at 29 CFR 5.5(a) and below at subsections (1) through (11), and applicable wage determinations, into all prime construction contracts in excess of $2,000 which are entered into for the construction, alteration, or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part under this Agreement. Definitions of the terms used in this section are found at 29 CFR 5.2.

If there are no construction elements to this contract, then this section will not apply. If there are construction elements to this contract such that it falls under the Davis-Bacon Act, then the wage determination referred to in subsection (1), below, is incorporated into this contract. Wage determinations in this contract will be proposed to DOE prior to start of construction but are subject to change based on DOE review.

(1) ***Minimum wages*** —

(i) ***Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of basic hourly wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto as Attachment B and made a part hereof, regardless of any contractual relationship

which may be alleged to exist between the contractor and such laborers and mechanics. As provided in 29 CFR 5.5(d) and (e), the appropriate wage determinations are effective by operation of law even if they have not been attached to the contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under the Davis-Bacon Act (40 U.S.C. 3141(2)(B)) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(v); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics must be paid the appropriate wage rate and fringe benefits on the wage determination for the classification(s) of work actually performed, without regard to skill, except as provided in 29 CFR 5.5 (a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under 29 CFR 5.5 (a)(1)(iii)) and the Davis-Bacon poster (WH–1321) must be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) ***Frequently recurring classifications.***

(A) In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR part 1, a wage determination may contain, pursuant to 29 CFR 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted pursuant to 29 CFR 5.5(a)(1)(iii), provided that:

(*1*) The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined;

(*2*) The classification is used in the area by the construction industry; and

(*3*) The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

(B) The Administrator will establish wage rates for such classifications in accordance with 20 CFR 5.5 (a)(1)(iii)(A)(*3*). Work performed in such a classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

(iii) ***Conformance.***

(A) The contracting officer must require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract be classified in conformance with the wage determination.

Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

(*1*) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(*2*) The classification is used in the area by the construction industry; and

(*3*) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(C) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken will be sent by the contracting officer by email to *DBAconformance@dol.gov*. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(D) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer will, by email to *DBAconformance@dol.gov,* refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30–day period that additional time is necessary.

(E) The contracting officer must promptly notify the contractor of the action taken by the Wage and Hour Division under 29 CFR 5.5(a)(1)(iii)(C) and (D). The contractor must furnish a written copy of such determination to each affected worker or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to 20 CFR 5.5 (a)(1)(iii)(C) or (D) must be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iv) ***Fringe benefits not expressed as an hourly rate.*** Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor may either pay the benefit as stated in the wage determination or may pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(v) ***Unfunded plans.*** If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, in accordance with the criteria set forth in 29 CFR 5.28, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(vi) ***Interest.*** In the event of a failure to pay all or part of the wages required by the contract, the contractor will be required to pay interest on any underpayment of wages.

(2) ***Withholding*** —

(i) ***Withholding requirements.*** DOE or OEMR may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for the full amount of wages and monetary relief, including interest, required by the clauses set forth in 29 CFR 5.5 (a) for violations of this contract, or to satisfy any such liabilities required by any other Federal contract, or federally assisted contract subject to Davis-Bacon labor standards, that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other Federal contract with the same prime contractor, or any other federally assisted contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld. In the event of a contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the contract, or upon the contractor's failure to submit the required records as discussed in 29 CFR 5.5(a)(3)(iv), OEMR may on its own initiative and after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

(ii) ***Priority to withheld funds.*** The Department of Labor has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5 (a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. 3901–3907.

(3) ***Records and certified payrolls*** —

(i) ***Basic record requirements*** —

(A) ***Length of record retention.*** All regular payrolls and other basic records must be maintained by the contractor and any subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime contract is completed.

(B) ***Information required.*** Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in 40 U.S.C. § 3141(2)(B) of the Davis-Bacon Act); daily and weekly number of hours actually worked in total and on each covered contract; deductions made; and actual wages paid.

(C) ***Additional records relating to fringe benefits.*** Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(v) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in 40 U.S.C. § 3141(2)(B) of the Davis-Bacon Act, the contractor must maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits.

(D) ***Additional records relating to apprenticeship.*** Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) ***Certified payroll requirements*** —

(A) ***Frequency and method of submission.*** The contractor or subcontractor must submit weekly, for each week in which any DBA- or Related Acts-covered work is performed, certified payrolls as provided in this Agreement (See Section 9, Reporting, above). The prime contractor is responsible for the submission of all certified payrolls by all subcontractors. A contracting agency or prime contractor may permit or require contractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid electronic signature; the system allows the contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least 3 years after the work on the prime contract has been completed; and the contracting agency permits other methods of submission in situations where the contractor is unable or limited in its ability to use or access the electronic system.

(B) ***Information required.*** The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i)(B), except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (*e.g.,* the last four digits of the worker's Social Security number). The required weekly certified payroll information shall be submitted using the DOE provided software, LCPtracker. It is not a violation of this section for a prime contractor to require a subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime contractor for its own records, without weekly submission by the subcontractor to OEMR.

(C) ***Statement of Compliance.*** Each certified payroll submitted must be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor, or the contractor's or subcontractor's agent who pays or supervises the payment of the persons working on the contract, and must certify the following:

(*1*) That the certified payroll for the payroll period contains the information required to be provided under 29 CFR 5.5(a)(3)(ii), the appropriate information and basic records are being maintained under 29 CFR 5.5(a)(3)(i), and such information and records are correct and complete;

(*2*) That each laborer or mechanic (including each helper and apprentice) working on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR part 3; and

(*3*) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification(s) of work actually performed, as specified in the applicable wage determination incorporated into the contract.

(D) ***Signature.*** The signature by the contractor, subcontractor, or the contractor's or subcontractor's agent must be an original handwritten signature or a legally valid electronic signature.

(E) ***Falsification.*** The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 3729.

(F) ***Length of certified payroll retention.*** The contractor or subcontractor must preserve all certified payrolls during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iii) ***Contracts, subcontracts, and related documents.*** The contractor or subcontractor must maintain this contract or subcontract and related documents including, without limitation, bids, proposals, amendments, modifications, and extensions. The contractor or subcontractor must preserve these contracts, subcontracts, and related documents during the course of the work and for a period of 3 years after all the work on the prime contract is completed.

(iv) ***Required disclosures and access*** —

(A) ***Required record disclosures and access to workers.*** The contractor or subcontractor must make the records required under 29 CFR 5.5(a)(3)(i) through (iii), and any other documents that OEMR, DOE, or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription by authorized representatives of OEMR, DOE, or the Department of Labor, and must permit such representatives to interview workers during working hours on the job.

(B) ***Sanctions for non-compliance with records and worker access requirements.*** If the contractor or subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during working hours on the job, OEMR or DOE may, after written notice to the contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to § 5.12. In addition, any contractor or other person that fails to submit the required records or make those records available to WHD within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under 29 CFR part 6 any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request and may consider, among other things, the location of the records and the volume of production.

(C) ***Required information disclosures.*** Contractors and subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and must provide them upon request to OEMR or to the WHD of the Department of Labor. The contractor, subcontractor, or both, must, upon request, provide the full Social Security number and last known address, telephone number, and email address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the OEMR, DOE, the contractor, or the WHD of the Department of Labor for purposes of an investigation or other compliance action.

(4) ***Apprentices and equal employment opportunity*** —

(i) ***Apprentices*** —

(A) ***Rate of pay.*** Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship (OA), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first 90 days of probationary employment as an apprentice in such a program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(B) ***Fringe benefits.*** Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringe benefits must be paid in accordance with that determination.

(C) ***Apprenticeship ratio.*** The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project pursuant to 29 CFR 5.5(a)(4)(i)(D). Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated in 29 CFR 5.5(a)(4)(i)(A), must be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(D) ***Reciprocity of ratios and wage rates.*** Where a contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality in which the construction is being performed must be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio and wage rate specified in the contractor's registered program must be observed.

(ii) ***Equal employment opportunity.*** The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

(5) ***Compliance with Copeland Act requirements.*** The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

(6) ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (11), along with the applicable wage determination(s) and such other clauses or contract modifications as OEMR or DOE may by appropriate instructions require, and a clause requiring the subcontractors to include these clauses and wage determination(s) in any lower tier subcontracts. The prime contractor is responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in this section. In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and may be subject to debarment, as appropriate.

(7) ***Contract termination: debarment.*** A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

(8) ***Compliance with Davis-Bacon and Related Act requirements.*** All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

(9) ***Disputes concerning labor standards.*** Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) ***Certification of eligibility.***

(i) By entering into this contract, the contractor certifies that neither it nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of 40 U.S.C. 3144(b) or § 5.12(a).

(iii) The penalty for making false statements is prescribed in the U.S. Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001.

(11) ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the DBA, Related Acts, this part, or 29 CFR part 1 or 3;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the DBA, Related Acts, this part, or 29 CFR part 1 or 3; or

(iv) Informing any other person about their rights under the DBA, Related Acts, this part, or 29 CFR part 1 or 3.

If Subrecipient has questions regarding when the Davis Bacon Act applies, wage determinations, or compliance monitoring, it shall contact OEMR.

17. <u>Copeland "Anti-Kickback" Act</u>

Subrecipients and its contractors and subcontractors shall comply 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 Copeland 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. Subrecipient shall report all suspected or reported violations to OEMR.

18. <u>Contract Work Hours and Safety Standards Act</u>

Where applicable, all contracts Subrecipient enters into under this Agreement that are in excess of $100,000 and involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C. § 3702 and § 3704, as supplemented by Department of Labor regulations at 29 CFR Part 5. Subrecipient shall comply with the following:

(1) ***Overtime requirements.*** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) ***Violation; liability for unpaid wages; liquidated damages.*** In the event of any violation of the clause set forth in 29 CFR 5.5(b)(1), the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages and interest from the date of the underpayment. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchpersons and guards, employed in violation of the clause set forth in 29 CFR 5.5(b)(1), in the sum of $32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by 29 CFR 5.5(b)(1).

(3) ***Withholding for unpaid wages and liquidated damages*** —

(i) ***Withholding process.*** OEMR may, upon its own action, or must, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime contractor or any subcontractor for any unpaid wages; monetary relief, including interest; and liquidated damages required by the clauses set forth in 29 CFR 5.5(b), any other federal contract with the same prime contractor, or any other federally assisted contract subject to the Contract Work Hours and Safety Standards Act that is held by the same prime contractor (as defined in 29 CFR 5.2). The necessary funds may be withheld from the contractor under this contract, any other federal contract with the same prime contractor, or any other federally assisted contract that is subject to the Contract Work Hours and Safety Standards Act and is held by the same prime contractor, regardless of whether the other contract was awarded or assisted by the same agency, and such funds may be used to satisfy the contractor liability for which the funds were withheld.

(ii) ***Priority to withheld funds.*** The Department of Labor has priority to funds withheld or to be withheld in accordance with 29 CFR 5.5(a)(2)(i) or (b)(3)(i), or both, over claims to those funds by:

(A) A contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;

(B) A contracting agency for its reprocurement costs;

(C) A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a contractor, or a contractor's bankruptcy estate;

(D) A contractor's assignee(s);

(E) A contractor's successor(s); or

(F) A claim asserted under the Prompt Payment Act, 31 U.S.C. §§ 3901–3907.

(4) ***Subcontracts.*** The contractor or subcontractor must insert in any subcontracts the clauses set forth in 29 CFR 5.5(b)(1)-(5) and a clause requiring subcontractors to include these clauses in any lower tier subcontracts. The prime contractor is responsible for compliance by any subcontractor or lower tier subcontractor with the clauses in 29 CFR 5.5(b)(1)-(5). In the event of any violations of these clauses, the prime contractor and any subcontractor(s) responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(5) ***Anti-retaliation.*** It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

(i) Notifying any contractor of any conduct which the worker reasonably believes constitutes a violation of the Contract Work Hours and Safety Standards Act (CWHSSA) or its implementing regulations in this part;

(ii) Filing any complaint, initiating or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under CWHSSA or this part;

(iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under CWHSSA or this part; or

(iv) Informing any other person about their rights under CWHSSA or this part.

19. <u>Equal Employment Opportunity</u>

If this a federally assisted construction contracts exceeding $10,000 annually, in accordance with Executive Order 11246:

a. Subrecipient and contractors are prohibited from discriminating in employment decision on the basis of race, color, religion, sex, sexual orientation, gender identity, or national origin;
b. Subrecipient shall flow down the appropriate language to all contractors and subcontractors to ensure equal opportunity is provided in all aspects of their employment; and

c. Subrecipient, contractors, and subcontractors are prohibited from taking adverse employment actions against applicants and employees for asking about, discussing, or sharing information about their pay or, under certain circumstances, the pay of their co-workers.

20. Debarment and Suspension

Subrecipient shall not award a contract to parties listed on the governmentwide exclusions in the System for Award Management (SAM) in accordance with 2 CFR part 180 that implements Executive Orders 12549 and 12689. Subrecipient shall include a similar term or condition in all lower tier contracts and transactions.

21. Procurement of Recovered Materials

Subrecipient and its contractors shall comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. Section 6002's requirements include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired during the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

22. Domestic Preference Requirements / Buy America Requirement

Subrecipient shall comply with the Build America Buy America Act ("BABA"), under subtitle IX of the IIJA, Public Law 177-58, and 2 CFR part 184. Consistent with BABA and 2 CFR part 184, none of the funds provided under this Agreement may be used for an "infrastructure project" unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States or Subrecipient applies for and receives a waiver to the domestic content procurement preference requirement. Definitions of the above terms are found in 2 CFR part 184.

Subrecipient shall include BABA terms and conditions in all contracts, subcontracts, and purchase orders for work performed under an infrastructure project. Subrecipient shall also provide OEMR certifications or equivalent documentation to prove compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, and not covered by a waiver or exemption, are produced in the United States. OEMR will keep these certifications and produce them upon request to DOE, auditors, or Office of Inspector General.

When necessary, Subrecipient may request to waive the BABA's application. If Subrecipient believes it may be eligible for a waiver, it shall contact OEMR to discuss its waiver request. Subrecipient waiver requests shall be in writing to OEMR. After OEMR receives a Subrecipient's request for a waiver, it will review and may apply to DOE for a waiver from

BABA on Subrecipient's behalf.

23. National Environmental Policy Act

DOE made a National Environmental Policy Act (NEPA) determination by issuing a categorical exclusion for all activities that OEMR listed in its EECBG Application to DOE. DOE thereby authorized OEMR to use EECBG funds for defined project activities as long as OEMR complies with conditions DOE included in the Award's Special Terms and Conditions. Consistent with those Special Terms and Conditions, Subrecipient shall immediately notify OEMR of (a) extraordinary circumstances; (b) cumulative impacts or connected actions that may lead to significance effects on the human environment; or (c) any inconsistency with the "integral elements" (as contained in 10 CFR Part 1021, Appendix B) as they relate to project activities.

24. Historic Preservation

Prior to expending funds under this Agreement to alter any structure or site, OEMR and Subrecipient shall comply with Section 106 of the National Historic Preservation Act (NHPA). Subrecipient shall not take any action that results in an adverse effect to historic properties pending compliance with Section 106. OEMR and DOE have executed Historic Preservation Programmatic Agreement. Subrecipients shall adhere to the terms and restrictions of this Historic Preservation Programmatic Agreement. Subrecipients shall review the online NEPA and Historic Preservation training at www.energy.gov/node/4816816.

25. Conflicts of Interest

Subrecipient shall comply with the requirements of DOE's Interim Conflict of Interest Policy for Financial Assistance (Interim COI Policy) found at: https://www.energy.gov/management/department-energy-interim-conflict-interest-policy-requirements-financial-assistance.

By signing this Agreement, Subrecipient certifies to OEMR that it is in compliance with all requirements in the Interim COI Policy. Subrecipient shall disclose, manage, and report conflicts of interest as per the Interim COI Policy. Subrecipient shall identify all significant financial conflicts of interest to OEMR within thirty (30) days of the effective date of this Agreement or when the Subrecipient identifies a significant financial interest.

26. Fraud, Waste, Abuse

Subrecipient shall timely disclose in writing to DOE or OEMR all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Award. Failure to make required disclosure can result in any of the remedies described in 2 CFR 200.339.

27. Incurred Costs Reporting, Tracking, and Segregation

Funds under this Agreement can be used in conjunction with other funding as necessary to complete projects. However, tracking and reporting must be separate to meet the IIJA reporting requirements and related Office of Management and Budget (OMB) Guidance. Subrecipient shall keep separate records for IIJA funds and ensure those records comply with IIJA requirements. IIJA funding that is supplemental to an existing grant or cooperative agreement is one-time funding.

28. Responsibility for Acts and Omissions

Each party shall be responsible for its own acts and omissions and shall not be responsible for the acts and omissions of the other party. With respect to any claim or action arising out of this Agreement, each party shall only be liable for payment of that portion of any and all claims, liabilities, costs, expenses, demands, settlements, or judgments resulting from the negligence, actions or omissions of itself and its employees.

29. Fiscal Necessity and Non-Appropriation

This Agreement is federally funded. It is understood and agreed that OEMR and the State of Idaho are governmental entities and that the OEMR's payments herein provided for shall be paid from federal funding sources. This Agreement shall in no way be construed to bind OEMR or the State of Idaho beyond the term of any particular appropriation or award of funds by the United States Congress, DOE, or any other federal agency or entity, as may exist from time to time, or beyond the term of any particular spending authority of federal funds by the Legislature of the State of Idaho.

OEMR reserves the right to terminate this Agreement, in whole or in part, if, in its sole judgment, the United States Congress, DOE, or other applicable federal agency or entity, withdraws or freezes the State's federal funding or fails, neglects, or refuses to appropriate or provide sufficient funds, including any sequestration of funds pursuant to federal law, as may be required to continue payments under this Agreement. Neither OEMR or the State of Idaho shall be required to transfer funds between accounts if funds are reduced or unavailable.

OEMR further reserves the right to terminate this Agreement if, in its sole judgment, the Legislature of the State of Idaho withdraws or freezes OEMR's spending authority regarding the federal funds required to continue payments under this Agreement.

Any termination under this section shall take effect on ten (10) days written notice to Subrecipient. Upon any such termination, all affected future rights and liabilities of the parties shall thereupon cease, and neither OEMR nor the State of Idaho shall be liable for any penalty, expense, or liability, or for general, special, incidental, consequential, or other damages resulting therefrom.

30. Boycott of Israel

Pursuant to Idaho Code § 67-2346, if payments under the Agreement exceed one hundred

thousand dollars ($100,000) and contractor employs ten (10) or more persons, Subrecipient will ensure that contractor certifies that it is not currently engaged in, and will not for the duration of the Agreement engage in, a boycott of goods or services from Israel or territories under its control. The terms in this section defined in Idaho Code § 67-2346 shall have the meaning defined therein.

31. Ownership or Operation by China

Pursuant to Idaho Code § 67-2359, Subrecipient shall require each contractor to certify that contractor is not currently owned or operated by the government of China and will not for the duration of the Agreement be owned or operated by the government of China. The terms in this section defined in Idaho Code § 67-2359 shall have the meaning defined therein.

32. Disclosure of Abortion Related Matters

The State of Idaho, a county, a city, a public health district, a public school district, or any local political subdivision thereof is subject to the No Public Funds for Abortion Act, Idaho Code title 18, chapter 87 and this provision is included in the Agreement to aid in compliance. Subrecipient shall not utilize funds under this agreement for any purpose that would violate the No Public Funds for Abortion Act. Subrecipient shall require all contractors to disclose, unless they are within one of the exemptions, if the contractor will use State facilities or public funds to provide, perform, participate in, promote or induce, assist, counsel in favor, refer or train a person for an abortion related activity. Please refer to the No Public Funds for Abortion Act for definitions of the terms used in this section.

33. No Personal Liability

Subrecipient specifically understands and agrees that in no event shall any official, officer, employee, or agent of OEMR be personally liable for any representation, statement, covenant, warranty, or obligation contained in or made in connection with this Agreement, express or implied.

34. Relationship of the Parties

OEMR and Subrecipient do not intend to create an employer and employee relationship with this Agreement. Subrecipient shall be responsible to withhold all monies required by law for Federal Insurance Contributions Act (FICA) and income tax purposes.

35. Insurance

Subrecipient shall be self-insured or maintain insurance of the types and in the amounts typically maintained by professionals in the same or similar field as the Subrecipient, including, but not limited to, comprehensive generally liability insurance, professional malpractice insurance, and workers' compensation insurance if required under the law. Such insurance shall be maintained with insurance companies properly license to do business in Idaho unless