

FUNDING OPPORTUNITY ANNOUNCEMENT G23AS00011
ATTACHMENT C
2023 NGGDPP Award Terms and Conditions

1. Acceptance

Acceptance of a Federal Financial Assistance award from the Department of the Interior (DOI) carries with it the responsibility to be aware of and comply with the terms and conditions of award. Acceptance is defined as the start of work, drawing down funds, or accepting the award by signature or electronic means. Awards are based on the application submitted to and approved by DOI and are subject to the terms and conditions incorporated either directly or by reference below.

2. Grant Administration

This grant will be administered by:

U.S. Geological Survey
Office of Acquisition and Grants
12201 Sunrise Valley Drive, MS205
Reston, VA 20192
Margaret Eastman, Contracting Officer
Phone: (703) 648-7366
E-mail: mrussell@usgs.gov

Written communications shall make reference to the Assistance Award number and shall be mailed (or emailed) to the above address.

3. Method of Payment

Payments under financial assistance awards must be made using the Department of the Treasury Automated Standard Application for Payments (ASAP) system (www.asap.gov).

- a) The Recipient agrees that it has established or will establish an account with ASAP. USGS will initiate enrollment in ASAP. If the Recipient does not currently have an ASAP account, they must designate an individual (name, title, address, phone and e-mail) who will serve as the Point of Contact (POC).
- b) With the award of each grant/cooperative agreement, a sub-account will be set up from which the Recipient can draw down funds. After Recipients complete enrollment in ASAP and link their banking information to the USGS ALC (14080001), it may take up to 10 days for sub-accounts to be activated and for funds to be authorized for drawdown in ASAP.
- c) Inquiries regarding payment should be directed to ASAP at 855-868-0151.
- d) Payments may be drawn in advance only as needed to meet immediate cash disbursement

needs.

4. Program Personnel

A. Principal Investigator

The Principal Investigator is the individual designated by the Recipient (and approved by the USGS) who is responsible for the technical direction of the research project. The Principal Investigator cannot be changed or become substantially less involved than was indicated in the Recipient's proposal, without the prior written approval of the Contracting Officer.

B. Grants Program Manager

The Grants Program Manager will work closely with the Principal Investigator to ensure that all technical requirements are being met. Grants Program Manager responsibilities include, but are not limited to, providing technical advice on the accomplishment of the proposal's goals; reviewing the technical content of reports and the other information delivered to the USGS; determining the adequacy of technical reports; and conducting site visits, in coordination with the Contracting Officer, as frequently as practicable. The Grants Program Manager is Michaela Johnson, U.S. Geological Survey, Box 25046, Mail Stop 975, Denver, CO 80225.

The NGGDPP Program Coordinator is Lindsay Powers, U.S. Geological Survey, Box 25046, Mail Stop 975, Denver, CO 80225. The Program Coordinator does not have the authority to issue any technical direction which constitutes an assignment of additional work outside the scope of the award; in any manner cause a change in the total cost or the time required for performance of the award; or change any of the terms, conditions, or general provisions of the award.

C. Contracting Officer (CO)

Contracting officers are individuals who have been delegated in writing by the USGS Office of Acquisition and Grants as the sole authority designated to obligate Federal funds and create terms and conditions of awards. They are the only individuals who have authority to negotiate, enter into, and administer awards resulting for this program. Contracting officers have responsibility to ensure the effective use of Federal funds.

Functions of the Contracting Officer include but are not limited to:

- (1) Issuing the grant program announcement in coordination with the Grants Program Manager.
- (2) Receiving grant proposals and related documents in response to a grant program announcement. The contracting officer as receiving official shall mark all proposals with a control number and the date officially received. He/she shall notify each applicant of the receipt of their proposal.

- (3) Approving the Grant Program Manager’s Technical Evaluation Plan, which describes in detail the evaluation process for a competitive grant/cooperative agreement program. The contracting officer shall ensure the openness and fairness of the evaluation and selection process.
- (4) Serving in an advisory capacity at peer review panel meetings. He/she shall interpret grant management policies to panel members.
- (5) Notifying grant program applicants whether or not they were selected for funding or of any other disposition of their proposal.
- (6) Negotiating, as necessary, the final grant budget.
- (7) Issuing grant awards and revisions to awards.
- (8) Approving invoice payments.
- (9) Receiving all requests for changes to an award. The contracting officer shall serve as the mandatory control point for all official communications with the grantee which may result in changing the amount of the grant/cooperative agreement, the grant/cooperative agreement budget, or any other terms and conditions of the grant.
- (10) Receiving financial reports required by the terms and conditions of the award.
- (11) Closing out grant/cooperative agreement awards when all applicable award requirements have been complied with.

5. Reporting Requirements

A. Requirement reports/documents

The Principal Investigator is required to submit the following reports or documents:

Report/Document	No. of Copies and Method of Transmittal	Submit To	When Due
(1) For collection inventory: on-line collection inventory form	Submit records describing collections using submission guidance at: https://www.usgs.gov/programs/national-geological-and-geophysical-data-preservation-program/data-submission	See Section 5.B (1) below	Within 90 calendar days after the end of the performance period. See Section 5.B (1) below.

(2) For metadata describing individual samples or records in a collection: digital metadata files	Provide metadata records and digital files to ReSciColl, formerly the National Digital Catalog, through one of the supported methods documented at https://www.usgs.gov/core-science-systems/national-geological-and-geophysical-data-preservation-program/prepare-metadata	See Section 5.B (2) below	Within 90 calendar days after the end of the performance period. See Section 5.B (2) below.
(3) For geologic maps submitted to NGMDB: digital metadata files	Provide metadata records to the ReSciColl through one of the supported methods documented at https://www.usgs.gov/core-science-systems/national-geological-and-geophysical-data-preservation-program/prepare-metadata and GeMS deliverables must be submitted following the guidance to the NGMDB Connect web site .	See Section 5.B (3) below	Within 90 calendar days after the end of the performance period. See Section 5.B(3) below.
(4) Priority 1 and 3, borehole informationP	Send information described in template provided in A2, Priority 1 and Priority 3- NGGDPP borehole template.xlsx	See Section 5.B (4) below	Within 90 calendar days after the end of the performance period. See Section 5.B(4)
(5) Priority 3, Identified critical mineral resources deposits and districts	Send information described in template provided in A2 – FY 2023 Priority 3 – Identify Critical Minerals, Attachment D_MineralDeposits_Districts_Templates.zip as email attachments to Grants Program Manager (NGGDPP@usgs.gov) and USMIN (Nick Karl, nkarl@usgs.gov)	See Section 5.B (5) below	Within 90 calendar days after the end of the performance period. See Section 5.B (5) below.

(6) Priority 3, Preserving samples for Geochemical Analyses for Characterizing Critical Mineral Resources	Samples preserved for analysis must be inventoried with the sample number and item-level documentation. The IGSN, if available, should also be provided. These must be submitted for registry in ReSciColl. Metadata guidance is available at https://www.usgs.gov/core-science-systems/national-geological-and-geophysical-data-preservation-program/prepare-metadata	See Section 5.B (6) below	Within 90 calendar days after the end of the performance period. See Section 5.B (6) below.
(7) Final technical report	Send word (*.docx) or Adobe Acrobat PDF file as an email attachment to Grants Program Manager	See Section 5.B (7) below	Within 90 calendar days after the end of the performance period. See Section 5.B (7) below.
(9) Publications	Send Adobe Acrobat PDF file as an email attachment to Grants Program Manager	See Section 5.B (9) below	Within 90 calendar days after the end of the performance period. See Section 5.B (9) below.
(9) Final SF 425 Financial Status Report	See Section 5.B(9)	See Section 5.B (9) below	Within 120 calendar days after the end of the performance period. See Section 5.B (9) below.

B. Report preparation instructions

The Recipient must prepare the reports/documents in accordance with the following instructions:

- (1) *Collection Inventory*. The recipient must submit records for collections to

ReSciColl. Record entry must be completed within 90 calendar days after the end of the project period. NGGDPP will provide required metadata attributes for collection level metadata, as well as upload and/or access protocols, by email and website no later than July 1, 2023.

- (2) *Metadata for ReSciColl, formerly the National Digital Catalog.* Digital metadata files describing individual samples in collections, including data converted to digital format, rescued and preserved materials, and assets applicable to Priority 1, 2 (if applicable) and 3 must be submitted to ReSciColl (formerly the National Digital Catalog). Record entry must be completed within 90 calendar days after the end of the project period. NGGDPP will provide required metadata attributes for metadata, as well as upload and/or access protocols, by website no later than July 1, 2023.
- (3) *Geologic Maps.* For providing geologic maps preserved in Geologic Mapping Schema (GeMS) format (<https://ngmdb.usgs.gov/Info/standards/GeMS>) to the National Geologic Map Database, submit deliverables following the [guidance](#) to the [NGMDB Connect web site](#). Please consult Dave Soller, the NGMDB Project Chief (drsoller@usgs.gov), or send inquiries to ngmdb@usgs.gov with any [questions](#). During the submittal an email confirmation will also be sent to the Program email box at nggdpp@usgs.gov.
- (4) *Priority 1 and 3, Compilation of Borehole Data.* Compiled borehole information in the template, [NGGDPP borehole template.xlsx](#), must be emailed to the general NGGDPP email box at nggdpp@usgs.gov. This template includes location (in decimal degrees) and total depth and should include if the information is available: identification of stratigraphic tops, lithology, driller's logs, construction information, imagery, geophysical data, and analytical results. This template may be updated with minor enhancements and will be provided by May 1, 2023.
- (5) *Priority 3, Mineral Deposits and Districts.* Compiled mineral districts and deposit map files applicable to Priority 3 requirements must be emailed to the USMIN representative, Nick Karl (nkarl@usgs.gov) and the general NGGDPP email box at nggdpp@usgs.gov.
- (6) *Priority 3, Preserving samples for Geochemical Analyses for Characterizing Critical Mineral Resources.* The collection and individual samples preserved for analysis must be inventoried with the sample number and item-level documentation. The IGSN, if available, should also be provided. These must be submitted for registry in ReSciColl using NGGDPP metadata templates available by July 1, 2023. Documentation and publication of analytical results are handled under the USGS data release, <https://doi.org/10.5066/P9WHRLXH>.
- (7) *All Project Awards.* The final technical report must document and summarize the results of the work and is limited to no more than five pages. This report must contain a comparison of actual accomplishments to the goals established for the period; reasons why established goals were not met, if applicable; and other pertinent information. The final report must be submitted within 90 calendar days of the end of the project period.
 - (a) Submit the final technical report electronically as an Adobe Acrobat PDF file e- mail attachment to: nggdpp@usgs.gov

with a copy of the transmittal sent to Margaret Eastman at mrussell@usgs.gov.

- (b) Final technical reports must consist of the following sections:
- Cover page with the following information:
 - a. Award Number
 - b. Title
 - c. Author and affiliation with address and zip code
 - d. Author's telephone number and e-mail address
 - e. Term covered by the award (start and end dates)
 - f. Submittal date of final technical report
 - g. Abstract
 - Main body of the report with the following information:
 - a. Comparison of actual accomplishments to the goals established for the period.
 - b. If established goals were not met, explanation of circumstances and impediments.
 - c. Required: 500-word summary with specific examples of user success stories and/or other societal benefits that highlight accomplishments in this project. A png image, 300 DPI or greater, is required to capture the essence of the project. Please note the summary and image may be shared in new releases, communications, or websites as examples of success stories and project types.

A recommended, but not required, [Final Technical Report template](#) is available on the NGGDPP site with guidance within the document accessed at: https://www.sciencebase.gov/catalog/file/get/5baa94ade4b08583a5cd878e?name=FinalTechnicalReport_Template.docx.

The final technical report is limited to no more than five pages. A final technical report must be submitted within 90 days after the end of the grant performance period. Failure to submit a final technical report may hinder receipt of future NGGDPP funds. Final technical reports shall be submitted electronically to the general NGGDPP email box, nggdpp@usgs.gov. A courtesy copy shall be submitted to Margaret Eastman, USGS Contract Specialist, mrussell@usgs.gov.

(8) *Publications*

2.

(a) Acknowledgment of Support

Recipient is responsible for assuring that an acknowledgment of USGS support:

1. is made in any publication (including World Wide Web pages) of any material based on or developed under this Grant, in the

following terms:

“This material is based upon work supported by the U.S. Geological Survey under Grant No. *(insert award number)*.”

2. is orally acknowledged during all news media interviews, including popular media such as radio, television and news magazines.

(b) Disclaimer

Recipient is responsible for assuring that every publication of material (including World Wide Web pages) based on or developed under this Grant, contains the following disclaimer:

“The views and conclusions contained in this document are those of the authors and should not be interpreted as representing the opinions or policies of the U.S. Geological Survey. Mention of trade names or commercial products does not constitute their endorsement by the U.S. Geological Survey.”

(c) Publication

Publication of the results of any project carried out under this assistance award is authorized in professional journals, trade magazines, or may be made by the USGS. Such manuscripts or publications submitted to journals or professional publications for publication shall be accompanied by the following notation:

“This manuscript is submitted for publication with the understanding that the United States Government is authorized to reproduce and distribute reprints for Governmental purposes.”

(d) Copies for USGS

Recipient is responsible for assuring that the USGS Project Office is provided a digital version, preferably as a MS Word DOCx file, of every accepted manuscript upon acceptance for publication by the journal.

Submit an Adobe Acrobat PDF file of publications to: gd-erp-coordinator@usgs.gov

(e) USGS Logo

Use of the USGS logo (also known as "visual identity" or "identifier") constitutes the recipient's

Agreement to and acceptance of the following terms:

- The USGS identifier is trademarked and not in the public domain.
- Use of the trademarked USGS identifier is authorized by USGS for use only by recipient's of USGS funding.
- Use is authorized on information products that result from research funded by the financial assistance award.
- Use the USGS identifier for any other purpose without written permission from USGS is prohibited; doing so constitutes trademark infringement.
- Recipient will adhere to the design requirements, which are as follows:
 - The USGS identifier must appear in black, white, or green only.
 - The USGS identifier cannot be modified in any way except for proportional sizing.
 - The USGS identifier should appear at the same size as logos of other agencies, if any.
 - If used on a digital product, the USGS identifier should link to www.usgs.gov

(f) Department of the Interior Requirements

Two copies of each publication produced under a Grant or Cooperative Agreement shall be sent to the Natural Resources Library with a transmittal that identifies the sender and the publication. The address of the library is:

U.S. Department of the Interior
Natural Resources Library
Division of Information and Library Services Gifts and Exchange Section
18th and C Streets, NW
Washington, DC 20240

(7) *Final Federal Financial Report*

- (a) The Recipient will liquidate all obligations incurred under the award and submit a final SF 425, Federal Financial Report, electronically through GrantSolutions (<https://www.home.grantsolutions.gov/home>) or by email to the Contracting Officer at mrussell@usgs.gov no later than 120 calendar days after the Agreement completion date. Recipient must include the USGS award number in the subject line of all email correspondence.

- (b) Recipient will promptly return any unexpended federal cash advances or will complete a final draw from ASAP to obtain any remaining amounts due. Once 120 days has passed since the Agreement completion date, USGS shall unilaterally deobligate federal funds as reflected in the Final SF 425.
- (c) Subsequent revision to the final SF 425 will be considered only as follows:
 - i. When the revision results in a balance due to the Government, the Recipient must submit a revised final SF 425, Federal Financial Report, and refund the excess payment whenever the overcharge is discovered, no matter how long the lapse of time since the original due date of the report.
 - ii. When the revision represents additional reimbursable costs claimed by the Recipient, a revised final SF 425 may be submitted to the USGS Grants Management Official with an explanation. If approved, the USGS will either request and pay a final invoice or reestablish the ASAP subaccount to permit the Recipient to make a revised final draw. Any revised final report representing additional reimbursable amounts must be submitted no later than 1 year from the due date of the original report, i.e., 15 months following the Agreement completion date. USGS will not accept any revised SF 425 covering additional expenditures after that date and will return any late request for additional payment to the Recipient.

A Recipient's failure to submit the required final technical report and final financial report will likely result in delay or non-issuance of new awards.

6. Adherence to Original Research Objective and Budget Estimate

Any commitments or expenditures incurred by the Recipient in excess of the funds provided by this award shall be the responsibility of the Recipient. Expenditures incurred prior to the effective date of this award cannot be charged against award funds.

7. Revisions and Prior Approvals

Modifications to this award shall generally be executed by mutual written consent of the parties, with the exception of certain purely administrative changes that may be executed unilaterally by the USGS. Recipients may make certain limited budgetary and programmatic changes without prior USGS approval as outlined in 2 CFR 200.308 and 200.407. Any proposed change which requires prior written approval of the USGS shall be submitted in writing to the Contracting Officer to the address at 2. above at least thirty (30) days prior to the requested effective date of the proposed change. The USGS will respond to the change request within thirty (30) days of receipt.

- A. Extensions. Recipients are specifically advised that requests for extension or other change to the budget or project period(s) require prior written approval. Such requests must be submitted as outlined above and be accompanied by a statement supporting the extension and a revised budget indicating the planned use of all unexpended funds during the proposed extension period.

- B. Transfer of Funds. Recipients are specifically advised that prior written approval of the USGS Contracting Officer is not required for transfer of funds between direct cost categories when the cumulative amount of the transfer during the performance period does not exceed ten percent (10%) of the total USGS award. Prior written approval is required from the USGS Contracting Officer for transfers of funds in excess of the ten percent limitation.

8. Government Furnished Equipment or Equipment Authorized for Purchase

Title to equipment acquired wholly or in part with Federal funds shall be vested in the Recipient unless otherwise specified in the award document. The Recipient shall retain control and maintain an inventory of such equipment as long as there is a need for such equipment to accomplish the purpose of the project, whether or not the project continues to be supported by Federal funds. When there is no longer a need for such equipment to accomplish the purpose of the project, the Recipient shall use the equipment in connection with other Federal awards the Recipient has received. Disposal of equipment shall be in accordance with 2 CFR 200.313.

None

9. Pre-Agreement Costs

Pre-agreement costs are not authorized under this program. Costs must be obligated during the project period.

10. Administrative Requirements

The Recipient shall be subject to the following regulations, which are incorporated herein by reference. Copies of these regulations can be obtained from the Internet at: <https://www.ecfr.gov/>

2 CFR Part 200, *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards*, as implemented by the Department of the Interior in 2 CFR Part 1402 and 43 CFR Part 12.

11. Department of the Interior Standard Terms and Conditions

The Recipient shall be subject to the Department of the Interior Standard Terms and Conditions which are incorporated herein by reference and available on the Internet at: <https://www.doi.gov/grants/doi-standard-terms-and-conditions>

12. Additional Terms and Conditions

A. Research Integrity

- 1) USGS requires that all grant or cooperative agreement Recipient organizations adhere to the Federal Policy on Research Misconduct, Office of Science and Technology Policy, December 6, 2000, 65 Federal Register (FR) 76260. The Federal Policy on Research Misconduct outlines requirements for addressing allegations of research misconduct, including the investigation, adjudication, and appeal of allegations of research misconduct and the implementation of appropriate administrative actions.
- 2) The Recipient must promptly notify the USGS Project Office when research misconduct that warrants an investigation pursuant to the Federal Policy on Research Misconduct is alleged.

B. Data Availability

- 1) Applicability. The Department of the Interior is committed to basing its decisions on the best available science and providing the American people with enough information to thoughtfully and substantively evaluate the data, methodology, and analysis used by the Department to inform its decisions.
- 2) Use of Data. The regulations at 2 CFR 200.315 apply to data produced under a Federal award, including the provision that the Federal Government has the right to obtain, reproduce, publish, or otherwise use the data produced under a Federal award as well as authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.
- 3) Availability of Data. The recipient shall make the data produced under this award and any subaward(s) available to the Government for public release, consistent with applicable law, to allow meaningful third party evaluation and reproduction of the following:
 - a. The scientific data relied upon;
 - b. The analysis relied upon; and
 - c. The methodology, including models, use to gather and analyze the data.

C. Conflict of Interest

- 1) Applicability.
 - a. This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.
 - b. In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict of interest provisions in 2 CFR 200.318 apply.
- 2) Requirements.

- a. Non-Federal entities must avoid prohibited conflicts of interest, including any significant financial interests that could cause a reasonable person to question the recipient's ability to provide impartial, technically sound, and objective performance under or with respect to a Federal financial assistance agreement.
- b. In addition to any other probations that may apply with respect to conflicts of interest, no key official of an actual or proposed recipient or subrecipient, who is substantially involved in the proposal or project, may have been a former Federal employee who, within the last one (1) year, participated personally and substantially in the evaluation, award, or administration of an award with respect to that recipient or subrecipient or in development of the requirement leading to the funding announcement.
- c. No actual or prospective recipient or subrecipient may solicit, obtain, or use non-public information regarding the evaluation, award, or administration of an award to that recipient or subrecipient or the development of a Federal financial assistance opportunity that may be of competitive interest to that recipient or subrecipient.

3) Notification.

- a. Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112, Conflicts of Interest.
- b. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the USGS Grants Management Official in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

4) Restrictions on Lobbying. Non-Federal entities are strictly prohibited from using funds under this grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR Part 18 and 31 USC 1352.

5) Review Procedures. The USGS Grants Management Official will examine each conflict of interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement, and will determine whether a significant potential conflict exists and, if it does, develop and appropriate means for resolving it.

6) Enforcement. Failure to resolve conflicts of interest in a matter that satisfies the Government may be cause for termination of the award. Failure to make required disclosures may result in any of remedies described in 2 CFR 200.338, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR Part 180).

D. Program Income

- 1) If the Recipient is an educational institution or nonprofit research organization, any other program income will be added to funds committed to the project by the Federal

awarding agency and Recipient and be used to further eligible project or program objectives, as described in 2 CFR 200.307(e)(2).

- 2) For all other types of Recipients, any other program income will be deducted from total allowable costs to determine the net allowable costs before calculating the Government's share of reimbursable costs, as provided in 2 CFR 200.307(e)(1).

E. Patent Rights (37 CFR § 401.14)

Unless otherwise provided in the Agreement, if this Agreement is for experimental, developmental, or research work, the following clause (implementing the Bayh-Dole Act, [35 U.S.C. § 200 et seq.]) shall apply. The recipient shall include this clause in all subawards for experimental, developmental, or research activities.

a. *Definitions*

1. INVENTION means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the USC, to 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. SUBJECT INVENTION means any invention of the recipient conceived or first actually reduced to practice in the performance of work under this Agreement, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d)) must also occur during the period of performance.
 3. 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.
 4. MADE when used in relation to any invention means the conception or first actual reduction to practice of such invention.
 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. NON-PROFIT ORGANIZATION means a domestic 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 domestic non-profit scientific or educational organization qualified under a State non-profit organization statute.
- b. Allocation of Principal Rights The recipient may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this Patent Rights clause and 35 U.S.C. § 203. With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world. If

the Agreement indicates it is subject to an identified international agreement or treaty, the U.S. Geological Survey (USGS) also has the right to direct the recipient to convey to any foreign participant such patent rights to subject inventions as are required to comply with that agreement or treaty.

b. *Allocation of Principal Rights*

1. The recipient may retain the entire right, title, and interest throughout the world to each subject invention solely made by recipient subject to the provisions of this Patent Rights clause, including (2) below, 35 U.S.C. §§ 202, 203 and 37 CFR § 401.14. Inventions made under this Agreement jointly by USGS and recipient will be jointly owned by both parties. However, where a USGS employee is a coinventor, the USGS may, for the purpose of consolidating rights in the invention and if it finds that it would expedite the development of the invention:
 - (a) license or assign whatever rights it may acquire in the subject invention to the nonprofit organization, small business firm, or non-Federal inventor in accordance with the provisions of this chapter; or
 - (b) acquire any rights in the subject invention from the nonprofit organization, small business firm, or non-Federal inventor, but only to the extent the party from whom the rights are acquired voluntarily enters into the transaction and no other transaction under this chapter is conditioned on such acquisition.

With respect to any subject invention in which the recipient retains title, the Federal Government shall have a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the U.S. the subject invention throughout the world. If the Agreement indicates it is subject to an identified international agreement or treaty, the U.S. Geological Survey (USGS) also has the right to direct the recipient to convey to any foreign participant such patent rights to subject inventions as are required to comply with that agreement or treaty.

2. If the recipient performs services at a Government owned and operated laboratory or at a Government owned and recipient operated laboratory directed by the Government to fulfill the Government's obligations under a Cooperative Research and Development Agreement (CRADA) authorized by 15 U.S.C. 3710a, the Government may require the recipient to negotiate an agreement with the CRADA collaborating party or parties regarding the allocation of rights to any subject invention the recipient makes, solely or jointly, under the CRADA. The agreement shall be negotiated prior to the recipient undertaking the CRADA work or, with the permission of the Government, upon the identification of a subject invention. In the absence of such an agreement, the recipient agrees to grant the collaborating party or parties an option for a license in its inventions of the same scope and terms set forth in the CRADA for inventions made by the Government.

c. *Invention Disclosure, Election of Title and Filing of Patent Applications by Recipient*

1. The recipient will disclose each subject invention to USGS within two months after the inventor discloses it in writing to recipient personnel responsible for the administration of patent matters. The disclosure to USGS shall be in the form of a

- written report and shall identify the Agreement under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding of the nature, purpose, operation, and, to the extent known, 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, 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 USGS, the recipient will promptly notify USGS of the acceptance of any manuscript describing the invention for publication, or of any on sale or public use planned by the recipient.
2. The recipient will elect in writing whether or not to retain title to any such invention by notifying USGS within two years of disclosure to USGS. However, in any case where publication, on sale, or public use has initiated the one-year statutory period wherein valid patent protection can still be obtained in the U.S., the period for election of title may be shortened by USGS to a date that is no more than 60 days prior to the end of the statutory period.
 3. The recipient will file its initial patent application on an invention to which it elects to retain title within one 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 U.S. after a publication, on sale, or public use. The recipient will file patent applications in additional countries or international patent offices within either ten months of the corresponding initial patent application, or six months from the date when permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications when such filing has been prohibited by a Secrecy Order.
 4. Requests for extension of the time for disclosure to USGS, election, and filing under subparagraphs 1., 2., and 3. may, at the discretion of USGS, be granted.
- d. *Conditions When the Government May Obtain Title*
- The recipient will convey to USGS, upon written request, title to any subject invention:
1. if the recipient fails to disclose or elect the subject invention within the times specified in paragraph c. above, or elects not to retain title, provided that USGS may only request title within 60 days after learning of the failure of the recipient to disclose or elect within the specified times;
 2. in those countries in which the recipient fails to file patent applications within the times specified in paragraph c. above, but prior to its receipt of the written request of USGS, the recipient shall continue to retain title in that country; or in any country in which the recipient decides not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- e. *Minimum Rights to Recipient*
1. The recipient will retain a non-exclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the recipient fails to disclose the subject invention within the times specified in paragraph c. above. The recipient's license extends to its domestic subsidiaries and affiliates, if any, within the corporate structure of which the recipient is a party and includes the right

- to grant sublicenses of the same scope to the extent the recipient was legally obligated to do so at the time the Agreement was made. The license is transferable only with the approval of USGS except when transferred to the successor of that part of the recipient's business to which the invention pertains.
2. The recipient's domestic license may be revoked or modified by USGS 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 at 37 CFR Part 404. This license will not be revoked in that field of use or the geographical areas in which the recipient 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 discretion of USGS to the extent the recipient, 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, USGS will furnish the recipient a written notice of its intention to revoke or modify the license, and the recipient will be allowed thirty days (or such other time as may be authorized by USGS for good cause shown by the recipient) after the notice to show cause why the license should not be revoked or modified. The recipient has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.
- f. *Recipient Action to Protect Government's Interest*
1. The recipient agrees to execute or to have executed and promptly deliver to USGS all instruments necessary to: (i) establish or confirm the rights the Government has throughout the world in those subject inventions for which the recipient retains title; and (ii) convey title to USGS when requested under paragraph d. above, and to enable the Government to obtain patent protection throughout the world in that subject invention.
 2. The recipient agrees to require, by written agreement, its employees, other than clerical and non-technical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the recipient each subject invention made under this Agreement in order that the recipient can comply with the disclosure provisions of paragraph c. above, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. The disclosure format should require, as a minimum, the information requested by paragraph c.1 above. The recipient shall instruct such employees through the 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 recipient will notify USGS of any decision not to continue 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 recipient agrees to include, within the specification of any U.S. patent application and any patent issuing thereon covering a subject invention, the following statement: “This invention was made with Government support under (identify the Agreement) awarded by the U.S. Geological Survey. The Government has certain rights in this invention.”
5. The recipient or its representative will complete, execute and forward to USGS a confirmation of a License to the U.S. Government and the page of a United States patent application that contains the Federal support clause within two months of filing any domestic or foreign patent application.

g. *Subcontracts*

1. The recipient will include this Patent Rights clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work. The subcontractor will retain all rights provided for the recipient in this Patent Rights clause, and the recipient will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractors’ subject inventions.
2. In the case of subcontracts, at any tier, when the prime award by USGS was a contract (but not a cooperative agreement), USGS, subcontractor, and contractor agree that the mutual obligations of the parties created by this Patent Rights clause constitute a contract between the subcontractor and the Foundation with respect to those matters covered by this Patent Rights clause.

h. *Reporting on Utilization of Subject Inventions*

The recipient 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 recipient 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 recipient and such other data and information as USGS may reasonably specify. The recipient also agrees to provide additional reports in connection with any march-in proceeding undertaken by USGS in accordance with paragraph j. of this Patent Rights clause. As required by 35 U.S.C. § 202(c)(5), USGS agrees it will not disclose such information to persons outside the Government without the permission of the recipient.

i. *Preference for United States Industry*

Notwithstanding any other provision of this Patent Rights clause, the recipient agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the U.S. unless such person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the U.S. However, in individual cases, the requirement for such an agreement may be waived by USGS upon a showing by the recipient or its assignee that reasonable but unsuccessful efforts have been made to award licenses on similar terms to potential licensees that would be likely to manufacture substantially in

the U.S. or that under the circumstances domestic manufacture is not commercially feasible.

j. *March-in Rights*

The recipient agrees that with respect to any subject invention in which it has acquired title, USGS has the right in accordance with procedures at 37 CFR § 401.6 and USGS regulations at 45 CFR § 650.13 to require the recipient, an assignee or exclusive licensee of a subject invention to grant a non-exclusive, 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 recipient, assignee, or exclusive licensee refuses such a request, USGS has the right to grant such a license itself if USGS determines that:

1. such action is necessary because the recipient 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 recipient, 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 recipient, assignee, or licensee; or
4. such action is necessary because the agreement required by paragraph i. of this Patent Rights clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the U.S. is in breach of such agreement.

k. *Special Provisions for Agreements with Non-profit Organizations*

If the recipient is a nonprofit organization, it agrees that:

1. rights to a subject invention in the U.S. may not be assigned without the approval of USGS, 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 recipient;
2. the recipient will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when USGS 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 recipient 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 or engineering 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 preference to a small business firm if the recipient determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided that the recipient 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 recipient. However, the recipient agrees that the Secretary of Commerce may

review the recipient's licensing program and decisions regarding small business applicants, and the recipient will negotiate changes to its licensing policies, procedures or practices with the Secretary when the Secretary's review discloses that the recipient could take reasonable steps to implement more effectively the requirements of this paragraph k.4.

1. *Communications*

All communications required by this Patent Rights clause must be submitted through the Office of Policy and Analysis (OPA), U.S. Geological Survey, Reston, VA 20192, gs_usgs_patents@usgs.gov.

F. Buy America Domestic Procurement Preference:

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at:

www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DO Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).
10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.

11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

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

– END OF ASSISTANCE AWARD DOCUMENT –