

# COOPERATIVE AGREEMENT TERMS AND CONDITIONS

(SEPT 2006 Rev 2)

**DoDGARs Part 22:** [http://www.dtic.mil/whs/directives/corres/pdf32106r\\_041398/part22.pdf](http://www.dtic.mil/whs/directives/corres/pdf32106r_041398/part22.pdf)

**DoDGARs Part 33:** [http://www.dtic.mil/whs/directives/corres/pdf/32106r\\_041398/part33.pdf](http://www.dtic.mil/whs/directives/corres/pdf/32106r_041398/part33.pdf)

## **OMB Circulars:**

<http://www.whitehouse.gov/omb/circulars/>

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\* Refer to DoDGARS, Part 22, appendices A-C for applicable modifications and requirements.

## **1. Order of Precedence**

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

- (a) The Federal statute authorizing this award, or any other Federal statutes directly affecting performance of this Cooperative Agreement.
- (b) Department of Defense Grant and Assistance Regulations (DoDGARs) 32 CFR Part 33, Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.
- (c) These General Terms and Conditions.
- (d) Other terms and conditions contained within this Cooperative Agreement and any attached schedules.

## **2. Statutes and Regulations**

This Cooperative Agreement is subject to the laws and regulations of the United States that apply to assistance instruments including Chapter 63 of U.S. Code Title 31. DoDGARs Part 33 is hereby incorporated into this Cooperative Agreement by reference. The following OMB circulars, as appropriate, are also incorporated by reference into this Cooperative Agreement:

- (a) A-87, "Cost Principles for State, Local, and Indian Tribal Governments"
- (b) A-102, "Grants and Cooperative Agreements with State and Local Governments,"
- (c) A-133, "Audits of States, Local Governments, and Non-Profit Organizations"

## **3. Cost Principles and Audit**

DoDGARs Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and the OMB Circulars below apply specifically to the Cooperator. The Cooperative Agreement shall be consistent with these authorities:

- (1) A-87, "Cost Principles for State, Local, and Indian Tribal Governments"
- (2) A-133, Audits of States, Local Governments, and Non-Profit Organizations"

Cooperator shall submit a copy of OMB Circular A-133 audit reports to the agency Inspector General (IG) and to DoD (IG).

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends \$750,000 or more during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year. A single audit is required to be uploaded by the recipient to the Federal Audit Clearinghouse within 30 calendar days after receipt of the auditor's report, or nine (9) months after the end of the audit period, whichever comes first.

## **4. Record Retention and Access Requirements**

All financial and programmatic records, supporting documents, statistical records, and other records of Cooperators or sub-Cooperators which are:

- (i) Required to be maintained by the terms of this part, program regulations or the Cooperative agreement,  
or

(ii) Otherwise reasonably considered as pertinent to program regulations or the Cooperative agreement.

**5. Modification of Cooperative Agreement**

The only method by which this Cooperative Agreement can be modified is by a written and signed modification. Administrative modification(s) to the Cooperative Agreement may be accomplished unilaterally by the signature of designated Cooperative Agreement Administrative Representative or Awarding Officer. Changes to the express clauses or terms of the Cooperative Agreement affecting price, quality, quantity or delivery of the Cooperator's duties shall be the subject of a bilaterally executed modification. No other communications, whether oral or in writing, shall modify this Cooperative Agreement.

**6. Prior Approvals and Changes**

Any program changes to the approved project must comply with 32 CFR 33.30.

**7. Allowable Costs**

Cooperative agreement funds may be applied only to those costs allowed under 32 CFR 33.22 and OMB Circular A-87.

**8. Unexpended Balance**

In the absence of any specific notice to the contrary, Cooperators are authorized to carry forward unexpended balances of funds received to subsequent funding periods.

**9. Overpayment and Earned Interest**

**Overpayment.** Within ninety (90) days after the end date of the Cooperative Agreement, any overpayment of funds shall be remitted to the Administrative Grants Officer (AGO) at the Administrative Office on the Award/Modification document, by check made payable to the Naval Facilities Engineering Command. An overpayment represents the difference between allowable actual expenditures and total disbursements received by the Cooperator.

**Advances and Earned Interest.** Interest earned on any account holding funds advanced under this Cooperative Agreement shall be remitted at least quarterly to the Naval Facilities Engineering Command, 1322 Patterson Ave. S.E., Washington, D.C. 20374-5065, by check made payable to the Treasury of the United States.

**10. Future Funding**

The Government's legal funding obligation is limited to the amount shown as the "Total Obligated on Award," section of the Cooperative Agreement document.

**11. Subagreements**

Cooperator shall comply with 32 CFR 33.37 in awarding any subagreement.

**12. Officials Not to Benefit**

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

**13. Hatch Act**

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

**14. Lobbying**

By signing and submitting this proposal, the Cooperator is providing the certification at Appendix A to 32 CFR Part 28 regarding lobbying.

**15. Environmental Standards**

By accepting funds under this Cooperative Agreement, the Cooperator assures that it will:

(a) Comply with applicable provisions of the Clean Air Act (42 U.S.C. 7401, *et seq.*) and Clean Water Act (33 U.S.C. § 1251, *et seq.*), as implemented by Executive Order 11738 [3 CFR § 1971-1975 Comp., p. 799] and Environmental Protection Agency (EPA) Rules at Subpart J of 40 CFR Part 32.

(b) Identify to the Cooperator agency any impact that this agreement may have on:

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

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

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

**16. Nondiscrimination**

By accepting funds under this Cooperative Agreement, the Cooperator assures that it will comply with applicable provisions of the following national policies prohibiting discrimination:

(a) On the basis of race, color, or national origin, in Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d, *et seq.*), as implemented by DoD regulations at 32 CFR Part 195

(b) On the basis of race, color, religion, sex, or national origin, in Executive Order 11246 [3 CFR, 1964-1965 Comp., p.339], as implemented by Department of Labor regulations at 41 CFR part 60. [NOTE: Use for Cooperative Agreements under which federally assisted construction work is to be done. See, DoDGARS, Part 22, Appendix B, p. 22-B-1 Matrix.]

(c) On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. 1681, et seq.). [NOTE: Use for any educational program or activity receiving Federal financial assistance. See, DoDGARS, Part 22, Appendix B, p. 22-B-1 Matrix.]

(d) On the basis of age, in the Age Discrimination Act of 1975 (42 U.S.C. 6101, et seq.) as implemented by Department of Health and Human Services regulations at 45 CFR Part 90. [NOTE: Use for all Cooperative agreements. See, DoDGARS, Part 22, Appendix B, p. 22-B-1 Matrix.]

(e) On the basis of handicap, in Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), as implemented by Department of Justice regulations at 28 CFR Part 41 and DoD regulations at 32 CFR Part 56. [NOTE: Use for all Cooperative agreements. See, DoDGARS, Part 22, Appendix B, p. 22-B-1 Matrix.]

## **17. Cargo Preference**

The Cooperator agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. § 1241), as implemented by Department of Transportation regulations at 46 CFR 381.7, which require that at least 50 percent of equipment, materials or commodities procured or otherwise obtained with U.S. Government funds under this Cooperative agreement, and which may be transported by ocean vessel, shall be transported on privately owned U.S.-flag commercial vessels, if available.

## **18. Preference for U. S. Flag Air Carriers**

Travel supported by U.S. Government funds under this Cooperative agreement shall use U.S.-flag air carriers (air carriers holding certificates under 49 U.S.C. § 41102) for international air transportation of people and property to the extent that such service is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974 (49 U.S.C. § 40118) and the interpretative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B-138942.

## **19. Profit or Fee**

In accordance with 32 CFR 22.205(b), no fee or profit may be charged to this Cooperative agreement.

## **20. Claims, Disputes, and Appeals**

### **(a) Cooperator Claims.**

Per 32 CFR 22.815, any claims arising out of this agreement must be:

- (1) Submitted in writing to the Grants Officer;
- (2) Specify the nature and basis for the relief requested, and;
- (3) Include all data and relevant facts in support of the claim.

### **(b) DOD Component Claims.**

Claims by a DOD Component shall be the subject of a written decision by the Grants Officer.

(c) Alternative Dispute Resolution (ADR).

The Parties shall use ADR to the maximum extent practicable, and comply with 32 CFR 22.815 ADR policies and procedures. The term “Parties” throughout this document refers to the Government and the successful awardee (Cooperator).

(d) Grants Officer Decisions.

(1) Within 60 calendar days after receipt of a written claim, the Grants Officer shall:

(a) Prepare a written decision, which shall include: the reasons for the decision; the relevant facts on which the decision is based; and the identity and mailing address of the cognizant Appeal Authority, and; shall be included in the award file, **or**

(b) Notify the Cooperator of a date when the written decision will be rendered. The notice shall address why additional time is needed.

(2) The Grants Officer’s decision is final, unless appealed. In the event of an appeal, the Parties shall endeavor to use ADR procedures to the maximum extent practicable.

(e) Formal Administrative Appeals.

All formal administrative appeals shall comply with the applicable provisions of 32 CFR 22.815(e), Claims, disputes, and appeals.

(1) Appeal Authority. The Assistant Commander for Acquisition is the Appeal Authority to decide formal, administrative appeals under this Grant.

(f) Non-exclusivity of remedies.

Nothing in this section is intended to limit a Cooperator’s right to any remedy under the law.

**21. Controlled Unclassified Information**

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

**22. Debarment and Suspension**

Cooperators shall comply with the requirements of DoDGARs Part 25, Subpart C, “Government-Wide Suspension and Debarment (Nonprocurement)”, 32 CFR Part 25, Subpart C. The Cooperator shall also include a similar term or condition in any lower-tier covered transactions, as required by DoDGARs Part 25, Subpart B, 32 CFR Part 25 (2004).

**23. Drug Free Workplace**

By accepting funds under this Cooperative Agreement, the Cooperator agrees to comply with the “Government –Wide Drug-Free Workplace (Grants)” requirements specified by DoDGARS Part 26, Subpart B (or Subpart C, if the Cooperator is an individual) of 32 CFR Part 26 (2004), which implements Secs. 5151-5160 of the Drug-Free Workplace Act of 1988 (41 U.S.C. § 701, et seq.).

#### **24. Standards for Financial Management Systems**

By accepting funds under this Cooperative agreement, the Cooperator agrees to maintain a financial management system that complies with 32 CFR 33.20

#### **25. Payment**

Cooperator shall submit any request for payment in accordance with 32 CFR 33.21 and 33.41. Payment will be made in accordance with 32 CFR 33.21.

[NOTE: **For any advance payment** the Cooperator must maintain or demonstrate the willingness to maintain the conditions set forth at 33 CFR 33.21(c). Include Cooperator is authorized to be paid in advance under the conditions set forth at 33 CFR 33.21(c).

Reimbursement is the preferred method when the requirements in 32 CFR 33.21(d) cannot be met. Cooperator is authorized reimbursements under the conditions set forth at 32 CFR 33.21(d).

#### **26. Procurement**

Cooperator’s system for acquiring goods and services under this Cooperative Agreement shall comply with 32 CFR 33.36, Procurement.

#### **27. Property**

Title shall vest in, and Cooperator shall manage, property under this Cooperative agreement in accordance with 32 CFR 33.31 through 33.34.

#### **28. Reports**

Cooperator shall maintain and submit reports in accordance with 32 CFR 33.40, Monitoring and Reporting Program Performance, and 32 CFR 33.41, Financial Reporting.

#### **MONITORING AND REPORTING PROGRAM PERFORMANCE**

1. The recipient is responsible for monitoring day-to-day performance and for reporting to the NAVFAC Washington awarding agency. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
2. The recipient must submit a written progress report annually  
To: [maureen.e.efalaschi.civ@us.navy.mil](mailto:maureen.e.efalaschi.civ@us.navy.mil). Reports must be provided as attachments; documents submitted via weblink or other document services will not be accepted. Each report must cover-
  - a. A comparison of actual accomplishments with the milestones and deliverables established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
  - b. The reasons why milestones and deliverables targets were not met, if appropriate.
  - c. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit costs.

3. The recipient must submit a final report no later than 120 calendar days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).

#### FINANCIAL REPORTING

1. Recipients must submit a Federal Financial Report (FFR), Standard Form (SF) 425 annually via e-mail to: [maureen.e.falaschi.civ@us.navy.mil](mailto:maureen.e.falaschi.civ@us.navy.mil) (SF425 and instructions are available on the Grants.gov website). Failure to submit reports as required may result in suspension or termination of award.
2. The recipient must submit a final financial report no later than 120 calendar days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIIS).
3. Reports submitted must be provided as attachments; documents submitted via weblink or other document services will not be accepted.

#### **29. Termination and Enforcement**

This award is subject to 32 CFR 33.43, Enforcement, and 33.44, Termination for Convenience

#### **30. After-Award Requirements**

Closeouts, subsequent adjustments, continuing responsibilities, and collection of amounts due are subject to the requirements in 32 CFR 33.50 through 33.52.

#### **31. Cost Share or Match**

Any cost share or cost match agreements shall comply with 32 CFR 33.24

#### **32. Resource Conservation and Recovery Act**

Cooperator shall comply with the requirements contained in 32 CFR 32.49.

[End of Items]