

**MEMORANDUM OF AGREEMENT FOR THE MANAGEMENT OF THE EPA
CLIMATE POLLUTION REDUCTION GRANT AWARD**

RECITALS

THIS MEMORANDUM OF AGREEMENT, made by and between the **COUNTY OF KANE (COALITION LEAD APPLICANT)**; and the following **SUB-RECIPIENTS: COUNTY OF DUPAGE; KENDALL COUNTY; LAKE COUNTY; COUNTY OF WILL; CITY OF AURORA; CITY OF BATAVIA; CITY OF ELGIN; CITY OF HIGHLAND PARK; CITY OF NAPERVILLE; CITY OF WAUKEGAN; VILLAGE OF DOWNERS GROVE; VILLAGE OF MOKENA; and the VILLAGE OF WHEELING.**

WHEREAS, the Parties are units of local government within the meaning of Section 10 of Article 7 of the Constitution of the State of Illinois; and

WHEREAS, the Parties are also public agencies within the meaning of the Intergovernmental Cooperation Act (5 ILCS 220/1, *et. seq.*); and

WHEREAS, the Parties are authorized to contract among themselves to obtain or share services, or exercise, combine, or transfer any power or function in any manner not prohibited by law (5 ILCS 220/3); and

WHEREAS, the Congress of the United States has enacted the Inflation Reduction Act of 2022 and established the Climate Pollution Reduction Grants (CPRG) program to address greenhouse gas (GHG) pollution contributing to climate change; and

WHEREAS, the CPRG program is designed to incentivize eligible applicants to apply for funding together as a coalition to implement GHG reduction measures across multiple municipalities; and

WHEREAS, more than two (2) million residents covered by the coalition will benefit from the award by reducing GHG emissions, improving air pollution, and accelerating the transition to a green economy; and

WHEREAS, the partner agencies committing to participate in the Coalition are: Kane County, Illinois – Coalition lead applicant; DuPage County, Illinois – subrecipient; Kendall County, Illinois – subrecipient; Lake County, Illinois- subrecipient; Will County, Illinois – subrecipient; City of Aurora, Illinois – subrecipient; City of Batavia, Illinois – subrecipient; City of Elgin, Illinois – subrecipient; City of Highland Park, Illinois- subrecipient; City of Naperville, Illinois – subrecipient; City of Waukegan, Illinois- subrecipient; Village of Downers Grove, Illinois – subrecipient; Village of Mokena, Illinois – subrecipient; and Village of Wheeling, Illinois-subrecipient; and

WHEREAS, Kane County is the lead applicant for the Coalition and the “pass through entity” for purposes of applying for, administering funds, and managing the program associated with the CPRG grant; and

WHEREAS, Kane County accepts full responsibility for the performance of the coalition and is be accountable to U.S. Environmental Protection Agency (EPA) for effectively carrying out the full scope of work and the proper financial management of the grant; and

WHEREAS, the lead applicant for the Coalition is required to submit a Memorandum of Agreement (MOA), which provides documentation that the organizations have consulted with each other and are committed to fulfilling their respective roles and responsibilities to successfully implement the greenhouse gas (GHG) reduction measures described in the application prior to receiving any awarded funds by the EPA; and

WHEREAS, Kane County, as Coalition lead, will provide subawards to subrecipients through forthcoming subaward agreements for projects listed in the application as deemed eligible by the US EPA and the subrecipients will be accountable to the Kane County for proper use of EPA funding, successful project implementation, procurement of equipment and contractors consistent with EPA subaward policy and any other state or federal regulations; and

WHEREAS, Kane County, as coalition lead and pass through entity, will distribute CPRG grant funds to coalition subrecipients on a reimbursement basis for eligible expenses; and

WHEREAS, Kane County and the Coalition Partner Agencies of this Agreement find that is in the best interests of their respective local governments, that this undertaking will benefit the public, and that the division of costs fairly compensates the performing party for the services or functions under this Agreement; and,

WHEREAS, purchasing and accounting methods will be in accordance with the subrecipients' governing jurisdiction's established policies and ordinances that govern the requisition and purchase of equipment and supplies; and

NOW THEREFORE, in consideration of the foregoing and the covenants contained herein, the parties do hereby agree and covenant as follows:

1. RECITALS

The recitals set forth above are incorporated in this Agreement by reference and made a part of this Agreement.

For purposes of this Agreement, Kane County shall be referred to as "LEAD" and all subrecipient or partner agencies shall collectively be referred to interchangeably as "SUBRECIPIENTS" or "PARTNER AGENCIES."

2. ELIGIBLE EXPENSES

Subrecipient shall spend funds on allowable costs in compliance with approved awards and any other guidance issued by the Environmental Protection Agency. Subrecipient shall spend funds in accordance with Title 2 C.F.R. 200- Uniform Administrative Requirements, guidance by the Environmental Protection Agency and other applicable state and federal laws. Specific eligible expenses will be determined upon EPA award and included in any subaward agreement.

3. REIMBURSEMENT REQUESTS

Subrecipient agrees to request funds on a reimbursement basis. Detailed instructions on requests for reimbursement will be included in subaward agreement.

4. COMPLIANCE WITH GRANT MONITORING & REPORTING PROVISIONS

The Parties agree that this Agreement requires compliance with the regulations of the State of Illinois and with all applicable state and local orders, laws, regulations and certifications governing any activities undertaken during the performance of the Agreement. This Agreement requires compliance with Title 2 C.F.R. 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and guidance issued by the Environmental Protection Agency and all other applicable federal laws.

Pursuant to 2 C.F.R. § 200.208, LEAD is responsible for ensuring that specific Federal award conditions are consistent with the program design reflected in Section 200.202, including clear performance expectations of recipients as required in Section 200.301.

In furtherance of its responsibilities, LEAD may adjust specific Federal award conditions as needed, in accordance with Section 200.208, based on an analysis of the following factors:

- (1) Based on the criteria set forth in § 200.206;
- (2) The applicant or recipient's history of compliance with the general or specific terms and conditions of a Federal award;
- (3) The applicant or recipient's ability to meet expected performance goals as described in § 200.211; or
- (4) A responsibility determination of an applicant or recipient.

Additional Federal award conditions may include items such as the following:

- (1) Requiring payments as reimbursements rather than advance payments;
- (2) Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given performance period;
- (3) Requiring additional, more detailed financial reports;
- (4) Requiring additional project monitoring;
- (5) Requiring the non-Federal entity to obtain technical or management assistance;
or
- (6) Establishing additional prior approvals.

If LEAD imposes additional Requirements consistent with Section 200.208, it shall notify the SUBRECIPIENT as to:

- (1) The nature of the additional requirements;
- (2) The reason why the additional requirements are being imposed;
- (3) The nature of the action needed to remove the additional requirement, if applicable;
- (4) The time allowed for completing the actions if applicable; and
- (5) The method for requesting reconsideration of the additional requirements imposed.

Pursuant to Section 200.208, LEAD shall promptly remove any additional Requirements once the conditions that prompted them have been satisfied.

Furthermore, LEAD has the right to conduct monitoring consistent with 2 CFR 200.332. The Parties shall comply with applicable requirements of the Climate Pollution Reduction Grants ("CPRG") program, including, but not limited to the monitoring responsibilities for LEAD and the reporting requirements for SUBRECIPIENTS, as it relates to financial and grant use reporting. The Subrecipient shall participate in lawfully required monitoring activities at the request of LEAD. The LEAD may request reasonable ad-hoc reports and supporting documentation in addition to the reimbursement requests. Failure to submit proper documentation verifying eligible expenses may result in termination of funding and recoupment of awarded funds from the Subrecipient.

Under 2 CFR 200.332(d), LEAD monitoring of the SUBRECIPIENT would include:

- A. Reviewing financial and performance reports required by the pass-through entity.

- B. Following up and ensuring subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from pass through entity.
- C. Issuing management decision for applicable audit findings and resolve audit findings specifically related to subaward.

If a SUBRECIPIENT is noncompliant, LEAD would need to take enforcement action against the non-complying municipality or county. SUBRECIPIENTS understand and agree that LEAD may take one of the following actions, by the authority granted to LEAD under 2 CFR 200.339, if compliance cannot be remedied by imposing additional conditions. Those Actions may include one or more of the following:

- 1. Temporarily withhold cash payments pending correction.
- 2. Disallow all or part of the cost of the activity or action not in compliance.
- 3. Wholly or partly suspend or terminate the Federal award.
- 4. Initiate suspension or debarment proceedings- (pass through entities can recommend the Federal government conduct such proceeding).
- 5. Withhold further Federal awards for the project or program.
- 6. Take other remedies that may be legally available.

5. COMPLIANCE WITH GRANT CERTIFICATIONS

The Parties shall comply with all applicable certifications and assurances required by the CPRG program, which is attached hereto and fully incorporated herein as ATTACHMENT B.

6. LIABILITY

The Parties shall each be individually responsible for their own actions and omissions, and for those of their officers, agents and employees, in the performance of this Agreement. Nothing in this Agreement shall be construed as a waiver of a Party's respective immunities or defenses, whether statutory or common law, by reason of any applicable indemnification and insurance provisions, or as an assumption of any duty for the benefit of any third party.

7. INSURANCE REQUIREMENTS

The Subrecipients will carry sufficient insurance coverage to protect any grant funds provided to the Subrecipients under the forthcoming subaward agreements. The insurance coverage shall also be adequate to satisfy any indemnification provisions set forth in the forthcoming subaward agreements.

8. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered to LEAD, shall be an original, but all of which shall together constitute one and the same instrument.

9. TERM & EFFECTIVE DATE

This Agreement shall become effective upon the date of acceptance by *all* of the Parties hereto (hereinafter referred to as the “effective date”). The initial term of this Agreement shall be for a period of three (3) years, commencing upon the Agreement’s effective date.

10. NO THIRD-PARTY BENEFICIARY

The Parties expressly agree that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such Agreements, including, but not limited to, subcontractors, subconsultants, and suppliers. The Parties expressly intend that any person other than the Parties who receives services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

11. FINAL AGREEMENT OF PARTIES; INTEGRATION - AMENDMENTS

This writing constitutes the final expression of the Agreement of the Parties. It is intended as a complete and exclusive statement of the terms of this Agreement, and it supersedes all prior and concurrent promises, representations, negotiations, discussions and Agreements that may have been made in connection with the subject matter hereof.

This Agreement may only be amended with the written consent of all Parties hereto, and appropriately executed by all Parties to the Agreement.

12. NOTICES

All notices given or sent hereunder shall be sent by United States Mail, postage prepaid, addressed to respective party at the address set forth on the signature page of this Agreement, or to such other address as the parties may designate in writing from

time to time. A party updating their official notice address shall send said notice to all current and future signatories to this Agreement. Said update is not considered a formal "modification" to the terms of this Agreement.

13. LEGAL AUTHORITY

The Parties represent that all necessary acts have been taken to authorize and approve this agreement in accordance with applicable law, and this Agreement, when executed by the Parties hereto, shall constitute a binding obligation of the Parties, legally and enforceable at law and equity against each.

14. GOVERNING LAW & VENUE

This Agreement shall be interpreted and governed by the laws of the State of Illinois. The parties agree that the exclusive venue for resolving any legal proceedings between them shall be the Sixteenth Judicial Circuit Court of Kane County, State of Illinois, or the United States District Court for the Northern District of Illinois.

15. ASSIGNMENT

This Agreement may not be assigned without the prior written consent of the other Parties, which will not be unreasonably withheld.

16. VALIDITY

If any provisions of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provisions to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

17. CONFIDENTIALITY

The parties shall maintain the confidentiality of records, data and other information deemed confidential by another party, except as otherwise required by law. Nothing in this paragraph is intended to impair a party's compliance with a request for information made pursuant to the Illinois Freedom of Information Act (FOIA).

18. SEVERABILITY

If any provision of this Agreement is held to be invalid, that provision shall be stricken from this Agreement, and the remaining provisions shall continue in full force and effect to the fullest extent possible.

IN WITNESS WHEREOF, the undersigned duly authorized officers have subscribed their names on behalf of the Parties.

KANE COUNTY, ILLINOIS

By: _____

Date: _____

Corinne Pierog
Kane County Board Chair
Kane County Government Center
719 Batavia Avenue, Building A
Geneva, Illinois 60134

DUPAGE COUNTY, ILLINOIS

By: _____

Date: _____

KENDALL COUNTY, ILLINOIS

By: _____

Date: _____

LAKE COUNTY, ILLINOIS

By: _____

Date: _____

WILL COUNTY, ILLINOIS

By: _____

Date: _____

CITY OF AURORA, ILLINOIS

By: _____

Date: _____

CITY OF BATAVIA, ILLINOIS

By: _____

Date: _____

CITY OF ELGIN, ILLINOIS

By: _____

Date: _____

CITY OF HIGHLAND PARK, ILLINOIS

By: _____

Date: _____

CITY OF NAPERVILLE, ILLINOIS

By: _____

Date: _____

CITY OF WAUKEGAN, ILLINOIS

By: _____

Date: _____

VILLAGE OF DOWNERS GROVE, ILLINOIS

By: _____

Date: _____

VILLAGE OF MOKENA, ILLINOIS

By: _____

Date: _____

VILLAGE OF WHEELING, ILLINOIS

By: _____

Date: _____

ATTACHMENT A

AWARD AND GRANTEE-SPECIFIC INFORMATION AND CERTIFICATION

Section I. _____

[Title and Description of Subaward including whether the Subaward is for Research and Development]

Section II. Federal Requirements.

A. Federal Award Identification.

1. **Subrecipient:**_____.

2. **Official Contact Information** (Name, Title, Address, Phone, Email): _____

3. **FEIN Number; SAM Registration; Nature of Entity:**

Under penalties of perjury, Subrecipient certifies that _____ is Subrecipient's correct SAM registration number; that _____ is Subrecipient's correct FEIN number; and that Subrecipient is doing business as a Governmental Unit in the State of Illinois.

4. **Amount of Agreement:** The amount of initial CPRG Funds dispensed to the Subrecipient are:_____. Subrecipient agrees to accept LEAD's payment as specified in the Exhibits and attachments incorporated herein as part of this Agreement.

5. **Identification Numbers:** If applicable, the Federal Award Identification Number (FAIN) is: _____, the federal awarding agency is: *United States Environmental Protection Agency*, and the Federal Award date is _____.
Note: The FAIN corresponds with the "Assistance ID No." on the EPA Notice of Award.

6. **Assistance Listing Number and Name for each EPA award used to support**

the subaward: _____.

7. Indirect cost rate for the pass-through entity's Federal award: _____

_____.

B. All "flow down" requirements imposed on the subrecipient by the pass-through entity to ensure that the EPA award is used in accordance with Federal statutes, regulations and the terms of the EPA award. The subrecipient is accountable to the pass-through entity for compliance with Federal requirements. In turn, the pass-through entity is responsible to EPA for ensuring that subrecipients comply with Federal requirements.

These requirements include, among others:

1. Title VI of the Civil Rights Act and other Federal statutes and regulations prohibiting discrimination in Federal financial assistance programs, as applicable.
2. Reporting Subawards and Executive Compensation under Federal Funding Accountability and Transparency Act (FFATA) set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Reporting Subawards and Executive Compensation.**"
3. Limitations on individual consultant fees as set forth in General Condition [2 CFR 1500.10](#) and the General Condition of the pass-through entity's agreement with EPA entitled "**Consultant Fee Cap.**"
4. EPA's prohibition on paying management fees as set forth in General Condition of the pass-through entity's agreement with EPA entitled "**Management Fees.**"
5. The Procurement Standards in [2 CFR Part 200](#) including those requiring competition when the subrecipient acquires goods and services from contractors (including consultants) and Domestic preferences for procurements at [2 CFR 200.322](#).
6. For states and other public recipients, a provision ensuring that subawards are not conditioned in a manner that would disadvantage applicants for subawards based on their religious character.

Other statutes, regulations and Executive Orders that may apply to subawards are described at [Information on Requirements that Pass-Through Entities must "Flow Down" to Subrecipients](#). Many Federal requirements are agreement or program specific and EPA encourages pass-through entities to review the terms of their assistance agreement carefully and consult with their EPA Project Officer for advice, if necessary.

ATTACHMENT B

CERTIFICATIONS AND ACKNOWLEDGEMENTS OF CPRG SUBRECIPIENTS

All of the Certifications and Assurances listed below are Federal requirements that may apply to SUBRECIPIENTS of EPA funded projects per 2 CFR 200.332(a)(2). This form serves as a notification and acknowledgment of these requirements prior to further pursuing this funding option. Please sign the attestation at the end of the following certifications and assurances, certifying acknowledgment of each of the requirements of the grant program. This shall be completed and submitted with grant application submittals.

Name of SUBRECIPIENT: _____

1. Non-Discrimination Laws

Title VI of the Civil Rights Act of 1964; Section 13 of the Federal Water Pollution Control Act Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; and the Age Discrimination Act of 1975 prohibit discrimination in the provision of services or benefits, on the basis of race, color, national origin, sex, disability or age, in programs or activities receiving federal financial assistance.

Pursuant to EPA's regulations on "*Nondiscrimination in Programs receiving Federal Assistance from the Environmental Protection Agency*," in [40 CFR Part 5](#) and [40 CFR Part 7](#), the pass-through entity must agree, and require all subrecipients to agree, not to discriminate on the basis of race, color, national origin, sex, disability or age. The fact that the regulations do not address discrimination on the basis of age *does not* exempt recipients from compliance with the later-enacted Age Discrimination Act.

a. Executive Order 11246

Part III of Executive Order No. 11246 (September 24, 1965) *as amended* prohibits discrimination in Federally assisted construction activities. As provided in section 301 of the Executive Order, Pass-through entities must ensure that subrecipients include the seven clauses specified in section 202 of the Order in all construction contracts. Section 302 defines "Construction contract" as "any contract for the construction, rehabilitation, alteration, conversion, extension, or repair of buildings, highways, or other improvements to real property." Contracts less than \$10,000 are exempt from the requirements of the Order.

b. Executive Order 13798

Executive Order 13798 established a policy of promoting free speech and religious liberty. It reinforces the requirement that religious organizations be allowed to participate in Federal financial assistance programs on an equal footing with other organizations without being required to alter their religious character. States or other public grantees may not condition subawards in a manner that would disadvantage grant applicants based on their religious character.

c. Disadvantaged Business Enterprises

EPA regulations at [40 CFR Part 33. "Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs"](#) set forth requirements for making good faith efforts to ensure that Disadvantaged Business Enterprises, including Minority Business Enterprises and Women's Business Enterprises receive a fair share of contracts awarded with funds provided by EPA financial assistance agreements. These requirements apply to subrecipients in accordance with [40 CFR 33.102](#) and the definition of "Recipient" in [40 CFR 33.103](#).

d. Consultation with State and Local Officials

The Demonstration Cities and Metropolitan Development Act and the Intergovernmental Cooperation Act instructed federal agencies to consult with local officials to ensure smoother coordination of their assistance programs and to ensure that projects funded under federal programs are consistent with local planning requirements. Similarly, Executive Order 12372 *as amended* (1983) established procedures for intergovernmental review of federal financial assistance projects. EPA has implemented these requirements in [40 CFR Part 29](#).

EPA financial assistance programs subject to intergovernmental review may be found at: <https://www.epa.gov/grants/epa-financial-assistance-programs-subject-executive-order-12372-and-section-204-demonstration>. Executive Order 12372 exempts tribal programs from intergovernmental review.

If intergovernmental review is required, and neither EPA nor the pass-through entity complied with [40 CFR Part 29](#) prior to award because the location of subaward projects had not been determined, the pass-through entity must comply with intergovernmental review requirements after award. Intergovernmental review requirements vary among the states. As provided at [40 CFR 29.9\(d\)](#), if a state does not have a single point of contact for intergovernmental review, the recipient must offer directly affected State, area-wide, regional and local officials an opportunity to comment on the subrecipient's proposed project.

e. Clean Air Act and Clean Water Act

Section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), as implemented by Executive Order 11738 (1973), prohibit performance of Federal assistance agreements at facilities disqualified due to certain violations of the CAA or CWA. Disqualified facilities are listed in the [System for Award Management](#). Pass-through entities must ensure that subrecipients are not disqualified and that they are aware of the requirement to check SAM, to determine if facilities that will be used to perform contracts or subawards are listed in SAM.

2. Financial Management Policies

These policies apply to transactions financed by EPA financial assistance funds and apply to both pass-through entities and subrecipients on the basis of either regulatory requirement or the [General Terms and Conditions](#) (T&C) of the pass-through entity's

agreement with EPA. Pass-through entities should consult with their EPA Project Officer for advice if they have questions regarding how these policies apply to a particular subaward.

a. Federal Funding Accountability and Transparency Act

As set forth in the General Condition of the pass-through entity's agreement with EPA entitled "Reporting Subawards and Executive Compensation" the pass-through entity must ensure that subrecipients comply with Federal Funding Accountability and Transparency Act (FFATA) reporting requirements. Pass-through entities may use the terms of their subaward agreement or other effective means to meet their responsibilities.

b. Suspension and Debarment

The pass-through entities responsibilities are described at [2 CFR Part 180, Subpart C](#) and the "Debarment and Suspension" T&C of the pass-through entity's agreement with EPA. These requirements, which include checking [SAM](#) to ensure that potential contractors, subrecipients and their principals and agents are not suspended, debarred or otherwise ineligible to participate in Federal assistance programs also apply to subrecipients. It is important to note that in addition to being precluded from all first tier contracts and all contracts requiring EPA approval in accordance with [2 CFR 180.220](#), under [2 CFR 1532.220](#), suspended or debarred parties may not receive EPA funded contracts in excess of \$25,000 at any tier. Also, at [2 CFR 1532.995](#) EPA has identified activities that suspended or debarred parties may not perform as a "Principal" in EPA financial assistance agreements and subawards.

c. Limits on Fees Charged by Individual Consultants

EPA's Fiscal Year 2009 Appropriation Act (Pub. L. 111-8) restricts the amount of EPA financial assistance that recipients may use to compensate individual consultants. EPA implements this requirement at [2 CFR 1500.10\(a\)](#) and the "Consultant Cap" T&C. Pass-through entities must ensure that subrecipients comply with the limitation on compensation for individual consultants through the terms of their subaward agreements or another effective means. Additional information regarding when the consultant fee limit applies is available in the [Best Practice Guide for Procuring Services, Supplies, and Equipment Under EPA Assistance Agreements](#) and the [Interim General Budget Development Guidance for Applicants and Recipients of EPA Financial Assistance](#).

d. Management Fees

EPA policy prohibits recipients and subrecipients from charging management fees or making similar arrangements to receive EPA financial assistance in excess of direct or Federally approved indirect cost rates. This prohibition is implemented by the Management Fees T&C. Pass-through entities must ensure that subrecipients comply with this requirement through the terms of their subaward agreements or another effective means.

e. New Restrictions on Lobbying, 40 CFR Part 34

All recipients of EPA funds, including subrecipients, are subject to the requirements in 40 CFR Part 34. For example, pass-through entities must ensure that subawards in excess of \$100,000 require that subrecipients submit certification and disclosure forms required by [40 CFR 34.110](#) and the "Lobbying and Litigation" Terms and Conditions.

f. Uniform Grant Guidance Requirements (UGG)

Subrecipients must comply with [2 CFR Part 200](#) requirements, including but not limited to when they award procurement contracts, make subawards, and incur other costs borne by EPA financial assistance. Pass-through entities must ensure that subrecipients comply with this requirement through the terms of their subaward agreements or another effective means.

g. Build America, Buy America Act

Pass-through entities must ensure subrecipients comply with the Buy America sourcing requirements under the Build America, Buy America (BABA) provisions of the [Infrastructure Investment and Jobs Act](#) (IIJA) (P.L. 117-58, §§70911-70917). The BABA requirements apply to expenditures for projects for which funds have been obligated on or after May 14, 2022 under a Federal financial assistance program for infrastructure, unless the expenditures are subject to an EPA-approved waiver. The BABA provisions require that all of the iron, steel, manufactured products, and construction materials used in these projects be produced in the United States. The BABA sourcing requirements apply to an entire infrastructure project, even if it is funded by both Federal and non-federal funds under one or more awards.

Pass-through entities and subrecipients must implement these requirements in their procurements, and these requirements must be included in the terms of all subawards and contracts at any tier. For descriptions of general applicability waivers, legal definitions and sourcing requirements, pass-through entities and subrecipients must consult EPA's [BABA website](#).

When supported by a rationale provided in Section 70914 of the IIJA, pass-through entities and/or sub-recipients, as appropriate, may submit a project-specific waiver to EPA. Guidance on the submission instructions of an EPA waiver request will be available on the EPA [BABA website](#). A list of approved EPA waivers is available on the EPA [BABA website](#).

3. Environmental Authorities

These requirements typically apply when an EPA funded project involves construction, remediation of contamination in water, soil, or buildings, and similar activities which alter the physical environment. Other environmental laws may apply to a project independent of EPA funding. Financial assistance for research, training, technical assistance and related outreach, environmental education, program operations, or installation of pollution control equipment on vehicles or vessels, are generally not affected by these requirements. Note that this list of environmental authorities is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement. If it appears that one or more of these requirements may apply, pass-through entities should consult with their EPA Project Officer for advice.

a. National Environmental Policy Act

Where applicable, the National Environmental Policy Act (NEPA) requires federal agencies to conduct an environmental review of their proposed actions, with a view toward ensuring informed decision-making and public input. EPA's NEPA regulations are

at [40 CFR Part 6](#), and note that certain EPA actions are exempt from NEPA. Pass-through entities and subrecipients may be required to assist EPA with NEPA compliance, where appropriate.

b. Executive Order No. 12898 (1994)

This Executive Order (E.O.) directs federal agencies to “make achieving environmental justice part of its mission.” Each covered agency is required to identify and address, as appropriate, any “disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations.” One vehicle for EPA’s efforts to address environmental justice concerns is a NEPA analysis. Considering environmental justice generally involves identifying potential adverse effects on minority populations and low-income populations, as well as encouraging early public participation and the development of alternative or mitigating options as appropriate. The terms and conditions of the EPA award may require pass-through entities and subrecipients to assist EPA in ensuring the requirements of the Executive Order are met.

c. National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Under the ACHP’s regulations, consultations generally occur in the first instance with state and/or tribal historic preservation officials, with direct ACHP involvement in certain cases.

EPA funded projects with the potential to affect historic properties – *i.e.*, properties listed in or eligible for listing in the National Register of Historic Places – may implicate this statute. This may include, for instance, EPA-funded projects that involve alteration of structures (*e.g.*, asbestos abatement) that are historic properties or construction/remediation on culturally sensitive lands.

Pass-through entities should work with their Project Officer to ensure that subrecipients are available to work with EPA on any required consultation process with the State or Tribal Historic Preservation Office prior to commencing the project to ensure compliance with section 106 of the NHPA.

d. Archeological and Historic Preservation Act

This law applies if archeologically significant artifacts or similar items are discovered after an EPA funded construction project has begun, and compliance may be coordinated with the NHPA, discussed above. The AHPA requires federal agencies to identify relics, specimens, and other forms of scientific, prehistorical, historical, or archaeological data that may be lost during the construction of federally sponsored projects to ensure that these resources are not inadvertently transferred, sold, demolished or substantially altered, or allowed to deteriorate significantly. Pass-through entities must ensure that subrecipients performing construction projects are aware of this requirement and pass-through entities must notify EPA if the AHPA is triggered.

e. Protection of Wetlands, Executive Order 11990 (1973), *as amended*

EPA funded projects involving new construction in wetlands may implicate this Executive Order. The terms and conditions of the EPA assistance agreement may require pass-through entities to ensure that subrecipients assist EPA in determining whether a proposed project will be located in (or affect) a wetland, and if so, evaluating practicable alternative locations for the project or other mitigation.

f. Flood Plain Management, Executive Order 11988 (1977), as amended, and Executive Order 13690 (2015)

EPA funded projects that are in or will affect a flood plain are covered by these Executive Orders and Water Resources Council guidance. EPA assistance agreement terms and conditions may require pass-through entities to ensure that subrecipients work with EPA to evaluate practicable alternatives or other mitigation to reduce flood risks and protect flood plains.

g. Farmland Protection Policy Act

This statute requires EPA to use criteria developed by the Natural Resources Conservation Service (NRCS) to identify the potential adverse effects of Federal programs on farmland and its conversion to nonagricultural uses, to mitigate these effects, and to ensure that programs are carried out in a manner that is compatible with the farmland preservation policies of state and local governments, and private organizations. Pass-through entities and their subrecipients may need to work with EPA or NRCS, as appropriate, to ensure compliance.

h. Coastal Zone Management Act

This statute requires EPA to ensure that Agency funded activities in coastal areas are consistent with state coastal zone management plans that have been approved by the Department of Commerce. Pass-through entities and subrecipients should consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the EPA funded project will be consistent with the state's coastal zone management plan.

i. Coastal Barriers Resources Act

This statute restricts federal financial assistance that would encourage development in the Coastal Barriers Resources System, a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes, and adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. During the planning phase of a proposed project located in the Coastal Barriers Resources System, pass-through entities and subrecipients should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the system, and if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

j. Wild and Scenic Rivers Act

This statute prohibits federal assistance for water resource projects that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a congressionally designated wild and scenic river. Pass-through entities and subrecipients should consult with appropriate state or federal (National Park Service or Bureau of Land Management) agency to determine whether the project or any alternatives under

consideration may affect a designated river.

k. Endangered Species Act (ESA)

This statute requires Federal agencies to ensure that their activities are not likely to jeopardize endangered species, adversely modify designated critical habitats, or incidentally take (injure or kill) endangered animals without authorization, in consultation with the appropriate federal wildlife agency (the U.S. Fish and Wildlife Service or National Marine Fisheries Service) as described in [50 CFR Part 402](#). The ESA consultation process is triggered when an action “may affect” ESA-protected species or critical habitat.

Pass-through entities and subrecipients should coordinate with EPA to ensure consultation occurs where appropriate.”

l. Magnuson-Stevens Fisheries Conservation and Management Act

Magnuson-Stevens Fisheries Conservation and Management Act *as amended* by The Sustainable Fisheries Act of 1996 is intended to manage and conserve Essential Fish Habitats (EFH). The National Marine Fisheries Service (NMFS) administers the Act. Pass-through entities and subrecipients must coordinate with NMFS to determine whether a proposed project may adversely affect an EFH. If an action may adversely affect an EFH, the subrecipient must complete an EFH consultation with NMFS.

m. Clean Air Conformity Act

This statute prohibits any Federal assistance for an activity within a non-attainment or maintenance area that fails to conform to an applicable State Implementation Plan. Pass-through entities and subrecipients should first consult with their state air program’s website to determine if an EPA funded activity is in a non-attainment or maintenance area. If the EPA funded activity is within a non-attainment or maintenance area the pass-through entity and subrecipient should consult with the state air program to determine conformity. Note that EPA regulations at [40 CFR 93.153\(c\)](#) exempt a number of activities including planning, studies, technical assistance and remediation under the Comprehensive Environmental Response, Liability and Compensation Act (CERCLA).

n. Safe Drinking Water Act

Precludes the use of EPA financial assistance for projects that would contaminate sole source aquifers. Pass-through entities and subrecipients must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the assistance recipient, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project. If the project could potentially affect ground water supplies, the assistance recipient, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures.

4. National Defense.

a. Never Contract with the Enemy (P.L. 113-91)

This statute applies only to grants and cooperative agreements that are expected to exceed \$50,000 and that are performed outside the United States, including U.S. territories, and that are in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. The “Never Contract with the Enemy” restrictions are implemented in 2 CFR Part 180. Recipients must ensure that none of the funds, including supplies and services, received under Federal grants or cooperative agreements are provided directly or indirectly (including through subawards or contracts) to a person or entity who is actively opposing the United States or coalition forces involved in a contingency operation in which members of the Armed Forces are actively engaged in hostilities.

b. Prohibition using Federal funds for certain telecommunications and video surveillance services or equipment (Section 889 of P.L. 115-232).

This statute prohibits using Federal funds to procure equipment, systems, or services, including equipment, systems, or services produced or provided by entities identified as subject to the section 889. These entities are recorded in the [System for Award Management](#) exclusion list. Section 889 is implemented in 2 CFR 200.216 and the general terms and conditions of EPA assistance agreements. EPA recipients, subrecipients, and borrowers under EPA funded revolving loan fund programs are prohibited from obligating or expending loan or grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services produced by entities subject to section 889 as a substantial or essential component of any system, or as critical technology as part of any system.

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SUBGRANTEE’S VERIFICATION BY CERTIFICATION

Under penalties of perjury as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure (735 ILCS 5/1-1109), the undersigned certifies that he or

she is authorized to act on behalf of the subrecipient hereinafter listed and that they have read and understands the Federal requirements that may apply to SUBRECIPIENTS of EPA funded projects, per 2 CFR 200.332(a)(2), which have been listed in the attached document entitled, "ATTACHMENT B: CERTIFICATIONS AND ACKNOWLEDGEMENTS OF CPRG SUBRECIPIENTS."

SUBRECIPIENT MUNICIPALITY

Signature of Authorized Representative

Printed Name

Title

Date