

MASTER COOPERATIVE AGREEMENT

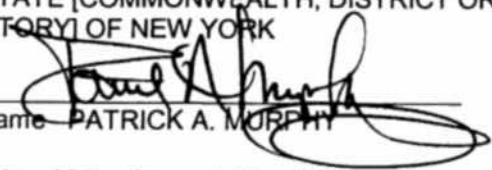
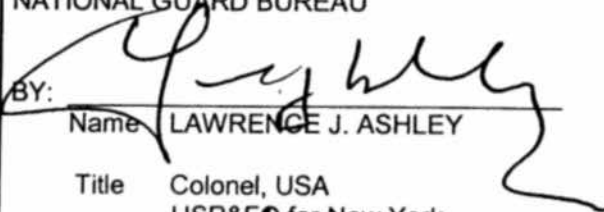
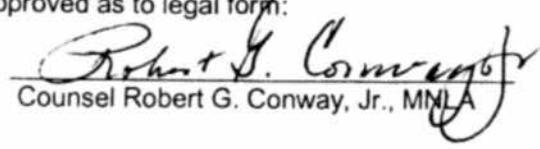
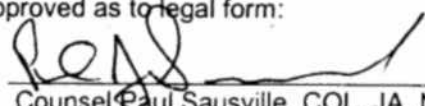
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EXECUTION

By executing this Master Cooperative Agreement, the parties agree to the terms and conditions contained herein, including attachments.

IN WITNESS WHEREOF, the parties by their authorized representatives, execute this Master Cooperative Agreement.

<p>THE STATE [COMMONWEALTH, DISTRICT OR TERRITORY] OF NEW YORK</p> <p>BY:  Name: PATRICK A. MURPHY</p> <p>Title: Major General, New York Army National Guard The Adjutant General</p> <p>Date: <u>1 Nov 10</u></p>	<p>NATIONAL GUARD BUREAU</p> <p>BY:  Name: LAWRENCE J. ASHLEY</p> <p>Title: Colonel, USA USP&FD for New York</p> <p>Date: <u>30 Nov 10</u></p>
<p>Approved as to legal form:</p> <p> Counsel Robert G. Conway, Jr., MNLA</p> <p>Date: <u>27 Sep 10</u></p>	<p>Approved as to legal form:</p> <p> Counsel Paul Sausville, COL, JA, NYARNG</p> <p>Date: <u>27 Sep 2010</u></p>

ARTICLE I – SCOPE, PURPOSE AND AUTHORITY

Section 101. General.

a. The National Guard Bureau (NGB) and the State (Grantee) have entered this Master Cooperative Agreement (MCA) to establish the terms and conditions applicable to the contribution of NGB funds or In-Kind Assistance for the operation and training of the State Army and Air National Guard.

b. This MCA and its appendices, includes all terms and conditions related to NGB's contribution of Cooperative Agreement funds for the operation and training of the Army and Air National Guard within the State/Territory or Commonwealth. Funds, equipment, supplies, or training acquired, issued, supplied, assigned or provided by NGB for the operation and training of the State Army and Air National Guard under applicable statutes and directives, are not covered by this MCA.

c. The attached Appendices are integral to this MCA.

Section 102. Scope.

The scope of this MCA includes all activities enumerated in the Appendices.

Section 103. Performance Specifications.

Specifications, for the performance of activities within the scope of this MCA, are contained in the Appendices.

Section 104. Authority.

a. Title 32 U.S.C. §§ 106 and 107 authorize the NGB to contribute funds for the support of the operation and training of the State Army and Air National Guard.

b. This MCA is a Cooperative Agreement within the meaning of 31 U.S.C. §§ 6301-6308.

ARTICLE II – OBLIGATIONS OF THE PARTIES

Section 201. Obligations of the Grantee.

- a. The Grantee shall exercise its best efforts to supervise, manage, operate and/or maintain all activities or projects within the scope of this MCA according to sound, efficient, commercial practice and according to the terms, condition, and specifications of this MCA and its Appendices.
- b. The Grantee will obligate sufficient funds to pay its share of the costs under this MCA and, where NGB provides services in kind, the costs of which are to be shared under the terms of this MCA, and to reimburse NGB in the manner provided under this MCA.
- c. The Grantee's obligations are contingent upon the NGB funding of the MCA Appendices in each fiscal year.

Section 202. Obligations of NGB.

- a. NGB shall reimburse the Grantee for the allowable costs incurred in performance of this MCA according to its terms and conditions for reimbursement.
- b. Whenever the terms of this MCA provide for approval by NGB, the approval will not be unreasonably withheld. Any request for approval shall be considered and acted upon by NGB in a timely fashion.
- c. The obligations of NGB are subject to the availability of federal funds for the MCA Appendices and the Grantee's funding contribution for its share of the costs of this MCA.

Section 203. Obligations of Both Parties-Close out.

NGB and the Grantee both share in the responsibilities for accurate and timely closeouts of all appendices under this MCA. Fiscal year end closeouts and/or projected completion/termination closeout of appendices shall be in accordance with NGR 5-1, Chapter 11.

ARTICLE III – COSTS

Section 301. General.

NGB shall reimburse the Grantee for all the costs that are allowable, allocable and reasonable in the performance of this MCA.

Section 302. Estimated Cost.

- a. The total estimated costs under this MCA are specified in each Appendix.
- b. The Grantee share in the costs under this MCA are provided for in the approved Appendices.

Section 303. Cost Sharing.

Wherever an item of cost for the performance under this MCA is identified to be funded in-part by Grantee contributions and in-part by NGB contributions, NGB shall be obligated to reimburse the Grantee only for its percentage share of the total allowable costs that would otherwise be allowable under this MCA.

Section 304. Allowability of costs.

a. Except as otherwise stated in this Article or elsewhere in this MCA, the allowability of costs incurred by the Grantee in performance under this MCA shall be determined according to the terms and conditions of 2 CFR Part 225, as amended, 32 CFR Part 33, as amended, and NGR 5-1, Chapter 5 effective at the time the cost is incurred.

b. The allowability of costs has no effect on the maximum funding level of this cooperative agreement. NGB has no liability to reimburse any cost over and above the maximum amount of funding obligated in this cooperative agreement, even if such cost would otherwise be allowable.

Section 305. Advance Agreements on the Allowability of Costs.

a. No cost incurred by the Grantee that is contrary to any restriction, limitation, or instruction contained in any Budget and/or Financial Plan under this MCA shall be allowable.

b. Indirect costs, as such costs are defined in Title 2 Code of Federal Regulations (CFR) Part 225, shall be unallowable, except for costs listed in paragraph c. below.

c. The costs of compensation for personnel services, including fringe benefits, but not limited to, the costs of workmen's compensation, unemployment compensation, State sponsored life/health insurance, and retirement benefits, shall be allowable as specified in NGR 5-1, Chapter 5.

ARTICLE IV – FUNDING LIMITATIONS

Section 401. Funding Limitations

a. The Annual Funding Program (AFP) limitation amount for NGB for any fiscal year is specified in the appendices. Increases/decreases to the AFP in a FY will be by a bilateral modification. The AFP amount of an appendix for the subsequent FY will be added by agreement modification to the applicable Appendix.

b. If, at any time within the fiscal year, the Grantee determines that NGB's share of allowable costs, as specified in the appendices, has reached the amount reflected in the appendix or determines that the total amount of NGB's share of allowable costs exceeds 90% of the amount reflected in the appendix, the Grantee will notify the USPFO in writing. The notice shall state the total estimated amount of NGB's share of allowable costs and the amount of the Grantee's share of allowable costs necessary to complete a fiscal year.

c. The addition of program income to the funds obligated in a cooperative agreement will not require an increase in the federal funding limitation.

d. Within its discretion, NGB may unilaterally increase the maximum funding limitation at any time.

e. The Grantee shall have no obligation to incur costs which exceed NGB's share of the maximum funding limitation.

Section 402. Method of Funding.

a. MCA Appendices will be either incrementally or fully funded annually, subject to the availability of funds.

b. The annual funding of MCA Appendices will be in accordance with NGR 5-1, Chapter 3 and as specified in the Budget Requirements/Financial Plan Requirements sections of each Appendix.

Section 403. Budgets/Financial Plans.

a. Budgets/Financial Plans Requirements are specified in each Appendix.

Section 404. Limitation on the Availability of Funds For State Obligation.

Funds provided by NGB under this MCA for any Fiscal Year are available for obligation (as the term "obligation" is defined in 32 CFR § 33.3) by the State only in that Fiscal Year. Allowable costs must be incurred in the same fiscal year as the funding.

ARTICLE V - PAYMENT

Section 501. General.

There are only two payment methods authorized in the execution of this MCA, the reimbursement method and the advance method.

Section 502. Payment by the Reimbursement Method.

Reimbursement method payments shall be according to procedures established by the Defense Finance and Accounting Service (DFAS), DoD Financial Management Regulation 7000.14R Volumes 11A and 11B and NGR 5-1, Chapter 11.

Section 503. Payment by Advance Method.

The advance payment method shall be according to procedures established in, NGR 5-1, Chapter 11.

Section 504. Direct Federal Payment of State Obligations.

In no event, shall the USPFO make direct payment to a state contractor, state employee, contractor employee, or state vendor for any costs incurred by the state under this MCA.

Section 505. Interest.

The amount of interest due the United States on funds advanced to the state or interest due the state shall be determined and paid in accordance with 31 U.S.C. § 6503 and the terms of the Cash Management Improvement Act Agreement in effect between the State and U.S. Treasury and regulations as issued by the U.S. Department of Treasury and the Department of Defense, as amended. For interest on advance payments see 31 U.S.C. 6503 and 32 C.F.R. § 33.21.

ARTICLE VI – DEFINITIONS

Section 601. Army National Guard and Air National Guard Cooperative Agreements.

Army National Guard (ARNG) and Air National Guard (ANG) Cooperative Agreements mean any agreements entered into by the Department of Defense, National Guard Bureau, with the states, funded by Department of Defense appropriations for the Army National Guard and Air National Guard, for construction, minor construction, distance learning, maintenance, repair, or operation of facilities, operations of the Army National Guard and Air National Guard, and for other programs authorized and directed by Congress or the Department of Defense to be performed by the states and the National Guard Bureau.

Section 602. Air National Guard.

The Air National Guard (ANG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that--

- a. is an air force;
- b. is trained, and has its officers appointed, under the sixteenth clause of section 8, article 1 of the Constitution;
- c. is organized, armed, and equipped wholly or partly at federal expense; and
- d. is federally recognized (32 U.S.C. § 101).

Section 603. Army National Guard.

The Army National Guard (ARNG) means that part of the organized militia of the several States and Territories, Puerto Rico, and the District of Columbia, active and inactive, that --

- a. is a land force;
- b. is trained, and has its officers appointed, under the sixteenth clause of section 8, article I of the Constitution.
- c. is organized, armed, and equipped wholly or partly at federal expense; and
- d. is federally recognized (32 U.S.C. § 101).

Section 604. Chief, National Guard Bureau.

The Chief, National Guard Bureau means the head of the National Guard Bureau or his/her designee.

Section 605. Cooperative Agreement Program Manager.

An individual appointed by the USPFO, in coordination with the TAG/ANG Unit command, as the Federal CA Program Manager (CA PM) to act for the ARNG / ANG in all matters relating to an MCA Appendix.

Section 606. Equipment. (Non-military).

For the purpose of 32 CFR § 33.32 and NGR 5-1, equipment is tangible, non-expendable, personal property having a useful life of more than one year and an acquisition cost of \$5000 or more per unit, purchased for the performance of this MCA. Use and disposal of equipment shall comply with the requirement of NGR 5-1, Chapter 8.

Section 607. Fiscal Year.

Fiscal Year (FY) means the federal FY that runs from October 1 to September 30.

Section 608. Government Furnished Property (GFP) or Government Furnished Equipment (GFE).

Government furnished property/equipment is property in the possession of, or directly occupied by, the Government and subsequently made available to the grantee (e.g. facilities, materials, special tools, special test equipment, installation property, GSA vehicles and "agency peculiar" equipment).

Section 609. Grantee.

The State or local government (2 CFR Part 225, Appendix A) responsible for the performance and administration of this award.

Section 610. Grants Officer.

Grants Officer (or Grantor) shall mean an individual appointed by the NGB, Head of Contracting Activity (HCA) authorized to provide approvals, receive reports, modify or change the terms of the MCA, provide funds under the MCA or take any other action for NGB under this MCA except for deciding any appeal of a dispute under this MCA as provided in section 1203 and any other action delegated to a specific person by this MCA or Appendices. For purposes of this agreement, the Grants Officer shall be the USPFO of the respective State/Territory.

Section 611. Grants Officer Representative.

Grants Officer Representative (GOR) means a representative of the Grants Officer acting within the limits of his or her authority as delegated, in writing, by the Grants Officer. If the Grants Officer designates a GOR, the Grantee will receive a copy of the written designation. It will specify the extent of the GOR's authority to act on behalf of the Grants Officer. The GOR is not authorized to make commitments or changes that will affect terms or conditions of the MCCA or an appendix.

Section 612. In-Kind Assistance.

In-Kind Assistance is the transfer of supplies or services by NGB to the state in lieu of funds, to satisfy in whole or in part, NGB's obligation of assistance support to the state. IKA will be the fair market value at the time of the contribution.

Section 613. Military Equipment.

Military Equipment is federal equipment, used by the Army and Air National Guard to carry out military missions (i.e. combat, or homeland defense/security), listed in the ARNG Modified Table of Organization Equipment (MTOE), Table of Distribution and Allowances (TDA) or AF Designed Operational Capability (DOC). Military equipment cannot be issued/transferred to the State for the purpose of MCA execution.

Section 614. National Guard Bureau.

The National Guard Bureau (NGB) is a joint activity of the Department of Defense pursuant to Section 10501, Title 10 United States Code (U.S.C.). The Chief, NGB, is under the authority, direction, and control of the Secretary of Defense. The Secretary normally exercises authority, direction, and control through the Secretaries of the Army and the Air Force for matters pertaining to their responsibilities in law or DoD policy. The Chief, NGB, is a principal advisor to the Secretary of Defense through the Chairman of the Joint Chiefs of Staff on matters involving non-federalized National Guard forces and through other DoD officials on matters as in DoD Directive 5105.77, May 21, 2008, or as determined by the Secretary of Defense.

Section 615. Operating Materials and Supplies.

Items purchased, provided, and consumed in normal operations in support of this MCA.

Section 616. Operation and Maintenance Activities.

Operation and Maintenance (O&M) Activities mean and include, but are not limited to actions by the state, through employment by the state, by contract or hire, of sufficient personnel, acquisition by contract of supplies or services, or other necessary actions, to perform the services, tasks, or activities within the scope of this MCA which are properly charged to an Operations and Maintenance appropriation.

Section 617. State.

Any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a state exclusive of local governments. (32 C.F.F. § 33.3)

Section 618. Territory.

Territory means any Territory. However, for purposes of laws relating to the militia, the National Guard, the Army National Guard of the United States, and the Air National Guard of the United States. "Territory" includes Guam and the Virgin Islands (32 U.S.C. § 101).

Section 619. The Adjutant General.

a. The Adjutant General (TAG) is the head of the State [Commonwealth, or Territory] Military Department, appointed by the Governor of the State [Commonwealth, or Territory], according to the respective state's [Commonwealth's, or Territory's] constitution, or statute.

b. The TAG receives funds, property, and accounts for all expenditures and property acquired through this MCA, and makes returns and reports concerning those expenditures and that property, as required by this MCA.

Section 620. United States Property and Fiscal Officer. (Grantor)

a. The United States Property and Fiscal Officer (USPFO) is the qualified commissioned officer of the Army National Guard or the Air National Guard, as the case may be, designated by the Chief, National Guard Bureau, to be the United States Property and fiscal Officer of a State or Territory.

b. The USPFO receives and accounts for all funds and property of the United States, in the possession of the National Guard for which he/she is property and fiscal officer, and makes returns and reports concerning those funds and that property, as required by the Secretary concerned. (32 U.S.C. § 708).

Section 621. Unit.

The Unit includes Air National Guard (ANG) flying Groups and Wings, Combat Communication Flights and Squadrons, Engineering Installation Flights and Squadrons, and Combat Readiness Training Centers (CRTC).

ARTICLE VII – GENERAL PROVISIONS

Section 701. Term of Agreement.

Unless sooner terminated by its terms, this MCA shall terminate on 30 September 2014.

Section 702. Sole Benefit.

This MCA is intended for the sole benefit of NGB and the Grantee and is not intended to create any other beneficiaries.

Section 703. Modifications.

This MCA may be modified only by a written instrument signed by the parties hereto. Appendices may be modified separately. However, no appendix modification may modify this MCA by reference.

Section 704. Successors and Assigns.

This MCA may not be assigned by a party without the express written consent of the other party. All covenants made under this MCA shall bind and take effect to the benefit of any successors and assigns of the parties whether or not expressly assumed or acknowledged by such successors or assigns.

Section 705. Entire Agreement.

This MCA forms the entire agreement between the parties as to scope and subject matter of this MCA. All prior discussions and understandings concerning the scope and subject matter are superseded and incorporated by this MCA.

Section 706. Severability.

If any provision of this MCA is held judicially invalid, the remainder of the MCA shall continue in force and effect to the extent not inconsistent with such holding.

Section 707. Waiver of Breach.

If a party waives enforcement of any provision of this MCA upon any event of breach by the other party, the waiver shall not automatically extend to any other or future events of breach.

Section 708. Notices.

Any notice, transmittal, approval, or other official communication made under this MCA shall be in writing and shall be delivered by hand, email, facsimile transmission, or by mail to the other party at the address or facsimile transmission telephone number set forth below, or at such other address as may be later designated:

NGB	LAWRENCE J. ASHLEY, COL, USA USPFO for New York 330 Old Niskayuna Road Latham, NY 12110-3514	Tel Number: (518) 786-4711 DSN: 489-4711 Fax Number (518) 786-4606
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Grantee	PATRICK A. MURPHY, MG The Adjutant General 330 Old Niskayuna Road Latham, NY 12110-3514	Tel Number: (518) 786-4502 DSN: 489-4502 Fax Number (518) 786-4325
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Section 709. Execution.

This MCA may be executed in several counterparts, each of which shall be deemed an original. Subsequent execution of any or all Appendices shall not affect the legality or enforceability of this MCA.

Section 710. Conflict of Interest.

The Grantee shall insure that its employees are prohibited from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others.

Section 711. Access to and Retention of Records.

The Grantee shall afford any authorized representative of NGB, the Department of Defense, or the Comptroller General access to and the right to examine all records, books, papers, and documents ("Records") that are within the Grantee's custody or control and that relate to its performance under this MCA. The Grantee shall retain all such records intact in a form, if not original documents, as may be approved by NGB for at least three (3) years following termination of this MCA.

Section 712. Change of Circumstances.

Each party shall promptly notify the other party of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect the party's ability to carry out any of its obligations under this MCA.

Section 713. Liability and Indemnity.

Except as stated in section 716, nothing in this MCA shall be construed as an indemnification by one party or the other for liabilities of a party or third persons for property loss or damage, or for death or personal injury arising out of and during performance of this MCA. Any liabilities or claims for property loss or damage or for death or personal injury by a party or its agents, employees, contractors or (assigns) or by third persons, arising out of and during the performance of this MCA shall be determined according to applicable law.

Section 714. Reports.

In addition to any financial or other reports required by the terms of this MCA, NGB may require the State to prepare reports or provide information relating to this MCA. The state agrees to provide the reports within a reasonable time of request and in such detail as may be required.

Section 715. Special State Requirements.

Changes to established requirements of this MCA made necessary by governing State statutes will be processed in accordance with NGR 5-1, Chapter 3 for approval by NGB. Upon approval, a statement of alterations or changes, along with justification, shall be attached to this MCA and will be considered a part thereof. (If none, state NONE.)

Section 716. Government Furnished Equipment (GFE).

In addition to the Liability and Indemnity provisions in section 713, nothing in this MCA shall be construed as an indemnification by the United States of the State, its employees, agents, or third persons, for liability with respect to any and all claims, including, but not limited to: (1) claims for damages; and (2) claims for reimbursement arising from property loss, personal injury or accident damage related to the use, care, or operation of GFE. The Grantee's liability for lost or damaged GFE will be in accordance with applicable State laws. (NGR 5-1, Chapter 8). The Grantee is liable for loss, in the event that State law does not authorize indemnification GFE should not be provided.

ARTICLE VIII – APPLICABLE LAWS AND REGULATIONS

Section 801. Applicable Law.

This MCA is incidental to the implementation of a Federal program. Accordingly, this MCA shall be governed by and construed according to federal law as it may affect the rights, remedies, and obligations of the United States.

Section 802. Governing Regulations.

To the extent not inconsistent with the express terms of this Agreement, the provisions of 32 CFR Part 33, Uniform Administrative Requirements for Grants and Cooperative Agreements, DoD Grant and Agreement Regulations (DoDGARS) (DoD 3210.6-R) as amended, Title 2 Code of Federal Regulations (CFR) Part 225, and NGR 5-1, are hereby incorporated into this MCA by reference as if fully set forth herein, shall govern this Agreement.

Section 803. Nondiscrimination.

The Grantee covenants and agrees that no person shall be subject to discrimination or denied benefits in connection with the State's performance under the MCA. Accordingly, and to the extent applicable, the Grantee covenants and agrees to comply with 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. Section 2000d et seq.), as implemented by DoD regulations at 32 CFR Part 195.
- b. On the basis of race, color or national origin, in Executive Order 11246 as implemented by Department of Labor regulations at 41 CFR Chapter 60.
- c. On the basis of sex or blindness, in Title IX of the Education Amendments of 1972 (20 U.S.C. Section 1681, et seq.), as implemented by DoD regulations at 32 CFR Part 196.
- d. On the basis of age, in The Age Discrimination Act of 1975 (42 U.S.C. Section 6101, et seq.), as implemented by Department of Health and Human Services regulations at 45 CFR Part 90.
- 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.

Section 804. Lobbying.

- a. The state covenants and agrees that it will not expend any funds appropriated by Congress to pay any person for influencing or attempting to influence an officer or employee of any agency, or a Member of Congress in connection with any of the following covered federal actions. The awarding of any federal contract; the making of any federal grant; the making of any federal loan; the entering into of any CA; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or Cooperative Agreement.
- b. The Final Rule, New Restrictions on Lobbying, issued by the Office of Management and Budget and the Department of Defense (32 CFR Part 28) to implement the provisions of Section 319 of Public Law 101-121 (31 U.S.C. Section 1352) is incorporated by reference and the state agrees to comply with all the provisions thereof, including any amendments to the Interim Final Rule that may hereafter be issued.

Section 805. Drug-Free work Place.

The Grantee covenants and agrees to comply with the requirements regarding drug-free workplace requirements in of 32 CFR Part 26, which implements Section 5151-5160 of the Drug-Free Workplace act of 1988 (Public Law 100-690, Title V, Subtitle D; 41 U.S.C. 701, et seq.).

Section 806. Environmental Protection.

- a. The Grantee covenants and agrees that its performance under this Agreement shall comply with:
- (1) The requirements of Section 114 of the Clean Air Act (42 U.S.C. Section 7414);
 - (2) Section 308 of the Federal Water Pollution Control Act (33 U.S.C. Section 1318), that relates generally to inspection, monitoring, entry reports, and information, and with all regulations and guidelines issued thereunder;
 - (3) The Resources Conservation and Recovery Act (RCRA);
 - (4) The Comprehensive Environmental Response, Compensation and Liabilities Act (CERCLA);
 - (5) The National Environmental Policy Act (NEPA);
 - (6) The Solid Waste Disposal Act (SWDA);
 - (7) The 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 and Environmental Protection Agency (EPA) rules at 40 CFR Part 31;
 - (8) To identify any impact this award may have on the quality of the human environment and provide help as needed to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and any applicable federal, state or local environmental regulation.

b. In accordance with the EPA rules, the parties further agree that the Grantee shall also identify to the awarding agency (NGB) any impact this award may have on:

- (1) The quality of the human environment, and provide help the agency may need to comply with the National Environmental Policy Act (NEPA, at 42 U.S.C. 4321, et seq.) and to prepare Environment Impact Statements or other required environmental documentation. In such cases, the recipient agrees to take no action that will have an adverse environmental impact (e.g., physical disturbance of a site such as breaking of ground) until the agency provides written notification of compliance with the environmental impact analysis process.
- (2) Flood-prone areas, and provide help the agency may need to comply with the National Flood Insurance Act of 1968 and Flood Disaster Protection Act of 1973 (42 U.S.C. 4001, et seq.), which require flood insurance, when available, for federally assisted construction or acquisition in flood-prone areas.
- (3) Coastal zones, and provide help the agency may need to comply with the Coastal Zone Management Act of 1972 (16 U.S.C. 1451, et seq.), concerning protection of U.S. coastal resources.
- (4) 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.
- (5) 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.).
- (6) Underground sources of drinking water in areas that have an aquifer that is the sole or principal drinking water source, and provide help the agency may need to comply with the Safe Drinking Water Act (42 U.S.C. 300H-3).

Section 807. Use of United States Flag Carriers.

a. The state covenants and agrees that travel supported by U.S. Government funds under this 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 inter-operative guidelines issued by the Comptroller General of the United States in the March 31, 1981, amendment to Comptroller General Decision B138942.

b. The state agrees that it will comply with the Cargo Preference Act of 1954 (46 U.S.C. Chapter 553), as implemented by Department of Transportation regulation at 46 CFR 381.7, and 46 CFR 381.7(b).

Section 808. Debarment and Suspension.

The state covenants and agrees to comply with the requirements regarding debarment and suspension in Subpart C of the OMB guidance in 2 CFR Part 180, as implemented by the DoD in 2 CFR Part 1125. The Grantee agrees to communicate the requirement to comply with Subpart C to persons at the next lower tier with whom the

Grantee enters into transactions that are "covered transactions" under Subpart B of 2 CFR part 180 and the DoD implementation in 2 CFR Part 1125.

Section 809. Buy American Act.

The state covenants and agrees that it will not expend any funds appropriated by Congress without complying with The Buy American Act (41 U.S.C.10a et seq.). The Buy American Act gives preference to domestic end products and domestic construction material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community (EEC) on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EEC and NAFTA end products and construction materials are exempted from application of the Buy American Act.

Section 810. Uniform Relocation Assistance and real Property Acquisition Policies

The state covenants and agrees that it will comply with CFR 49 part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. Section 4601 et seq.) and provides for fair and equitable treatment of persons displaced by federally assisted programs or persons whose property is acquired as a result of such programs.

Section 811. Copeland "Anti-Kickback" Act.

The state covenants and agrees that it will comply with the Copeland "Anti-Kickback" Act (18 U.S.C. Section 874) as supplemented in Department of Labor regulations (29 CFR Part 3). As applied to this agreement, the Copeland "Anti-Kickback" Act makes it unlawful to induce, by force, intimidation, threat of procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, financed in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

Section 812. Contract Work Hours and Safety Standards Act.

The state covenants and agrees that it will comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. Sections 3701-3708) as supplemented by Department of Labor regulations (29 CFR Part 5). As applied to this agreement, the Contract Work Hours and Safety Standards Act specifies that no laborer or mechanic doing any part of the work contemplated by this agreement shall be required or permitted to work more than 40 hours in any workweek unless paid for all additional hours at not less than 1.5 times the basic rate of pay.

ARTICLE IX – PROCUREMENT

Section 901. State Contracts.

The Grantee's acquisition of goods and services by the State in performance of this MCA shall be according to applicable State contracting procedures, standards and procedures contained in 32 CFR § 33.36 and this MCCA.

Section 902. State Contract Flow-down.

Subject to existing contracts, the Grantee is required to insert the substance of provisions of article VIII in contracts issued under this MCA, unless state laws or regulations offer more protection.

ARTICLE X – PROPERTY

Section 1001. Equipment.

- a. Equipment purchased by the Grantee under the terms of this agreement becomes the property of the state and will be managed, used, and disposed of IAW 32 CFR § 33.32 and Chapter 8, NGR 5-1.
- b. Equipment purchased by the federal government, including equipment acquired specifically for a National Guard Cooperative Agreement, vests in the Federal Government. This equipment shall be managed, used, and accounted for as provided in 32 CFR § 33.32(f) and NGR 5-1, Chapter 8.
- c. Equipment purchased by the federal government and issued to the state is Government Furnished Equipment (GFE). The title to GFP/GFE vests in the federal government and cannot be transferred to the state and therefore cannot be considered as In-Kind Assistance (IKA).

Section 1002. Operation Materials and Supplies.

- a. Items to be consumed in normal operations purchased by the state under the terms of this agreement become the property of the State and will be managed and disposed of IAW 32 CFR § 33.33 and NGR 5-1, Chapter 8.
- b. Supplies purchased by the federal government shall be managed, used, and accounted for as provided in 32 CFR § 33.33 and NGR 5-1, Chapter 8. State use of federal supplies and materials may be considered as IKA.

ARTICLE XI – LEGAL AUTHORITY

Section 1101. Legal Authority.

The Grantee represents and warrants that it is under no existing or foreseeable legal disability that would prevent or hinder it from fulfilling the terms and conditions of this MCA. The Grantee shall promptly notify NGB of any legal impediment that arises during the term of this MCA that may prevent or hinder the state's fulfillment of its obligations under this MCA.

Section 1102. Opinion of Counsel.

Concurrent with its execution of this MCA, the Grantee shall furnish an opinion of counsel by the highest legal officer of the State, or his or her designee, that:

- a. The Grantee has the requisite authority to enter into this MCA;
 - b. The Grantee can make the warranty set forth in Section 1101 above;
 - c. The Grantee is empowered to assume the responsibilities and obligations the State proposes to undertake under this MCA;
 - d. The provisions of the MCA intended to secure the interests of NGB are enforceable according to their terms;
 - e. The execution of this MCA has been duly authorized by the state and,
 - f. That the individual signing this MCA on behalf of the State has the requisite legal authority to bind and obligate the state to the terms and conditions of this MCA.
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ARTICLE XII – TERMINATION, ENFORCEMENT, CLAIMS, DISPUTES RESOLUTION, AND APPEALS

Section 1201. Termination.

This MCA may be terminated by either party according to the terms and conditions of 32 CFR § 33.44.

Section 1202. Enforcement.

NGB may take such actions to enforce the terms of this MCA as may be provided for in and under the terms of 32 CFR § 33.43

Section 1203. Claims, Disputes Resolution and Appeals.

a. Any claim made by the Grantee arising out of this MCA shall be presented in writing to the Grants Officer. The claim shall include: the amount of monetary relief claimed or the nature of other relief requested, the basis for relief, and the documents or other evidence pertinent to the claim.

b. Claims shall be made within 60 days after the basis of the claim is known or should have been known, whichever is earlier. It is the state's duty to include in its claim all information needed to demonstrate its timeliness.

c. Upon receipt of a claim, the Grants Officer shall provide a written decision denying or sustaining the claim, in whole or part, which decision shall include the reason for the action, within 60 days of the date of the receipt of a claim. The determination shall be final unless appealed by the Grantee pursuant to the provisions of this section.

d. Alternative Dispute Resolution (ADR).

1. Policy. It is NGB policy to try to resolve all issues concerning cooperative agreements at the Grants Officer's level. Grant Officers are encouraged to use ADR procedures to the maximum extent practicable.

2. Procedures. If a Grantee decides to appeal a Grants Officer's decision, the Grants Officer shall encourage the state to enter into ADR procedures. The ADR procedures to be used shall be agreed to at the time the parties determine to employ them.

e. Appeals.

1. Grant Appeal Authority. The CNGB shall designate a Grants Appeal Authority at the time of receipt of appeal.

2. Right of Appeal. The State has the right to appeal a Grants Officer's decision to the Grant Appeal Authority.

3. Appeal Procedure.

(a) Notice of appeal. The TAG may appeal a decision of the Grants Officer within 90 days of receiving that decision, by filing a written notice of appeal to the Grant Appeal Authority and to the grants Officer.

(b) Appeal file. Within 30 days of receiving the notice of appeal, the Grants Officer shall forward to the Grant Appeal Authority and the Grantee the appeal file, which shall include copies of all documents relevant to the appeal.

(c) Decision. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate.

f. Nothing in this section is intended to limit a Grantee's right to any remedy under the law.