

Environmental and Historical Preservation (EHP) Documentation

***All of this information is also located in the Subrecipient agreement – Exhibit E**

A. Grantee shall comply with the requirements of all applicable federal, State, and local environmental and historic preservation laws, regulations, and standards (“Environmental Matters”). Sub-Recipient is also responsible for ensuring that its contractors and any subcontractors comply with all such requirements.

B. Pre-Implementation and Funding Conditions:

Except for the limited permissible activities identified in Paragraph F below, funds shall not be disbursed to the Sub-Recipient prior to the following:

- a. The completion of any review required under the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.) (“NEPA”), and issuance by NTIA and the State, as required, of a Categorical Exclusion (“Cat Ex”) determination, Record of Environmental Consideration (“REC”), Finding of No Significant Impact (“FONSI”), or Record of Decision (“ROD”) (individually, an “Environmental Decision”) that meet the requirements of NEPA and applicable South Dakota law;
- b. The completion of reviews required under Section 106 of the National Historic Preservation Act of 1966 (54 U.S.C. 300101, et seq.) (“NHPA”), including any consultations required by federal law, to include consultations with the State Historic Preservation Office (“SHPO”), and federally recognized Native American tribes;
- c. The completion of consultations with the U.S. Fish and Wildlife Service (“USFWS”) or the National Marine Fisheries Service (“NMFS”), as applicable, under Section 7 of the Endangered Species Act (16 U.S.C. 1531, et seq.), and/or consultations with the U.S. Army Corps of Engineers (“USACE”) under Section 404 of the Clean Water Act (33 U.S.C. 1251, et seq.), as applicable; and

- d. Demonstration of compliance with all other applicable federal, state, and local environmental laws and regulations.

C. Sub-Recipient's Compliance with NEPA

To ensure the timely completion of environmental review for all BEAD-funded activities subject to NEPA review, the Sub-Recipient shall:

- a. Timely prepare any required NEPA documents and obtain any required permits, adhering to any applicable statutory deadlines in 42 U.S.C. 4336a(g); and
- b. Provide a milestone schedule identifying specific deadlines and describing how Sub-Recipient proposes to meet these timing requirements including, as required, the completion of consultations, the completion of NEPA and Section 106 reviews, and the submission of Environmental Assessments (EAs) or Environmental Impact Statements (EISs).

D. Sub-Recipient Compliance with NHPA Section 106

To ensure the timely completion of historic preservation review for all BEAD-funded activities, the Grantee shall adhere to, and ensure that all subgrantees adhere to, the provisions of the NTIA memorandum to SHPOs, Tribal Historic Preservation Officers ("THPOs"), and Internet for All ("IFA") grant recipients authorizing IFA grant recipients to initiate Section 106 consultation for NTIA funded projects.

- E. Sub-Recipient shall comply with any further guidance provided by NTIA regarding its responsibilities with respect to Environmental Matters.

F. Limited Permissible Pre-Implementation Activities

Sub-Recipient shall ensure that implementation (site preparation, demolition, construction, ground disturbance, fixed installation, or any other implementation activities) does not begin prior to the completion of all requirements as outlined in this Exhibit E. Sub-Recipient shall comply with all conditions placed on the grant funded activities as the result of NEPA or NHPA consultation or processes under other applicable laws, including, for example, mitigation requirements; best management practices; or other measures necessary to reduce environmental impacts, and ensure that any subcontractors comply with such conditions as well. Sub-Recipient must also provide any information requested by NTIA or the State to ensure both initial and ongoing compliance with all requirements described above.

- G. Only if approved by the State in writing, prior to the completion of the Environmental Matters review process, Sub-Recipient may undertake limited permissible activities under NEPA to proceed using grant funds, including the following:
- a. Pre-construction planning, including collecting information necessary to complete environmental reviews;
 - b. Applications for environmental permits;
 - c. Studies including, but not limited to, Environmental Assessments (“EA”), wetland delineations, biological assessments, archaeological surveys, and other environmental reviews and analyses;
 - d. Activities supporting consultations required under the NHPA, the Endangered Species Act, and the Clean Water Act; and/or
 - e. Limited, preliminary procurement, including the purchase or lease of equipment, or entering into binding contracts to do so; the purchase of applicable or conditional insurance; and/or funds used to secure land or building leases (including right-of-way easements).
- H. If Sub-Recipient undertakes unauthorized project activities in contravention of the requirements hereunder it does so expressly at its own risk. The State may consider such activities to be Events of Default under this agreement or cause for the imposition of the remedies identified in 2 CFR 200.339.

- I. Sub-Recipient shall notify the State within 24 hours upon receipt of any Section 106 notices of foreclosure; notices requesting continuing or supplemental consultation received from the SHPO, THPO, or other consulting party or the USFWS or NMFS; or notices of noncompliance received from consulting authorities or regulatory agencies.
- J. Any change to the approved scope of Award funded activities proposed after the completion of environmental and historic preservation review that has the potential for altering the nature or extent of environmental or historic preservation impacts shall be brought to the attention of the State and will be re-evaluated for compliance with applicable requirements.
- K. Archaeological Resources: Burial sites, human remains, and funerary objects are subject to the requirements of all applicable Federal, Tribal, state, and local laws and protocols, such as the Native American Graves Protection and Repatriation Act (NAGPRA), in addition to Section 106 of the NHPA. Sub-Recipient shall notify the State of inadvertent discoveries and potential impacts to these resources and identify and follow all applicable laws or protocols. If any potential archeological resources or buried human remains are discovered during construction, Sub-Recipient shall immediately stop work in that area, secure that area, and keep information about the discovery confidential, except to call local authorities and to notify the State. Such construction activities may then only continue with the written approval of the State.