

1 October 2018

**DEPARTMENT OF DEFENSE STARBASE PROGRAM
COOPERATIVE AGREEMENT**

AGREEMENT NO. W912-19-2-4002

PAGE 1 OF 21 PAGES

ISSUED BY: NATIONAL GUARD BUREAU

ISSUED TO: THE STATE OF VERMONT

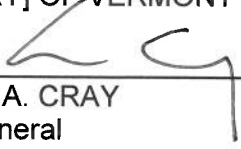
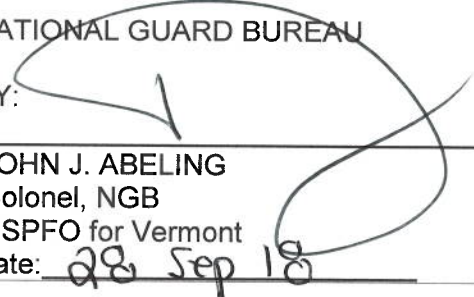

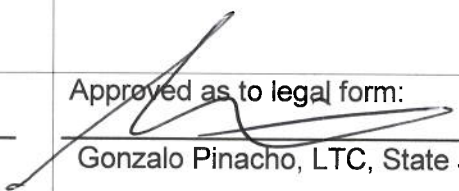
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EXECUTION

By executing this Department of Defense STARBASE Program Cooperative Agreement, the parties agree to the terms and conditions contained herein.

STARBASE Program Cooperative Agreement

THE STATE [COMMONWEALTH, DISTRICT, OR TERRITORY] OF VERMONT BY: 	NATIONAL GUARD BUREAU BY: 
STEVEN A. CRAY Major General The Adjutant General Date: <u>26 Sep 18</u>	JOHN J. ABELING Colonel, NGB USPFO for Vermont Date: <u>28 Sep 18</u>
Approved as to legal form: 	Approved as to legal form: 
JACOB A. HUMBERT, Assistant Attorney General Date: <u>21 SEPT 2018</u>	Gonzalo Pinacho, LTC, State Judge Advocate Date: <u>13 Sep 2018</u>

2018-07391

Article I

Scope, Purpose, and Authority

Section 101. General

a. Congress authorized the Secretary of Defense acting through the Chief, National Guard Bureau (CNGB) to conduct Programs collectively called the "National Guard Youth Programs." The National Guard Bureau (NGB) and the Grantee (The Adjutant General - TAG) have entered into this Department of Defense STARBASE Program Cooperative Agreement (CA) to establish the terms and conditions applicable to the contribution of Department of Defense (DoD) funds or In-Kind Assistance, State funds, and funds from other authorized sources for the activities specified herein.

b. This Agreement applies to the STARBASE and STARBASE 2.0 programs and includes all terms and conditions related to DoD's contribution of funds for the operation and training of the STARBASE Program within the State.

c. It is required for first year STARBASE Programs that the State shall submit its plan signed by the Governor, the State Attorney General and The Adjutant General. The Adjutant General may sign subsequent Cooperative Agreements provided that the Governor delegates this authority to The Adjutant General.

d. Funding cannot be released until the state program budget and state plan are received and approved by NG-J1-Y and OASD/M&RA.

e. Although not an appendix to that document, NGB's Master Cooperative Agreement (MCA) and Attachment A – 2 CFR Part 200 Award Provisions, are incorporated herein by reference. They contain provisions required by federal law and regulation which apply to this STARBASE cooperative agreement and govern it.

Section 102. Scope

The Secretary of Defense, acting through the Chief of the National Guard Bureau, may conduct a National Guard Youth Program (to be known as the Department of Defense STARBASE Program) to use the National Guard to raise the interest and improve the knowledge and skills of at-risk youth in Science, Technology, Engineering, and Mathematics, which will provide for a highly educated and skilled American workforce that can meet the advanced technological requirements of the Department of Defense.

Section 103. Authority

a. 10, United States Code (USC) § 2193b, authorizes the Department of Defense through the National Guard Bureau (NGB) to contribute funds to the States for STARBASE with funds appropriated therefore.

b. This is a Cooperative Agreement (CA) within the meaning of 31 USC § 6305.

Article II Obligations of the Parties

Section 201. Obligations of the Grantee (State)

a. General.

(1) The Grantee shall exercise its best efforts to supervise, manage, operate and/or maintain all activities or projects within the scope of this STARBASE CA according to sound and efficient business practices, and the terms, conditions and specifications of this Cooperative Agreement.

(2) The Grantee shall obligate sufficient funds to pay its share of the costs under this Agreement and, where NGB provides services in kind, the costs of which are to be shared under the terms of this Agreement, and to reimburse NGB in the manner provided under this Agreement.

(3) The Grantee's obligations are contingent upon the NGB funding of this STARBASE CA in each Fiscal Year as provided in Article IV, Section 401.

(4) If, at any time within the Federal Fiscal Year (FFY), the Grantee determines that NGB's share of allowable costs has reached the amount reflected in Section 401, or determines that the total amount of NGB's share of allowable costs exceeds 90% of the amount reflected in this Section, the Grantee will notify the Grantor 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.

b. Objectives.

(1) The STARBASE Program's intent is to raise the interest and improve the knowledge and skills of at-risk youth in math, science, and technology by exposing them to the technological environment and positive role models found on military bases and installations.

(2) STARBASE 2.0 is an afterschool, middle and high school mentoring initiative conducted in partnership with local school districts that combines STEM activities with a relationship-rich, school-based environment to provide the missing link for youth making the transition from elementary to middle school, and from middle to high school. STEM clubs are expected to meet no less than four hours per month.

(3) The Grantee is advised that the Program is a non-combat, civil-military activity, of the National Guard and the Program shall be conducted so as not to detract from, or interfere with, military training activities of the National Guard.

c. Further Obligations of the Grantee - Plans, Procedures.

(1) The Grantee shall develop a Goal-Focused State Plan that includes STARBASE Academy goals, their measureable achievements, Academy expenditures, and the number of students and classes. This plan will be updated each Fiscal Year.

(2) The Grantee shall develop a standard curriculum for each of the six content areas listed in the DoDI 1025.7 (14 Sep 00). The curriculum will be inquiry-based and the activities will clearly be specified in lesson plans, adhering to the standards, objectives, and approved activities designated by the curriculum committee.

(3) The Grantee shall develop Standing Operating Procedures (SOPs) for all key areas of the Program. SOPs may take the form of handbooks, guides, manuals, etc. The Grantee will ensure the SOPs include the requirement for Program Directors to perform a semi-annual (twice a year) operational self-evaluation.

d. Further Obligations of the Grantee - School District Participants.

(1) STARBASE Application Procedures. The Grantee shall accept applications from any school district (public or private), alternative educational provider, individual, or group of home schooling families.

(2) Youth Selection Criteria. Application and selection procedures shall make reasonable accommodations for physical disabilities and shall, to the fullest extent possible, actively encourage participation of at-risk youth and those that are historically underrepresented in science, math and technology fields.

(3) Application and selection procedures shall, to the fullest extent possible, attempt to reach and include economically and educationally disadvantaged groups. Other factors to be considered in the selection process are:

- (a) Inner city and/or rural location.
- (b) Disability.
- (c) Socio-economic disadvantage.
- (d) Low academic performance.
- (e) Further Obligations of the Grantee - Staff.

(4) Program personnel will be civilian employees of the State or employed under a contract with the Grantee.

(5) The Grantee may procure by contract the temporary full-time services of such civilian personnel as may be necessary to carry out this Program. Civilian employees and contract personnel performing these services may be required, when appropriate, to achieve a Program objective, to be members of the National Guard and to wear the military uniform.

(6) Specific educational, experience, and similar criteria for all paid staff members may not be less than the criteria which would be required for State employees in similar positions.

(7) The Grantee may require, to the extent consistent with State law and policy, certain staff to be members of the National Guard and, as National Guard members, to wear the military uniform, particularly those in direct contact with the students.

(8) The Grantee is responsible for ensuring STARBASE directors and staff shall attend all authorized and approved DoD funded training. STARBASE Directors and staff are required to attend workshops, seminars and formal training sessions to acquire needed skills and knowledge of total Program Management to assist in assessing the effectiveness of their Programs.

(9) The Grantee shall provide, to the extent practicable, professional instruction, counseling and mentoring as is required for the Program.

(10) Facilities of the National Guard may be used in carrying out the Program.

(11) Grantee staff involved with the program must pass the required background investigation – either the minimum federal standard applicable to the youth age group or a stricter state standard if applicable.

Section 202. Obligations of NGB

a. NGB shall reimburse the Grantee for costs that are allowable as identified in the approved annual state plan in the performance of this agreement. NGB, in conjunction with an appropriate State official, will ensure the administration of the STARBASE Program with respect to the management of logistics, equipment and facilities will comply with applicable Federal and State statutes and regulatory guidance, to include acquisition, property accountability and environmental protection (IAW current PARC policy, the former NGR 5-1 or successor CNGB instruction and manual).

b. Whenever the terms of this Agreement 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 and the Grantee's actual contribution of its share of the costs as specified in this Agreement.

Section 203. Obligations of Both Parties – Close Out.

NGB and the Grantee share in the responsibility for accurate and timely closeouts of this Agreement. Federal Fiscal Year (FFY) end closeouts and/or projected completion/termination closeout of this Agreement shall be in accordance with current PARC policy, the former NGR 5-1 Chapter 11 or successor CNGB instruction and manual.

Section 204. Termination of the Agreement

a. Termination for Non-compliance. If the Grantee materially fails to comply with any term of this Agreement, the Grantor may take actions pursuant to 32 Code of Federal Regulations (CFR) Part 33.43, including the following, as appropriate in the circumstances:

(1) Temporarily withhold cash payments pending correction of the deficiency by the Grantee, or more severe enforcement action by the Grantor/NGB;

(2) Disallow (that is, deny reimbursement) all or part of the cost of the activity or action not in compliance;

(3) Wholly or partially suspend or terminate the current Agreement for the Grantee's Program;

(4) Withhold further Agreements for the Program, and/or;

(5) Take other remedies that may be legally available.

b. Termination for Convenience. This Agreement may be terminated in whole or in part, pursuant to 32 USC § 33.44, as follows:

(1) By the Grantor with the consent of the Grantee in which case the two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated, or

(2) By the Grantee upon written notification to the Grantor, setting forth the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. However, if in the case of a partial termination, NGB determines that the remaining portion of the Agreement will not accomplish the purposes for which the Agreement was made, NGB may terminate the Agreement in its entirety under either §33.43 or paragraph (a) of this Section. Either party may terminate this Agreement with a 90 day written notice to the other party.

Section 205. Program Closure

This Agreement may be terminated at the discretion of the Office of the Assistant Secretary of Defense – Reserve Affairs (OASD-RA) for just cause as provided below:

a. A STARBASE Program fails to provide data necessary for compilation of the annual Congressional report.

b. STARBASE Program does not show measurable achievement of Program goals.

c. A military installation fails to support or becomes unable to adequately support a STARBASE Program.

d. DoD Component recommends that the STARBASE Program be terminated.

e. Other reasons as deemed appropriate by the OASD-RA.

Article III Costs

Section 301. General

Wherever any item of cost for the performance of this Agreement, as listed in a Budget/Financial Plan as required in Article IV of this Agreement, 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 costs that would otherwise be allowable under this Agreement.

Section 302. Allowability of Costs

a. Except as otherwise stated in this Article or elsewhere in this Agreement, the allowability of costs incurred by the Grantee in performance under this Agreement shall be determined according to the terms and conditions of 2 CFR Part 200 as applicable and current PARC policy, the former NGR 5-1 Chapter 5 or successor CNGB instruction and manual effective at the time the cost is incurred.

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

Section 303. 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/Financial Plan under this Agreement shall be allowable.

b. The costs of compensation for personnel services, including the cost of fringe benefits such as worker's compensation, unemployment compensation, State sponsored life and health insurance, and retirement benefits shall be allowable as specified in current PARC policy, the former NGR 5-1 Chapter 5 or successor CNGB instruction and manual. Only those indirect costs approved by the OASD-RA are reimbursable.

Section 304. Authorized Costs/Activities

a. Federal STARBASE funding levels for each person will not exceed the authorized GS level equivalency for that person's respective position in accordance with the Academy Manning Model. If a State has a pay freeze or pay cap, a hiring freeze or employee furloughs for like positions throughout the State, then STARBASE employees will have corresponding adjustments.

b. Salaries for the STARBASE Program may not exceed the authorized, specified GS level, Step 5. Benefits required by State law can be added to the GS-level base. When there is no like State Government position available, salaries and benefits will be equivalent to a comparable grade and series Federal Civil Service position in the geographic area. Exceptions to a State Government position or comparable Federal Civil Service position must be approved by NG-J1-Y.

(1) Fringe Benefits including FICA (Social Security and Medicare) contributions; workers compensation and unemployment fund contributions; health and life insurance benefits, and contributions to the State's retirement system.

c. Facility Expenses.

(1) Improvement to facilities will be limited to general upkeep/maintenance and limited modernization/changes to make the facilities safe and habitable by the students. No construction of any new structure or addition to an existing structure, new office or classroom space is authorized. The intent is to use existing facilities for this Program. Reimbursement to the State for improvements to facilities will not exceed \$50,000 per building without approval. Proposed renovations must be included in the State

Plan.

(2) Each command hosting a STARBASE Program is responsible for funding the necessary facility maintenance and utility costs related to operating the Program with no federal reimbursement. Utility costs are not allowable except for official usage telephone.

d. Supplies, Equipment and Computers.

(1) Reimbursement may be made for expenditures on reasonable supply requirements and consumable supplies necessary for the STARBASE Program.

(2) The procurement of computer related equipment such as, computers, software, tablets, IPADs, printers to include the cost on internet connection to service provider cannot exceed \$25,000 and must be addressed in the approved state plan.

(3) The reasonable cost to rent or purchase classroom furnishings for the students is reimbursable. These expenditures will be included in the approved State Plan and Budget.

(4) The purchase of class/instructional materials, as specified in the approved State Plan, is reimbursable to the State.

e. Travel and Transportation.

(1) Required travel, which includes but is not limited to DoD Directors Conferences, at a rate consistent with State travel regulations and not exceeding the Joint Federal Travel Regulation (JFTR) and the Joint Travel Regulation (JTR) for performing program-related activities and authorized training away from employee's home station, shall be authorized. Travel may not exceed the budgeted amount approved by NG-J1-Y.

(2) The travel budget may also include funding to specific DoD STARBASE Program Meetings and special events (which may involve travel costs for former or current STARBASE students) approved by OASD-RA.

(3) The purchase of safety items such as vest, belts are authorized during student gatherings, field trips or other events as needed. Items must be accounted for and returned to the program.

(4) It is OASD-RA policy to have the participating schools/organizations provide transportation for the students from school to/from the STARBASE Program site. Exemptions to this policy must be approved by OASD-RA.

f. Guest speakers will not exceed the daily wage rate for a GS-15, plus per diem expenses, as authorized by the JTR. Free guest speakers should be highly encouraged.

g. The cost of required coverage (commercial insurance or state's risk management) as required by the OPR-PM, at the statutory state share ratio.

Section 305. Unauthorized Costs/Activities

a. Purchase of vehicles.

b. Repair to, or construction of, a STARBASE Program building in excess of \$50,000 per building, unless previously approved by NG-J1-Y and OASD/M&RA,. (Reference Section 304.c.).

c. Clothing other than safety gear as identified in section 304

d. The following medical services are not authorized:

(1) Long term or rehabilitative mental health care.

(2) Movement on aero medical evacuation aircraft, except in life threatening situations as determined by on site medical personnel.

(3) Routine health care services.

(4) Continuing and/or ongoing treatments and medical care for chronic and/or pre-existing conditions.

(5) Elective care of any kind.

e. Costs for food at open houses.

f. Cost of guest speakers exceeding the calculated daily wage for GS-15, Step 10 (hourly wage rate in \$/hour x 8 hours).

g. Reimbursement of monthly or one-time worker's compensation payouts (claims); additional post-retirement costs, such as additional costs associated with post-retirement health insurance; early retirement incentives, such as bonuses or payouts; and, post-retirement monthly payment of vacation or annual leave, shall not be authorized.

h. Reimbursement of costs associated with arbitration services, professional or otherwise, in the negotiation and settlement of a grievance or other formal complaint filed by an employee or a group of employees, shall not be authorized. These are matters between the State and the employee(s), and such costs shall be borne by the Grantee.

i. Reimbursement of costs incurred by, or associated with, the process of collective bargaining between the State and its employees covered by a Bargaining Unit (a legally organized labor union) for the purposes of negotiating matters involving employment issues, such as general working or safety conditions on the job, job qualifications and the like, shall not be authorized. Such costs shall be borne by the Grantee.

j. Costs not outlined in Section 304 or costs not approved in writing by NG-J1-Y.

k. Costs listed as unallowable/unauthorized in CFR Part 225, Appendix B.

Article IV Budget Requirements and Funding Limitations

Section 401. Budget Requirements

a. The Grantee shall submit for approval a budget that lists object code categories, for each Fiscal Year of this Agreement, in the form required by NG-J1-Y. Upon approval, the budget shall be included as part of this Agreement. Budgets shall be submitted for approval to NG-J1-Y 90 days prior to the expiration of the current budget year (FFY) for each succeeding year.

b. Object code categories are:

- (1) Staff.
- (2) Facility maintenance and utilities.
- (3) Facility furnishings.
- (4) Transportation and travel (e.g. TDY, training, special events).
- (5) Supplies.
- (6) Equipment.
- (7) Contract services.
- (8) Communications.

c. Budgets shall be approved before the execution and before NGB funding of this Agreement in any Fiscal Year.

d. Funding will not be released or obligated until NGB-J1-Y approves a Program budget. Adjustment of budget categories and use of funds to do so may not be made until NGB-J1-Y has approved the required budget modifications. Grantee may adjust the budget object codes up to 10% of the total approved budget, provided that the total budget amount is not increased. Object code adjustments exceeding 10% must be approved in writing by NGB-J1-Y and object code changes will not be executed until so approved and a CA modification is executed. Any change in budget or object codes in excess of 10% may be changed only by an executed modification of the Budget/Financial Plan. Either party may propose a change to a budget by submitting such proposal in writing to the other party.

e. The total amount of each budget shall reflect the maximum amount for which NGB is obligated to reimburse the Grantee for performance of this Agreement. NGB may incrementally fund and may unilaterally increase or decrease the maximum funding amount. OASD-RA will review and consider increasing a Program's class size on a case by case basis.

f. The Grantee shall submit its new or amended plan signed by the Governor, the State Attorney General and the Adjutant General if this is the original Cooperative Agreement. If so delegated by the Governor, The Adjutant General may sign subsequent renewals.

Section 402. Budget Reports

a. The STARBASE Program uses three Microsoft Excel spreadsheets for required Budget Reports. Questions regarding report preparation and submission may be addressed to NG-J1-Y.

(1) Initial Budget Report -- used to submit initial Fiscal Year operating Budget.

(2) Budget Modification Report -- used when modifying the approved initial Fiscal Year (FFY) operating Budget.

(3) Quarterly Budget Report -- tracks operating Budget obligations/expenditures by calendar quarter. Quarterly Budget Reports shall be sent to NG-J1-Y not later than 90 days following the execution date of the operating Budget.

b. Updated annual Goal-Focused State Plans will be submitted simultaneously with each proposed budget submission.

c. A revised budget is required when additional funds are requested above the initial approved budget amount.

- d. Revised budgets must show how the additional funds will be allocated.

Section 403. Method of Funding

a. The STARBASE CA may be incrementally funded. If this Agreement is incrementally funded, it is the understanding of the parties that the maximum obligation of NG-J1-Y, as stated in Section 401, shall be determined annually subject to the availability of funds.

b. The annual funding of this Agreement will be in accordance with current PARC policy, the former NGR 5-1 Chapter 3 or successor CNGB instruction and manual as specified in the Budget Requirements/Financial Plan Requirements in Section 401.

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

Funds provided by NGB under this Agreement are available for obligation by the Grantee only in the Federal Fiscal Year available. Funds obligated by the Grantee under this Agreement, and the incurring of allowable costs, may cross Fiscal Years, provided all funds are obligated and allowable costs incurred within 12 months of Agreement.

Section 405. Program Income

Program Income is not applicable under this Agreement.

Section 406. Funding Limitation

a. Approved Budget/Annual Funding Program (AFP): The total dollar amount that NGB anticipates, subject to the availability of funds, being available for reimbursement to the Grantee for its costs in fulfilling its responsibilities under this Agreement. Updated funding limitations will be issued by NG-J1-Y each Fiscal Year this Agreement is in operation. Increases/decreases to the AFP in any given FFY will be by a bilateral modification.

b. Total Dollars Obligated: The total amount of funds obligated by NGB for the Grantor's share under this Agreement.

c. Accomplished as In-Kind Assistance: The total dollars expended through federal acquisition. The Grantee must submit a written request demonstrating a compelling reason to use federal procurement to the Grantor.

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

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

f. NG-J1-Y will be advised of any additive funding received by the Grantee from any other source.

g. United States Property and Fiscal Officer (USPFO) Authority to Withhold Funds from the Grantee. Failure of the Grantee to provide data and reports to the independent assessment firm at the prescribed intervals and in the prescribed format may result in the withholding of federal funds by the USPFO until the data and reports are submitted. Also, failure on the part of the Grantee to comply with specific actions required by an NG-J1-Y assessment to bring the Program into compliance may result in the withholding of federal funds by the USPFO until corrective action is taken.

Article V Payment

Section 501. General

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

Section 502. Payment by 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 current PARC policy, the former NGR 5-1 Chapter 11 or successor CNGB instruction and manual. Upon verification of the payment amount, the USPFO shall execute the necessary documentation for reimbursing the State and forward the accompanying documentation to the designated ANG Comptroller's Office.

Section 503. Payment by Advance Method

The advance payment method shall be according to procedures established in current PARC policy, the former NGR 5-1 Chapter 11 or successor CNGB instruction and manual.

Section 504. Direct Federal Payment of Grantee Obligations

In no event shall the Grantor make direct payment to a Grantee contractor, Grantee employee, contractor employee, or Grantee vendor for any costs incurred by the Grantee under this Agreement.

Section 505. Interest

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

Section 506. Final Accounting

Within 90 days after the end of the Federal Fiscal Year, or upon termination or close out of an Agreement, whichever is earlier, the grantee shall provide to the USPFO, a final accounting of all funding and disbursements under the Agreement for the Fiscal Year, (IAW current PARC policy, the former NGR 5-1 Chapter 11 or successor CNGB instruction and manual.

**Article VI
Definitions**

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

See MCA Section 601.

Section 602. Air National Guard

See MCA Section 602

Section 603. Army National Guard

See MCA Section 603

Section 604. Chief, National Guard Bureau

See MCA Section 604

Section 605. Cooperative Agreement Federal Program Manager

See MCA Section 605

Section 606. Equipment (Non-military)

See MCA Section 606

Section 607. Federal Fiscal Year

Federal Fiscal Year (FFY) 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

See MCA Section 609.

Section 610. Grants Officer

See MCA Section 610

Section 611. Grants Officer Representative

See MCA Section 611

1 October 2018

Section 612. In-Kind Assistance

See MCA Section 612

Section 613. Military Equipment

See MCA Section 613

Section 614. National Guard Bureau

See MCA Section 614

Section 615. Operating Materials and Supplies

See MCA Section 615

Section 616. Operation and Maintenance Activities

See MCA Section 616

Section 617. State

See MCA Section 617

Section 618. Territory

See MCA Section 618

Section 619. The Adjutant General

See MCA Section 619

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

See MCA Section 620

Section 621. Unit

See MCA Section 621

Article VII General Provisions

Section 701. Term of Agreement

The terms and conditions of the STARBASE agreement/award are valid until officially changed by GCAPL or reissued.

Section 702. Sole Benefit

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

Section 703. Modifications

This Agreement may be modified only by a written instrument signed by the parties. Attachments may be modified separately. However, no modification to an Attachment modifies this Agreement.

Section 704. Successors and Assigns

This Agreement may not be assigned by a party without the express written consent of the other party. All covenants made under this Agreement 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 Agreement forms the entire Agreement between the parties as to scope and subject matter of this Agreement. All prior discussions and understandings concerning the scope and subject matter are superseded by this Agreement.

Section 706. Severability

If any provision of this Agreement is held judicially invalid, the remainder of the Agreement 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 Agreement 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 Agreement 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:

1 October 2018

NGB JOHN J. ABELING, COL, USPFO-VT
789 National Guard Road, Colchester, Vermont 05446-3099
John.j.abeling.mil@mail.mil; Fax: (802) 338-3184
Grantee STEVEN A. CRAY, MAJ, TAG-VT
789 National Guard Road, Colchester, Vermont 05446-3099
Steven.a.cray.mil@mail.mil; Fax: (802) 338-3425

Section 709. Execution

This Agreement may be executed in several counterparts, each of which shall be deemed an original.

Section 710. Conflict of Interest

The Grantee shall ensure 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 Agreement. The Grantee shall retain all such records intact in a form, if not original documents, as may be approved by NGB for at least ten (10) years following termination of this Agreement.

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 Agreement.

Section 713. Liability and Indemnity

Except as Stated in Section 716, nothing in this Agreement 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 and performance of this Agreement. 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 Agreement shall be determined according to applicable law.

Section 714. Reports

In addition to any financial or other reports required by the terms of this Agreement, NGB may require the Grantee to prepare reports or provide information relating to this Agreement. The Grantee 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 the established requirements of this Agreement made necessary by governing State statutes will be processed in accordance with current PARC policy, the former NGR 5-1 Chapter 3 or successor CNGB instruction and manual for approval by NGB. Upon approval, a statement of alterations or

changes, along with justification, shall be attached to this Agreement and will be considered a part thereof. (If none, state NONE).

Section 716. Government Furnished Equipment (GFE)

a. In addition to the Liability and Indemnity provisions in Section 713, nothing in this Agreement 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, operation of GFE.

b. Nothing in this Agreement alters the State's liability for loss of or damage to GFE. The method or mechanism for payment shall be in accordance with State law. Unless State law authorizes compensation for such damage or destruction, GFE shall not be provided.

Article VIII Applicable Laws and Regulations

Section 801. Applicable Law

This Agreement is incidental to the implementation of a Federal Program. Accordingly, this Agreement 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

See the MCA Section 802

Section 803. Nondiscrimination

See MCA Section 803

Section 804. Lobbying

See MCA Section 804

Section 805. Drug-Free Work Place

See MCA Section 805

Section 806. Environmental Protection

See MCA Section 806

Section 807. Use of the United States Flag Carriers

See MCA Section 807

Section 808. Debarment and Suspension

See MCA Section 808

Section 809. Buy American Act

See MCA Section 809

Section 810. Uniform Relocation Assistance and Real Property Acquisition Policies

See MCA Section 810

Section 811. Copeland “Anti-Kickback” Act

See MCA Section 811

Section 812. Contract Work Hours and Safety Standards Act

See MCA Section 812

Section 813. Central Contractor Registration and Universal Identifier Requirements

See MCA Section 813

Section 814. Reporting Subawards and Executive Compensation

See MCA Section 814

**Article IX
Procurement**

Section 901. State Contracts

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

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 Agreement, 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 Part 33.32 and current PARC policy, the former NGR 5-1 Chapter 8 or successor CNGB instruction and manual.

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 Part 33.32(f) and current PARC policy, the former NGR 5-1 Chapter 8 or successor CNGB instruction and manual.

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 Part 33.33 and current PARC policy, the former NGR 5-1 Chapter 8 or successor CNGB instruction and manual

b. Supplies purchased by the Federal Government shall be managed, used, and accounted for as provided in 32 CFR Part 33.33 and current PARC policy, the former NGR 5-1 Chapter 8 or successor CNGB instruction and manual. State use of federal supplies and materials may be considered as IKA.

Article XI

Legal Authority

Section 1101. Legal Authority

The State 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 Agreement. The State shall promptly notify NGB of any legal impediment that arises during the term of this Agreement that may prevent or hinder the State's fulfillment of its obligations under this Agreement.

Section 1102. Opinion of Counsel

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

- a. The State has the requisite authority to enter into this Agreement;
- b. The State can make the warranty set forth in Section 1101;
- c. The State is empowered to assume the responsibilities and obligations the State proposes to undertake under this Agreement;
- d. The provisions of the Agreement intended to secure the interests of NGB are enforceable according to their terms;
- e. The execution of this Agreement has been duly authorized; and,
- f. That the individual signing this Agreement on behalf of the State has the requisite legal authority to bind and obligate the State.

Article XII
Termination, Enforcement, Claims, Disputes Resolution, and Appeals

Section 1201. Termination

The termination provisions specified in 32 CFR Part 33.44 apply to this Agreement.

Section 1202. Enforcement

NGB may take such actions to enforce the terms of this Agreement as may be provided for in and under the terms of Section 204 and 32 CFR Part 33.43.

Section 1203. Claims, Disputes Resolution, and Appeals

a. Any claim made by the State arising out of this Agreement 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 State pursuant to the provisions of this Section.

d. Alternative Dispute Resolution (ADR).

(1) Policy. It is NGB policy to resolve issues concerning Cooperative Agreements at the Grants Officer's level whenever possible. Grant Officers are encouraged to use ADR procedures to the maximum extent practicable.

(2) Procedures. If a State 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 Procedures. Notice of appeal. 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.

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

(5) Decision. Any fact-finding or hearing shall be conducted using procedures that the Grant Appeal Authority deems appropriate. Nothing in this Section is intended to limit a State's right to any remedy under the law.

Article XIII
Agreement Particulars

The information below shall be recorded by the Grants Officer's Representative (GOR) for compliance with the reporting requirements of the DoD Assistance Award Action Report System (DAADS) and the Federal Funding Accountability and Transparency Act of 2006.

- | | |
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| a. Grantee/Recipient Category: | Government |
| b. Grantee/Recipient Type: | State Government |
| c. Grantee/Recipient DUNS: | 070980243 |
| d. Primary Place of Performance (if different from 'Issued To' on CA Modification Form): | |
| VT National Guard, 789 National Guard Road, Colchester, Vermont 05446-3099 | |
| e. Grantee/Recipient County | |
| (Primary Place of Performance): | Chittenden |
| f. Grantee/Recipient Congressional District | |
| (Primary Place of Performance): | At Large |
| g. Major Agency: | DOD |
| h. Agency Code: | 0100 |
| i. Funding Agency: | Air Force |
| j. Program Source Agency: | 57 |
| k. Transaction Type: | Cooperative Agreement |
| l. CFDA: | 12.404 |
| m. CFDA Program Title: | Operation and Maintenance,
Defense Wide |
| n. Program Source Account-Funding: | 3400 |
| o. Treasury Appropriation Code: | 3400 |
| p. Award/Obligation/Action Date: | 1 October 2018 |
| q. Starting Date: | 1 October 2018 |
| r. Ending Date: | Per the terms of agreement |
| s. Record Type: | Individual Action |
| t. Fiscal Year/Quarter: | FY19/1 st Quarter |
| u. Unique Federal Award Identification Number (FAIN) | W912LN-19-2-4002 |
| v. Approved Budget Amount: | Established per mod |
| w. R&D Award (Yes or No) | N/A |
| x. Indirect Cost Rate or CPP Rate: | N/A |