

**INTERGOVERNMENTAL AGREEMENT
FOR PUBLIC WI-FI PROJECTS BETWEEN THE
COUNTY OF LAKE AND THE CITY OF NORTH CHICAGO**

This Intergovernmental Agreement (“**IGA**”) is between the County of Lake (“**County**”), a body politic and corporate, operating under 55 ILCS 5/1-1001 *et seq.*, and the City of North Chicago (“**Municipality**”), a home rule municipal corporation operating under the Constitution of the State of Illinois and located in Lake County, Illinois.

Recitals

Whereas:

1. The County and Municipality are units of local government authorized to enter into this IGA under the Constitution of the State of Illinois of 1970, Article VII, Section 10, and the Intergovernmental Cooperation Act, 5 ILCS 220/1 *et seq.*
2. In alignment with the County’s Broadband and Digital Equity Action Plan, the County has a goal to expand countywide access to reliable, high-speed broadband infrastructure by increasing free public Wi-Fi in high-need areas within the County.
3. The County contracted with CDW Government LLC (“**CDW**”) for hardware, installation, service, and support to allow for public Wi-Fi connectivity at specific locations within Lake County to increase internet accessibility, the terms of which are set forth in a separate agreement between the County and CDW (“**CDW Agreement**”). The CDW Agreement provides for up to a 1-year term for internet service (arranged by CDW and supplied by an internet service provider yet to be determined) and support for the hardware and the internet service for this public Wi-Fi initiative.
4. Municipality has locations where the public Wi-Fi could be installed and the internet service made available to its residents, who would benefit from being able to connect to the internet more affordably or with greater bandwidth than they may currently access (the “**Project**”).
5. Once installed, Municipality is willing to operate and maintain the Wi-Fi infrastructure and service under the terms below.

In light of the foregoing, the Parties agree as follows:

AGREEMENT DOCUMENTS

The documents that encompass the parties' understanding are listed below and shall be considered in the following order of precedence:

- A. This Agreement and its exhibits A–B.
 - a. Exhibit A- Uniform Administrative Requirements; Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200
 - b. Exhibit B- Uniform Administrative Requirements; Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.313 Equipment

Article 1. **Locations.** The Project will be located at and around the vicinity known as “Downtown North Chicago”, approximately bound by Park Avenue to the west, the Union Pacific railroad right of way to the east, 16th Street to the north, and Broadway Avenue to the south.

Article 2. **County Obligations.** The County agrees to perform the following:

- 2.1 **Funding.** The County obtained funding through federal award number SLFRP0214 awarded to Lake County by the U.S. Department of the Treasury to purchase equipment and pay for support to install Wi-Fi at various locations in the County. The funding is available to support Wi-Fi projects until December 31st, 2026.

Article 3. **Hardware and Installations.** The County has acquired (or will acquire) hardware and internet service to provide public Wi-Fi at the agreed locations. The County, through its contractors, agrees to install the hardware and operate the internet service at the locations listed above.

- 3.1 **Planning and Engineering.** The County, through its contractor, will plan and engineer the installations for each location.

- 3.2 **Permitting.** The County, through its contractor, will apply for permits with the Municipality in the ordinary course, but the Municipality agrees to waive permitting fees.

Article 4. **Startup and Transfer.** The County and Municipality will test the service once installation is complete to ensure that the Wi-Fi operates as intended. Upon successful completion of the testing, the parties shall sign the bill of sale, transferring ownership to the Municipality.

Article 5. **Support After Transfer.** After transfer, support for the hardware and services will be provided by CDW. The County will pay for CDW's support services from the date of deployment until December 31st, 2026. The County

will also deliver to the Municipality an assignment of all manufacturer's warranties to the extent permitted by such warranties.

5.1 **Informational Materials.** The County will provide initial informational materials and workshops to community members on the use of the Wi-Fi services. The Municipality will help disseminate information about the services, as provided further below.

Article 6. **Data and Reporting.** From the date of deployment until December 31st, 2026, Municipality will provide data and reporting generated by a custom internet network usage dashboard on a quarterly basis to the County. The Municipality's role in providing this data shall be limited to providing a download from the dashboard tool and supplying it to the County. The Municipality's duty under this provision shall not apply unless and until such dashboard is developed and launched by the County's vendor.

Article 7. **Location-by-Location Project Information.** For each location served by a Project, the County must collect from the subrecipient or contractor and submit the following information to the US Treasury using a predetermined file format that will be provided by Treasury (collection of certain fields will begin on the date of deployment, as specified below):

- Speed and Latency at the Locations (collection to be phased in):
 - Maximum download speed offered
 - Maximum download speed delivered
 - Maximum upload speed offered
 - Maximum upload speed delivered
 - Latency

Article 8. **Municipality Obligations.** The Municipality agrees to perform the following.

Article 9. **Provide Data.** The Municipality agrees to collect and promptly provide to the County all data outlined in Articles 5 and 6, above, which are required to comply with the County's obligations under its grant funding.

9.1 **Electricity.** The Municipality will pay for the electricity required for the Wi-Fi. The Municipality agrees to permit the projects, without any expense to the County, for the hardware installation.

Article 10. **Marketing.** The Municipality will disseminate materials provided by the County and publicize information regarding workshops that the County provides. After ownership transfer, the Municipality may create its own materials and informational sessions, and disseminate and publicize as it desires.

Article 11. **Continuation After County Funding Ends.** The County is funding the construction and initial service of the Wi-Fi projects using ARPA funds, which must be obligated and expended by December 31, 2026. These funds will be used to pay for network service from the date the project is implemented until December 31st, 2026. After the funding period ends, the Municipality shall be responsible for identifying a funding source to continue providing the service. Subject to and in accordance with Exhibit B, Uniform Administrative Requirements; Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.313 Equipment, attached hereto, should no funding for the continuation of service be obtained, the Municipality may discontinue the service and dispose of the Hardware and Installations in accordance with federal guidelines as outlined in Exhibit B paragraph (b).

Article 12. **Designated Representative and Notices.** The County and Municipality shall each provide contact information for Designated Representatives who shall coordinate the services governed by this IGA.

The County's Initial Designated Representative is:

Deputy County Administrator
18 N. County Street
Waukegan, IL 60085
mmeyers@lakecountyil.gov
broadband@lakecountyil.gov

Municipality's Initial Designated Representative is:

Taylor Wegrzyn, ECD Director
1850 Lewis Avenue
North Chicago, IL 60064
tayweg@northchicago.org

Article 13. **Change in Designated Representative.** The Parties may change their Designated Representative by providing notice of such change with the contact information for the new Designated Representative in accordance with the "Notices" section of this IGA.

Article 14. **Notices.** Notice may be given by email to the email address listed below, but shall not be deemed received unless the recipient acknowledges receipt.

In addition to or in lieu of email, all notices and other communications regarding the terms of this IGA shall be in writing and shall be deemed received within three business days after being deposited in the U.S. Mail, proper postage prepaid, if properly addressed as follows, respectively:

To the County:

Attn: County Administrator Patrice Sutton
18 N. County Street
Waukegan, IL 60085
Email: psutton@lakecountyil.gov

To Municipality:

Taylor Wegrzyn, ECD Director
1850 Lewis Avenue
North Chicago, IL 60064
tayweg@northchicago.org

Article 15. **Acknowledgments and Other Provisions.**

Article 16. **Non-exclusivity.** Nothing in this IGA shall be interpreted to prevent or limit the right of the County (or to require the consent of the Municipality) to provide any services, including those similar to those at issue in this IGA, to other governmental or nongovernmental entities.

16.1 **Modification; Entire Agreement.** No amendment of this IGA will be effective unless it is in writing and signed by the parties. This IGA constitutes the entire agreement of the parties relating to the subject matter of this IGA and supersedes all other oral or written agreements.

16.2 **Severability.** If any provision of this IGA is unenforceable to any extent, the remainder of this IGA (or application of that provision to any persons or circumstances other than those as to which it is held unenforceable) will not be affected by that unenforceability and will be enforceable to the fullest extent permitted by law.

16.3 **Governing law; venue.** The laws of Illinois, without giving effect to principles of conflict of laws, govern all matters arising under this IGA, including all tort claims, and all lawsuits shall be brought only in the Nineteenth Judicial Circuit of Lake County, Illinois.

Article 17. **Term.** Upon becoming effective, this IGA shall remain in effect until December 31st, 2026.

17.1 **Waivers.** No term or condition of this IGA shall be deemed waived by either party unless the term or condition to be waived and the circumstances giving rise to such waiver are set forth specifically in a duly authorized and written waiver of such party. No waiver by any party of any term or condition of this IGA shall be deemed or construed as a waiver of any other term or condition of this IGA, nor shall waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or a different provision of this IGA.

- Article 18. **No Third-Party Beneficiaries.** Nothing in this IGA shall create, or be construed or interpreted to create, any third-party beneficiary rights.
- 18.1 **Relationship of the Parties.** In providing services under this IGA, neither party intends to create any employment relationship with any employee or agent of the other Party. Each Party intends only to maintain an independent contracts relationship between the Parties.
- 18.2 **Assignments.** A party may assign this IGA only with the express written consent of the other party.
- Article 19. **Insurance.** Insurance required for the installation of the hardware shall be dictated by the Municipality’s permitting process. The parties otherwise agree to maintain their customary insurance coverage at all times.
- Article 20. **Indemnification.**
- 20.1 The County agrees to indemnify Municipality for all third-party claims, demands, damages, liabilities and costs incurred by Municipality that directly or indirectly result from, or arise in connection with, any negligent act or omission of the County, its contractors, agents, or employees, pertaining to its activities and obligations under this IGA.
- 20.2 Municipality agrees to indemnify the County for all third-party claims, demands, damages, liabilities and costs that directly or indirectly result from, or arise in connection with, any negligent act or omission of Municipality, its agents, or employees, pertaining to its activities and obligations under this IGA.
- 20.3 Nothing herein shall be deemed to waive any defenses and immunities available to either the County or Municipality under Illinois law.
- Article 21. **Counterparts.** The parties may sign this IGA in several counterparts, each of which will be deemed an original but all of which together will constitute one instrument.
- Article 22. **Recitals.** The recitals above are incorporated into the body of this IGA.
- Article 23. **Effective Date.** This IGA will become effective when all of the Parties have signed it, and the date this IGA is signed by the last party to sign it (as indicated by the date associated with that party’s signature) will be deemed the “Effective Date” of this IGA. If a party signs but fails to date a signature, the date that the other party receives the signing party’s signature will be deemed to be the date that the signing party signed this IGA, and the other party may inscribe that date as the date associated with the signing party’s signature.

Signed:

The County of Lake

By its

Date: _____

Municipality

By its

Date: _____

Exhibit A

Uniform Administrative Requirements; Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200

1. **Debarment and Suspension.** This Agreement is covered transaction for purposes of 2 C.F.R. pt. 180 and 2 C.F.R. pt. 3000. As such, the Contractor is required to verify that none of the Licensor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).

Contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction in enters into.

This certification is a material representation of fact relied upon by Lake County. If it is later determined that the Contractor does not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Licensor, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.

Contractor agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000 subpart C throughout the period of any contract that may arise. Licensor agrees to include a provision requiring such compliance in its lower tier covered transactions.

2. **Access to Records.** Contractor agrees to provide Lake County, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Licensor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts, and transcriptions.

Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

No language in this contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

Contractor agrees to retain all records covered by this section through December 31, 2031, or such longer period as necessary for the resolution of any litigation, claim, negotiation, audit or other inquiry involving the contract.

3. **No Obligation by Federal Government.** The Federal Government is not a party to this Agreement and is not subject to any obligations or liabilities to the non-Federal entity, Contractor, or any other party pertaining to any matter resulting from the contract.

4. **Program Fraud and False or Fraudulent Statements or Related Acts.** Contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the Contractor's actions pertaining to this Agreement.
5. **Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).** Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, officer or employee of Congress, or an employee of a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient who in turn will forward the certification(s) to the awarding agency.

The undersigned shall require that the language of this attestation be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly to the tier above.

A failure to follow self-certification procedures may result in a civil penalty. Per 31 U.S. Code § 1352 Any person who fails to file or amend a declaration required to be filed or amended under subsection (b) of this section shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

6. **Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended.** Contractors who apply or bid for an award of \$150,000 or more shall comply with the following provisions:
 - i. Clean Air Act
 1. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
 2. The Contractor agrees to report each violation to the LCHD and understands and agrees that the LCHD will, in turn, report each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office.
 3. The Contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.
7. **Procurement of Recovered Materials.** In the performance of this Agreement, Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired –

1. Competitively within a timeframe providing for compliance with the contract performance schedule;
2. Meeting contract performance requirements; or
3. At a reasonable price.

Information about this requirement, along with the list of EPA designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>.

Contractor also agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

8. **Contractor Work Hours and Safety Standards Act.** No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

In the event of any violation of the above clause the contractor or any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the above clause, in the sum of \$27 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause above

Lake County shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages.

The contractor or subcontractor shall insert any subcontracts the clauses set forth in this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier contractor.

9. **Domestic Preference for Procurements.** As appropriate and to the extent consistent with law, Lake County, to the greatest extent practicable under a Federal award of American Rescue Plan dollars, provides a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products)
- a) For purposes of this section:
- (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
 - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
10. **Prohibition on Certain Telecommunications.** The proposed equipment will not utilize covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).
11. **Minority and Women Business Enterprises.** Contractor hereby agrees to comply with the following when applicable: The requirements of Executive Orders 11625 and 12432 (concerning Minority Business Enterprise), and 12138 (concerning Women's Business Enterprise), *when applicable*. Accordingly, the contractor hereby agrees to take affirmative steps to assure that women and minority businesses are utilized when possible as sources [12] of supplies, equipment, construction and services. Affirmative steps shall include the following:
1. Including qualified women's business enterprises and small and minority businesses on solicitation lists.
 2. Assuring that women's enterprises and small and minority businesses are solicited whenever they are potential sources.
 3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business, and women's business enterprises.
 4. Where the requirement permits, establishing delivery schedules which will encourage participation by women's business enterprises and small and minority business; and
 5. Using the services and assistance of the Small Business Administration, and the U.S. Office of Minority Business Development Agency of the Department of Commerce; and the North Carolina Office for Historically Underutilized Businesses.

For the purposes of these requirements, a Minority Business Enterprise (MBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by members of the following groups: Black, Hispanic, Asian or Pacific Islander, American Indian,

or Alaskan Natives. A Women Business Enterprise (WBE) is defined as an enterprise that is at least 51 percent owned and controlled in its daily operation by women. Additionally, an MBE or WBE qualifies if it is currently certified as a North Carolina “historically underutilized business” under N.C.G.S. §143-128.4(a) and qualifies as a “small business” if it is independently owned and operated and is qualified under the Small Business Administration criteria and size standards at 13 C.F.R. Part 21.

12. Assurances of Compliance with Title VI of the Civil Rights Act of 1964. Contractor and any subcontractor, or the successor, transferee, or assignee of contractor or any subcontractor, shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. §§ 2000d et seq.), as implemented by the Department of the Treasury’s Title VI regulations, 31 C.F.R. Part 22, which are herein incorporated by reference and made a part of this contract. Title VI also provides protection to persons with “Limited English Proficiency” in any program or activity receiving federal financial assistance, 42 U.S.C. §§ 2000d et seq., as implemented by Treasury’s Title VI regulations, 31 C.F.R. Part 22, and herein incorporated by reference and made a part of this contract.

13. Publications. Any publications produced with funds from this award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number SLFRP00214 awarded to Lake County by the U.S. Department of the Treasury.”

In addition, any publications produced with funds from this award must be approved by Lake County Communications prior to dissemination and display the following language: “This project [is being] [was] supported, in whole or in part, in partnership with the Lake County Digital Growth Initiative” alongside the Lake County Digital Growth Initiative logo using Lake County Digital Growth Initiative branding guidelines.

14. Increasing Seat Belt Use in the United States. Pursuant to Executive Order 13043, 62 Fed. Reg.19216 (Apr. 18, 1997), contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for your employees when operating company-owned, rented or personally owned vehicles.

15. Reducing Text Messaging While Driving. Pursuant to Executive Order 13513, 74 Fed. Reg. 51225 (Oct. 6, 2009), contractor is encouraged to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.

16. Conflicts and Interpretation. To the extent that any portion of this Addendum conflicts with any term or condition of this contract expressed outside of this Addendum, the terms of this Addendum shall govern.

Exhibit B

Uniform Administrative Requirements; Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.313 Equipment

(a) Title. Title to equipment acquired under the Federal award will vest upon acquisition in the recipient or subrecipient subject to the conditions of this section. This title must be a conditional title unless a Federal statute specifically authorizes the Federal agency to vest title in the recipient or subrecipient without further responsibility to the Federal Government (and the Federal agency elects to do so). A conditional title means a clear title is withheld by the Federal agency until conditions and requirements specified in the terms and conditions of a Federal award have been fulfilled. Title for equipment vested in a recipient or subrecipient is subject to the following conditions:

(1) Use the equipment for the authorized purposes of the project during the period of performance or until the property is no longer needed for the purposes of the project.

(2) While the equipment is being used for the originally-authorized purpose, the recipient or subrecipient must not dispose of or encumber its title or other interests without the approval of the Federal agency or pass-through entity.

(3) Use and dispose of the property in accordance with [paragraphs \(b\), \(c\), and \(e\)](#) of this section.

(b) General. A State must use, manage and dispose of equipment acquired under a Federal award in accordance with State laws and procedures. Indian Tribes must use, manage, and dispose of equipment acquired under a Federal award in accordance with tribal laws and procedures. If such laws and procedures do not exist, Indian Tribes must follow the guidance in this section. Other recipients and subrecipients, including subrecipients of a State or Indian Tribe, must follow [paragraphs \(c\)](#) through [\(e\)](#) of this section.

(c) Use.

(1) The recipient or subrecipient must use equipment for the project or program for which it was acquired and for as long as needed, whether or not the project or program continues to be supported by the Federal award. The recipient or subrecipient must not encumber the equipment without prior approval of the Federal agency or pass-through entity. The Federal agency may require the submission of the applicable common forms for reporting on equipment. When no longer needed for the original project or program, the equipment may be used in other activities in the following order of priority:

(i) Activities under other Federal awards from the Federal agency that funded the original program or project; then

(ii) Activities under Federal awards from other Federal agencies. These activities include consolidated equipment for information technology systems.

(2) During the time that equipment is used on the project or program for which it was acquired, the recipient or subrecipient must also make the equipment available for use on other programs or projects supported by the Federal Government, provided that such use will not interfere with the purpose for which it was originally acquired. First preference for other use of the equipment must be given to other programs or projects supported by the

Federal agency that financed the equipment. Second preference must be given to programs or projects under Federal awards from other Federal agencies. Use for non-federally-funded projects is also permissible, provided such use will not interfere with the purpose for which it was originally acquired. The recipient or subrecipient should consider charging user fees as appropriate.

(3) Notwithstanding the encouragement in [§ 200.307](#) to earn program income, the recipient or subrecipient must not use equipment acquired with the Federal award to provide services for a fee that is less than a private company would charge for similar services unless specifically authorized by Federal statute. This restriction is effective as long as the Federal Government retains an interest in the equipment.

(4) When acquiring replacement equipment, the recipient or subrecipient may either trade-in or sell the equipment and use the proceeds to offset the cost of the replacement equipment.

(d) Management requirements. Regardless of whether equipment is acquired in part or its entirety under the Federal award, the recipient or subrecipient must manage equipment (including replacement equipment) utilizing procedures that meet the following requirements:

(1) Property records must include a description of the property, a serial number or another identification number, the source of funding for the property (including the FAIN), the title holder, the acquisition date, the cost of the property, the percentage of the Federal agency contribution towards the original purchase, the location, use and condition of the property, and any disposition data including the date of disposal and sale price of the property. The recipient and subrecipient are responsible for maintaining and updating property records when there is a change in the status of the property.

(2) A physical inventory of the property must be conducted, and the results must be reconciled with the property records at least once every two years.

(3) A control system must be in place to ensure safeguards for preventing property loss, damage, or theft. Any loss, damage, or theft of equipment must be investigated. The recipient or subrecipient must notify the Federal agency or pass-through entity of any loss, damage, or theft of equipment that will have an impact on the program.

(4) Regular maintenance procedures must be in place to ensure the property is in proper working condition.

(5) If the recipient or subrecipient is authorized or required to sell the property, proper sales procedures must be in place to ensure the highest possible return.

(e) Disposition. When equipment acquired under a Federal award is no longer needed for the original project, program, or for other activities currently or previously supported by a Federal agency, the recipient or subrecipient must request disposition instructions from the Federal agency or pass-through entity if required by the terms and conditions of the Federal award. Disposition of the equipment will be made as follows, in accordance with Federal agency or pass-through entity disposition instructions:

(1) Equipment with a current fair market value of \$10,000 or less (per unit) may be retained, sold, or otherwise disposed of with no further responsibility to the Federal agency or pass-through entity.

(2) Except as provided in [§ 200.312\(b\)](#), or if the Federal agency or pass-through entity fails to provide requested disposition instructions within 120 days, items of equipment with a current fair market value in excess of \$10,000 (per-unit) may be retained or sold by the recipient or subrecipient. However, the Federal agency is entitled to an amount calculated by multiplying the percentage of the Federal agency's contribution towards the original purchase by the current market value or proceeds from the sale. If the equipment is sold, the Federal agency or pass-through entity may permit the recipient or subrecipient to retain, from the Federal share, \$1,000 of the proceeds to cover expenses associated with the selling and handling of the equipment.

(3) The recipient or subrecipient may transfer title to the property to the Federal Government or to an eligible third party provided that the recipient or subrecipient must be entitled to compensation for its attributable percentage of the current fair market value of the property.

(4) In cases where a recipient or subrecipient fails to take appropriate disposition actions, the Federal agency or pass-through entity may direct the recipient or subrecipient to take disposition actions.

(f) Equipment retention. When included in the terms and conditions of the Federal award, the Federal agency may permit the recipient to retain equipment, or authorize a pass-through entity to permit the subrecipient to retain equipment, with no further obligation to the Federal Government unless prohibited by Federal statute or regulation.