REQUEST FOR QUALIFICATIONS

AFRICATOWN WELCOME CENTER PHASE I – ENGINEERING AND DESIGN
Mobile, Alabama 36610
CL-036-21

The City of Mobile Architectural Engineering Department is seeking competitive proposals for qualified design professionals to provide design and construction administration related services for proposed Africatown Welcome Center Phase I.

The full extent of requirements and services is contained in the formal Request for Qualifications, as posted on the City of Mobile website. The document may also be obtained by contacting the Architectural Engineering Department, 251-208-7454, Government Plaza, 205 Government Street, 5th Floor South Tower (P. O. Box 1827), Mobile, Alabama 36633-1827.

Proposals in response to the Request for Qualifications must be submitted no later than 3:00 PM local time on Wednesday, September 7, 2022, to the address indicated above. Bid Documents are on file and may be examined and obtained from the following location:

www.cityofmobile.org/bids/

Disadvantaged Business Enterprise participation may be required. Minority and women's business enterprises are solicited to submit a statement of qualifications and are encouraged to make inquiries regarding potential subcontracting opportunities. When subcontracting, all potential contractors must make positive efforts to use small and minority owned business and women business enterprises. See 2. C. F. R. §200.321. A Directory of DBE Vendors can be found at the following location:

https://workwith.cityofmobile.org/

Any contract awarded under this solicitation may be paid for in whole or in part with grant funding from the Department of the Treasury and the Alabama Department of Conservation and Natural Resources (ADCNR) under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). Any contract resulting from this solicitation will be subject to the terms and conditions of said funding award, the RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 U. S. C. 1321(t), Treasury Regulations 31 C. F. R. § 34 et seq., including 31 C. F. R. §§ 34, Subpart D, all applicable terms and conditions in 2 C. F. R. Part 200 (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable. ADCNR, the United States, or any of its departments, agencies or employees is not and will not be a party to this solicitation or any resulting contract.

REQUEST FOR QUALIFICATIONS
PROFESSIONAL DESIGN SERVICES

CITY OF MOBILE
ADCNR ACTIVITY 11- AFRICATOWN WELCOME CENTER
PHASE I – ENGINEERING AND DESIGN
City of Mobile Project No. CL-036-21

1.0 INTRODUCTION

The City of Mobile is inviting qualified consultants to submit a Statement of Qualifications (SOQ) in response to this Request for Qualifications (RFQ) to provide professional services for the planning, engineering and architectural design of the Africatown Welcome Center, a public facility dedicated to the promotion of the Africatown community's cultural heritage, with information for tourists and locals and a strategic community destination, linking various community development initiatives and historical sites. Architecture, engineering, or planning firms with experience in tourism related centers in historic communities, buildings in historic communities, or other like buildings are requested to respond to this RFQ. This request for qualifications will enable the City of Mobile to make a selection based on professional qualifications for this consulting work.

2.0 DESCRIPTION OF PROJECT

The City of Mobile has been awarded a grant from the RESTORE Act. This project will be implemented by the City of Mobile pursuant to the Subaward Agreement for Grant Number 1 RDCGR010111-01-00 between the Alabama Department of Conservation and Natural Resources (ADCNR) and the City of Mobile. The project will have a strict timeline for completion. The project's scope of work for Phase I of the Africatown Welcome Center includes the development of Comprehensive Site Master Plan as well as permitting, engineering and design, surveying, geotechnical, utilities work and community engagement of stakeholders. The Africatown Welcome Center will be a public facility dedicated to the promotion of the Africatown community's cultural heritage, with information for tourists and locals and a strategic community destination, linking various community development initiatives and historical sites. The Welcome Center will enhance the preservation of the community and a location from which to share and promote the Africatown community as an area of nationally historic significance within the Gulf Coast Region. Community engagement and stakeholder engagement process will inform design elements of the facility, as well as the programs/displays/features that will be housed in the community center.

3.0 SCOPE OF WORK & DELIVERABLES

The Scope of Work is anticipated to include, but not be limited to, the following tasks:

1. Review existing grant documentation.
2. Regulatory and environmental compliance and correspondence.

3. Participate with the City in responding to the U.S. Department of the Treasury and ADCNR requirements and inquiries.
4. Participate in the City-led communication and stakeholder engagement process regarding the Welcome Center, as deemed appropriate and as directed by the City, regarding compliance, permitting, project implementation, design, uses and adaptive management.
5. Review and utilize outcome materials from archeological and cultural resources survey.
6. Planning for and participation in the City of Mobile's zoning and planning process.
7. Provide site planning services.
8. Provide engineering and architectural design services for site and building design including, but not limited to civil, landscape, architectural, structural, mechanical, plumbing and electrical and lighting design.
9. Provide services of a LEED AP accredited professional to achieve LEED BD+C Certification designation for the facility.
10. Create bid documents as required by Engineering Department and ADCNR.
11. Prepare final plans and bid documents.
12. Assist City of Mobile project design consultants with Pre-Bid and Bid Process.
13. Provide technical assistance with construction observation.

4.0 PROPOSAL REQUIREMENTS

Firms interested in performing the work will be considered based on a written response to the Request for Qualifications. Please limit this section addressing 1-4 to no more than 10 single-sided pages. The page limit does not include resumes or required Attachment A, Attachment B, or Attachment C. All proposals should be organized in the following manner:

1. Cover Letter
   The Statement of Interest must include a cover letter accompanying the Statement and acknowledging receipt of any issued amendments to the RFQ. The letter should be addressed to Roger Washington, Architectural Engineer 205 Government Street, 5th Floor, South Tower, Mobile, Alabama 36602

   a. The letter should indicate a primary contact and that person's title, address, phone number, email address, and the UEI number for the firm. The letter should introduce the Respondent's project team. The Project Team is defined as the lead plus any key team members who are critical for consideration by the evaluation team and include relevant professional certifications for each.
   b. The letter should include a general statement of prior relevant experience and proposed approach for this project.
   c. The letter should include a statement that the Project Team is adequately staffed and will execute the Project in a timely manner.
   d. The letter should include the following documents: (1) Attachment A: City of Mobile UEI Number Documentation and Verification Form, (2) Attachment B: City of Mobile Federal Funding Accountability and Transparency Act Disclosure Statement.
   e. The letter should include the MBE and/or WBE status of the proposing firm.
   f. The Federal Government's SAM Registration Process is provided in Attachment C.

2. Conceptual Approach & Methodology
   The response should provide a description of the methods that will be used to accomplish the following tasks:

a. Site Design including approach to site layout, utilities work, surveying, geotechnical, permitting/environmental compliance, grading and drainage, parking and drives, landscaping, site lighting and signage.
b. Building Design including approach to building plan and configuration, exterior materials and colors, structural and mechanical electrical/ plumbing systems design, and LEED BD+C Certification.
c. Coordination with community engagement team.

3. Experience and Background

Firms interested in performing the work will be considered based on a written response to the RFQ. All applicants must submit their qualifications and list any prior experience with projects similar in nature and scope to the above services being requested. The following information must be submitted in written form:

a. Statement of registration of the firm. Architects/Engineers of Record must be a registered professional in the State of Alabama.
b. Statement of the names, and duties of the individuals that will be involved in this project (when performing professional services) and their experience.
c. Statement of qualifications of individuals who will perform professional work.
d. Statement as to professional standing including any pending controversies. If none exists, such a statement should be made.
e. Statement of experience in the fields that the proposed services are requested and work of a similar nature which the proposed staff for requested services was in responsible charge, including a description of the work, the client for whom it was performed, the location of the work, and dates of performance. Provide proposed staff names and specific experience.
f. Statement of experience within the local jurisdiction, with local utility providers, and knowledge of local standards and specifications.
g. Statement of experience with participating in community engagement and outreach for this type of project. Please include specific examples.
h. Statement of availability and adequacy, in both number and quality of remaining staff, to perform all other functions needed for the proposed services.
i. List of qualified personnel in other disciplines required for proposed services, both in-house and those to be acquired from outside sources and their experience.
j. Statement as to whether or not the firm is operating on a sound fiscal basis.
k. Statement of where the work will actually be accomplished.
l. Statement of experience obtaining LEED BD+C Certifications.

4. Project Team / Level of Participation

The Statement of interest shall provide the following information so that it can be clearly understood by the Evaluation Team and City personnel.

a. Identify key Project Team members with responsibility for leading main project tasks, including the percentage of time each is expected to commit through the duration of the planning process.
b. Minority and women's business enterprises are solicited to submit a statement of qualifications and are encouraged to make inquiries regarding potential subcontracting opportunities. When subcontracting, all potential contractors must make positive efforts to use small and minority owned business and women business enterprises. See 2. C. F. R.

§200.321. Identify key Project Team members that qualify as a Minority Owned Business and/or Women's Business Enterprise.

c. In addition to identification of Minority Owned Businesses and/or Women Business Enterprises, also Identify key Project Teams members that qualify as a Certified Socially and Economic Disadvantaged Business (DBE) or labor surplus area firm, including the percentage of time each is expected to commit through the duration of the planning process.
d. Include an organization chart of the Project Team showing lines of communication, clearly defined roles, availability, and decision-making hierarchy.

5.0 SUBMITTAL OF RESPONSES AND ANTICIPATED SCHEDULE

Responses to the RFQ will be received until 3pm CST on September 7, 2022. Please limit narrative to 10 single-sided pages. Page limit does not include resumes. Submittals will not be accepted after the stated deadline. Please submit five (5) printed copies and one (1) electronic version (email or USB drive) to:

Roger Washington
205 GOVERNMENT STREET, 5TH FLOOR, SOUTH TOWER, MOBILE, AL 36602
roger.washington@cityofmobile.org

Any items submitted as part of a response to this RFQ shall become property of the City of Mobile. After written proposals have been reviewed, discussions with prospective firms may be required to clarify any portions of the proposal.

The following is a schedule for the selection process. The schedule is subject to change.

07/29/2022	Request for Qualifications advertised
08/26/2022	Questions must be submitted via email before 5pm CST
08/30/2022	Addendum with responses to questions posted
09/06/2022	Proposals submitted by candidate firms by 3pm CST
09/09/2022	Short list selected and notified, if City deems appropriate. Those not selected will be notified.
09/16/2022	Short list interviews (if needed)
09/16/2022	Selection
09/19-09/30/2022	Negotiation with selected firm
10/31/2022	Target date for notice to proceed

6.0 QUESTIONS

As stated above, the City will answer questions until 5pm on August 26, 2022. An addendum including all questions and answers and Q&A meeting minutes will be posted on August 30, 2022. Questions should be emailed to Roger Washington at roger.washington@cityofmobile.org

7.0 EVALUATION CRITERIA

Submittals received will be fully reviewed by an evaluation team and responses will be considered in the following categories:

1. Cover Letter / Comprehensive Project Team (5%)
   a. Completeness of information on proposed project team.
   b. Conciseness and ingenuity of the statement of approach.
   c. Timeliness of approach.

2. Conceptual Approach & Methodology (20%)
   a. Strategy for addressing identifying, researching, and documenting sites.
   b. Plan for preparing planning, architectural and construction documents.
   c. Demonstration of methods for communication and soliciting community engagement, comments and suggestions during project development.
   d. Strategy for completing the work in a timely manner.

3. Experience and Background (50%)
   a. Experience with design and administration with the City of Mobile and local utilities and their standard specifications.
   b. Prior experience with building design projects.
      - Prior experience with similar building design projects.
      - Prior experience working within historic communities and/or Africatown.
   c. Diversity of expertise of key team members.
   d. Prior experience working on federally funded projects.
   e. Demonstrated team experience in completing projects of the scale and complexity envisioned in the preliminary design through completion and assessment, on budget and on schedule.
   f. Prior success in obtaining LEED BD+C Certifications.
   g. Provision of at least two references.

4. Project Team / Level of Participation (15%)
   a. Roles, availability and time allocation of key Project Team members are clearly defined and reasonable.
   b. Provided organizational chart of key Project Team members that clearly delineates roles/responsibilities, lines of communication and decision-making hierarchy.

5. Disadvantaged Business Enterprise (DBE), Minority Business Enterprise (MBE) Women-Owned Business Enterprise (WBE) Participation (10%)
   a. The percentage of participation of registered DBE, MBE, WBE and Labor Surplus firms.
   b. Provided statement of participation and role.

8.0 CONDITIONS

The firm or individual practitioner must:

1. Have current City of Mobile Business License.
2. The licensed professional must be accessible by telephone and available for consultation between the hours of 8:00 AM and 5:00 PM, Monday through Friday.
3. Furnish proof of Insurance as follows:
   a. General Liability Insurance each in the minimum amount of:
      i. Bodily Injury - $1,000,000 each person / $1,000,000 each occurrence, and
      ii. Property Damage - $1,000,000 per occurrence, or
      iii. Combined single limit - $1,000,000
   b. Automobile Liability Insurance each in the minimum amount of:
      i. Bodily Injury - $1,000,000 each person / $1,000,000 each occurrence, and
      ii. Property Damage - $1,000,000 each occurrence, or
      iii. Combined single limit - $1,000,000
   c. Excess/Umbrella and Employer's Liability Insurance in the minimum amount of:

i. Combined single limit - $2,000,000 each occurrence for bodily injury and/or property damage
ii. Workmen's Compensation Insurance: Statutory-Amount and coverage required by the State of Alabama

d. Workmen's Compensation Insurance: Statutory-Amount and coverage required by the State of Alabama

e. Professional Liability Insurance in the minimum amount of: $1,000,000 per occurrence/$2,000,000 aggregate.

- Waiver of Subrogation - All policies of insurance shall be endorsed to waive rights of subrogation in favor of the City of Mobile.
- Additional Insured - All policies of insurance shall be endorsed to name the City of Mobile as an Additional Insured
- Primary Insurance - All policies of insurance shall be endorsed to provide that all such insurances are primary and non-contributing with any other insurance maintained by the City of Mobile.
- Certificates of Insurance - Prior to commencement of the work, consultant shall deliver to the City of Mobile certificates of insurance certifying the existence and limits of the insurance coverages, noting applicable endorsements, described above and shall deliver same and renewals thereof to the City of Mobile. The certificates shall provide that such insurance shall not be subject to cancellation, non-renewal nor material change without 30 days or more (except 10 days for non-payment) prior written notice thereof to the City of Mobile.

4. Affirm, for the duration of the contract, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien in the State of Alabama. Evidence of the firm's or individual's enrollment in the federal E-Verify program shall be submitted as a condition of contract approval.
5. Funding - Any contract awarded under this solicitation may be paid for in whole or in part with grant funding from the U.S. Department of the Treasury and the Alabama Department of Conservation and Natural Resources (ADCNR) under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast Sates Act of 2012 (RESTORE Act). Any contract resulting from this solicitation will be subject to the terms and conditions of said funding award, the RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 U. S. C. 1321(t), Treasury Regulations 31 C. F. R. § 34 et seq., including 31 C. F. R. §§ 34, Subpart D, all applicable terms and conditions in 2 C. F. R. Part 200 (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable. The ADCNR, the United States, or any of its departments, agencies or employees is not and will not be a party to this solicitation or any resulting contract.
6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE REQUIREMENT

(a) Bid awardee (or "contractor") shall comply with all Federal, State and local laws concerning nondiscrimination, including but not limited to Sections 14-9 and 1410, Mobile City Code, and by doing so agrees that it either will have, or will provide City of Mobile with written proof demonstrating good faith efforts to procure, at least fifteen (15) percent participation by socially and economically disadvantaged individuals. Unless waived or exempted, all bidders must demonstrate good faith efforts to meet the requirements of Section 14-10, Mobile City Code, in order to be considered responsive bidders (b) During the performance of this contract, the bid awardee agrees as follows:

(i) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The

contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(ii) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

(iii) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

(iv) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(v.) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(vi) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(vii) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(viii) The contractor will include the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for

noncompliance: Provided, however, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

7. All respondents will be required to certify that they are not on the Federal list of debarred, suspended, or voluntarily excluded contractors and are not in default on any obligations due to the State of Alabama including, but not limited to, payment of taxes, fines, penalties, or other monies due. Selected firm will be required to register with www.sam.gov to confirm debarment/suspension status (see forms), provide evidence of required insurance, possess a City of Mobile business license, and be enrolled in the E-Verify program.
8. The successful firm will be required to keep and maintain documents in compliance ADCNR's records retention policy and 2 CFR 200.334, as well as all other applicable federal, state, and local laws.
9. The successful firm shall comply with the Davis Bacon Act, 40 U.S.C. 3141-3148, as supplemented by Department of Labor regulations at 29 CFR Part 5, as it applies to grants awarded by Treasury under the RESTORE Act in two situations: (1) for a construction project if it is for the construction of a project that can be defined as a "treatment works" in 33 U.S.C 1292; and (2) for a construction project regardless of whether it is a "treatment works" project if it is receiving federal assistance from another federal agency operating under an authority that requires the enforcement of Davis-Bacon Act-related provisions.
10. The successful firm will be required to comply with applicable federal, state, and local laws relating to lobbying activities including, but not limited to, the Byrd Anti-Lobbying Amendment (31 U.S.C. §1352.)
11. The successful firm will be required to represent and agree that it is not currently engaged in, nor will it engage in, any boycott of person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade pursuant to Section 41-16-5, Code of Alabama 1975
12. The successful firm will be required to comply with all applicable federal, state and local environmental laws, regulations and policies including, but not limited to, all requirements set forth in the RESTORE Act and Subaward Agreement.
13. The successful firm will be required to comply with the Copeland "Anti-kickback" Act, 40 U.S.C. 3141-3148, as supplemented by Department of Labor regulations (29 CFR Part 5), the Contract Work Hours and Safety Standard Act Section 103 and 107 of the Agreement Work Hours and Safety Standard Act (40 U.S.C. Chapter supplemented by Department of Labor regulation (29 CFR part 5), the requirements of 37 CFR 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," the Clean Air Act (42 U.S.C. 7401-7671), the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), and pursuant to EO 130443, encourage employees and to wear seatbelts when operating any vehicles in connection with performance of activities associated with this Agreement.
14. The successful firm will be required to document compliance with 2 CFR 200.321. In accordance with this section, the prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:
    (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
    (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
    (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
(5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

9.0 OTHER PROVISIONS

1. RFQ is not to be construed as a contract or a commitment of any kind, nor does it commit the City of Mobile to pay for any costs incurred in the preparation of a submission or of any costs incurred prior to the execution of a formal contract.
2. If awarded, a contract will be awarded to the responsible firm whose proposal is deemed most advantageous to the City of Mobile.
3. The City of Mobile may (1) evaluate submittals; (2) waive any irregularities therein; (3) select candidates for selection interviews; (4) request supplemental or additional information as deemed necessary; (5) contact others to verify information provided in the submittal; or (6) reject any and all submittal(s), should it be deemed in the best interest of the City of Mobile.
4. If a mutually agreeable contract cannot be negotiated between the selected consultant and the City, the City reserves the right to select an alternate consultant or resolicit.
5. The successful firm will have to complete an Affidavit of Ownership or Control prior to completion of contract negotiations. The affidavit certifies that the firm is not delinquent in any debt owed to the City of Mobile (taxes, fines, fees, etc.).
6. Any future agreements arising from this RFQ may be subject to 31 C.F.R. Part 19 compliance.
7. Applicants (except procurement contracts for goods and services under $25,000 not requiring the consent of a Treasury official) are subject to 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Non-procurement).” In addition, applicants or bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than $100,000 of Federal funds at any tier are subject to relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying,” published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying,” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).
8. The following will be incorporated into the contract documents:
    a. Prohibition on Contracting for Covered Telecommunications Equipment or Services (2 CFR 200.216)
    b. Domestic Preference for Procurements (2 CFR 200.322)
    c. Procurement of Recovered Materials - Section 6002 of the Solid Waste Disposal Act
    d. Appendix II to Part 200 - Contract Provisions for non-Federal Entity Contracts Under Federal Awards
    e. RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions
    f. Any applicable Special Award Conditions that may be outlined in the Notice of Award
    g. Terms and Conditions of the Sub-Award Agreement with ADCNR
    h. Any other terms required under federal, state, or local law.
9. No obligation to proceed. The City is under no obligation to proceed with this Project, or any subsequent. Project, and may cancel this RFQ at any time without the substitution of another, if such cancellation is deemed in the best interest of the City. Furthermore, the City may reject any and all

proposals, to waive any irregularities or informalities in a proposal, and to issue a new or modified RFQ, if it is found to be in the best interest of the City.

10. Withdrawal and modification. The City may allow a Respondent representative bearing proper authorization and identification to sign for, receive, and withdraw the Respondent's unopened proposal prior to submission deadline. A Respondent wishing to modify its proposal may do so by withdrawing the initial submission and then submitting a modified proposal prior to the deadline.
11. Licenses and permits. The successful Respondent shall furnish the City upon request all documentation regarding necessary licenses, permits, certifications, and/or registrations required by the laws or rules and regulations of the City of Mobile, Mobile County, other units of local government, the State of Alabama and the United States. The Respondent certifies that it is now and will remain in good standing with such governmental agencies and that it will keep its licenses, permits, certifications, and/or registrations in force during the term of the agreement.
12. Errors in proposals. Respondents will not be allowed to change or alter their proposals after the deadline for proposal submission. The City reserves the right, however, to correct obvious errors. This type of correction may only be allowed for "obvious" errors such as arithmetic, typographical, or transposition errors. Any such corrections must be approved by the City of Mobile and countersigned by the Respondent. Respondents are advised to make sure that their proposals are true. and correct when submitted.
13. Respondent expenses. By submitting a response to this RFQ, or participating in the process, each Respondent agrees that all of its related exppenses are its sole responsibility. The City will not be responsible for any costs whatsoever incurred by the Respondent in connection with, or resulting from the RFQ and/or RFP process, including but not limited to costs for preparation/submission of proposals, travel & per diem, attending interviews, providing presentations or demonstrations, and participating in contract negotiation sessions.
14. Proposal life. Respondents must hold their proposals open for one hundred eighty (180) calendar days from the proposal submission deadline. Any proposal accepted by the City for the purpose of contract negotiations shall remain valid until superseded by an executed contract or until rejected by the City.
15. All information in a Respondent's proposal is subject to disclosure under the provisions of the State of Alabama's public record laws. Proposal responses received and opened will not be available to the public until after negotiation and award of the contract to the selected Respondent, or the final cancellation of the RFQ/procurement.
16. All questions or requests for clarifications shall be submitted as specified in this RFQ. Written responses will be provided as an official addendum to the RFQ in accordance with the submittal timeline. Respondents shall note that the official addendum represents the City's official position and supersedes any oral responses to inquiries or written responses by the City.

10.0 DRAFT AGREEMENT

A draft agreement between owner and architect is included with this solicitation. The City may modify this contract. Except as may be required under Alabama law, City will not consent to any contract provisions that seek to limit Respondent's liability for damages arising during the project. Except as may be required under Alabama law, City will not consent to any contract provision requiring it to indemnify Respondent for third party claims. Except as may be prohibited under Alabama law, City will require indemnification from Respondent for any claims arising from project. These are standard guidelines for City contracts. The scope and budget of the grant award is limited to E&D/planning services, and preparation of construction and bid documents. The City may, at its discretion, amend the contract to include procurement services, and construction phase services. Firms should submit with their proposal any terms within the agreement which the firm will be unable to agree.

DRAFT

AIA® Document B101™ – 2017

Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the « » day of « » in the year « »
(In words, indicate day, month and year.)

BETWEEN the Architect's client identified as the Owner:
(Name, legal status, address and other information)

«City of Mobile »« »
«Architectural Engineering Department »
«P. O. Box 1827 »
«Mobile, Alabama 36633-1827 »

and the Architect:
(Name, legal status, address and other information)

« »« »
« »
« »

«City of Mobile Business License No.: »
«Secretary of State Registration No.: »

for the following Project:
(Name, location and detailed description)

«Africatown Welcome Center - Phase I – Engineering And Design »
«Project Number: »
« »
« »
« »

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS: The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

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TABLE OF ARTICLES

ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1. and in Exhibit A, Proposal for Architectural Services for: Name of Project, and in Exhibit 1, Insurance Requirements.
(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")

§ 1.1.1 The Owner's program for the Project:
(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)

« »

§ 1.1.2 The Project's physical characteristics:
(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)

« »

§ 1.1.3 The Owner's budget for the Cost of the Work, as defined in Section 6.1:
(Provide total and, if known, a line item breakdown.)

« »

§ 1.1.4 The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

« »

.2 Construction commencement date:

« »

.3 Substantial Completion date or dates:

« »

.4 Other milestone dates:

«N/A »

§ 1.1.5 The Owner intends the following procurement and delivery method for the Project:
(Identify method such as competitive bid or negotiated contract, as well as any requirements for accelerated or fast-track design and construction, multiple bid packages, or phased construction.)

«Competitive Bid. »

§ 1.1.6 The Owner's anticipated Sustainable Objective for the Project:
(Identify and describe the Owner's Sustainable Objective for the Project, if any.)

«N/A »

§ 1.1.6.1 If the Owner identifies a Sustainable Objective, the Owner and Architect shall complete and incorporate AIA Document E204™–2017, Sustainable Projects Exhibit, into this Agreement to define the terms, conditions and services related to the Owner's Sustainable Objective. If E204–2017 is incorporated into this agreement, the Owner and Architect shall incorporate the completed E204–2017 into the agreements with the consultants and contractors performing services or Work in any way associated with the Sustainable Objective.

§ 1.1.7 The Owner identifies the following representative in accordance with Section 5.3:
(List name, address, and other contact information.)

«Director of Real Estate Asset Management Department »
«City of Mobile »
«P. O. Box 1827 »
«Mobile, Alabama 36633-1827 »
« »
« »

§ 1.1.8 The persons or entities, in addition to the Owner's representative, who are required to review the Architect's submittals to the Owner are as follows:
(List name, address, and other contact information.)

«N/A »

§ 1.1.9 The Owner shall retain the following consultants and contractors, as required, and if not expressly included as a reimbursable expenses provided by the Architect's Fee Proposal, Exhibit A:
(List name, legal status, address, and other contact information.)

.1 Geotechnical Engineer:

«TBD »« »
« »
« »

« »

.2 Other, if any:
(List any other consultants and contractors retained by the Owner.)

«Construction Materials Testing Engineering – TBD
Alabama Department of Environmental Management QCI/QCP – TBD
Special Inspections as required by International Building Code - TBD »

§ 1.1.10 The Architect identifies the following representative in accordance with Section 2.3:
(List name, address, and other contact information.)

«TBD »
« »
« »
« »

§ 1.1.11 The Engineer shall retain the consultants identified in Sections 1.1.11.1 and as described in Exhibit A:

§ 1.1.11.1 Consultants retained under Basic Services:

.1 Structural Engineer:

«TBA »« »

.2 Mechanical and Plumbing Engineer:

«TBA »« »

.3 Electrical Engineer:

« TBA »« »

.4 Commissioning Agent:

« TBA »

§ 1.2 The Owner and Architect may rely on the Initial Information. Both parties, however, recognize that the Initial Information may materially change and, in that event, the Owner and the Architect shall appropriately adjust the Architect's services, schedule for the Architect's services, and the Architect's compensation. The Owner shall adjust the Owner's budget for the Cost of the Work and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information.

§ 1.3 The parties shall agree upon protocols governing the transmission and use of Instruments of Service or any other information or documentation in digital form.

ARTICLE 2 ARCHITECT'S RESPONSIBILITIES

§ 2.1 The Architect shall provide professional services as set forth in this Agreement. The Architect represents that it is properly licensed in the jurisdiction where the Project is located to provide the services required by this Agreement, or shall cause such services to be performed by appropriately licensed design professionals, and shall affix a seal representing such licensure to all documents, as required.

§ 2.2 The Architect shall perform its services consistent with the professional skill and care ordinarily provided by architects practicing in the same or similar locality under the same or similar circumstances. The Architect shall

perform its services as expeditiously as is consistent with such professional skill and care and the orderly progress of the Project. The Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services which initially shall be consistent with the time periods established in Section 1.1.4 and which shall be adjusted, if necessary, as the Project proceeds. This schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Time limits established by this schedule approved by the Owner shall not, except for reasonable cause, be exceeded by the Architect or Owner.

§ 2.3 The Architect shall identify a representative authorized to act on behalf of the Architect with respect to the Project.

§ 2.4 Except with the Owner's knowledge and consent, the Architect shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Architect's professional judgment with respect to this Project.

§ 2.5 The Architect shall maintain the following insurance until termination of this Agreement. If any of the requirements set forth below are in addition to the types and limits the Architect normally maintains, the Architect shall provide same at no additional cost:

.1 Workers' Compensation/Employer's Liability:

.1 Workers' Compensation insurance in the amounts required by all applicable laws, rules or regulations of the State of Alabama.

.2 Employer's Liability with limits of not less than:
Bodily Injury by Accident $1,000,000 each accident
Bodily Injury by Disease $1,000,000 policy limit
Bodily Injury by Disease $1,000,000 each employee

.3 Borrowed Servant/Alternate Employer endorsement in favor of City of Mobile.

.2 Comprehensive General Liability Insurance:

.1 Comprehensive General Liability (occurrence form) including coverage for products/completed operations, independent contractors, and blanket contractual liability, specifically covering the obligations assumed by Contractor.

.2 Limit of Liability: $1,000,000 combined single limit of liability each occurrence bodily injury or property damage.

3. General Aggregate Limit shall apply on a "Per Project" Basis.

3. Automobile Liability Insurance:

.1 Automobile Liability Insurance to cover any auto, including owned, non-owned, and hired vehicles, with a $1,000,000 combined single limit of liability each accident for bodily injury and/or property damage.

4. Excess/Umbrella Liability Insurance

.1 Providing following form coverage for Employer's Liability, Comprehensive General Liability, and Automobile Liability.
.2 Limit of Liability: $2,000,000 combined single limit of liability each occurrence for bodily injury and/or property damage.

5. Professional Liability Insurance:

.1 Projects $0-$1,000,000, $1,000,000 annual aggregate

6. Endorsements:
All endorsements listed below are required and must be listed on the description of operations "box on the certificate of Liability Insurance" or listed separately on an attachment to the Certificate of Insurance (ACORD 101, Additional Remarks Schedule).

.1 Additional Insured: All policies of insurance, except those referenced under paragraph A, shall be endorsed to name City of Mobile as an Additional Insured.

.2 Waiver of Subrogation: All policies of insurance shall be endorsed to waive rights of subrogation in favor of City of Mobile.

.3 Primary and Non-Contributing: All policies of insurance, except those referenced under paragraph A, shall be endorsed to provide that all such insurances are primary and non-contributing with any other insurance maintained by City of Mobile.

.4 Notice of Cancellation: Certificates of Insurance shall provide that such insurance shall not be subject to cancellation, non-renewal nor material change without 30 days or more (except 10 days for non-payment) prior written notice thereof to the City of Mobile.

.5 Certificates of Insurance: - General: Within ten (10) calendar days from date of issuance of Contract forms for execution, Consultant shall deliver to the City of Mobile, certificates of insurance (standard ACORD format) certifying the existence and limits of the insurance coverages along with separate policy endorsements as described above. Consultant shall also be responsible for delivering policy renewal certificates to the City of Mobile.

§ 2.5.1 Within ten (10) calendar days from issuance of Contract forms for execution, the Architect shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 2.5. Consultant shall also be responsible for delivering policy renewal certificates to the City of Mobile.

ARTICLE 3 SCOPE OF ARCHITECT'S BASIC SERVICES

§ 3.1 The Architect's Basic Services consist of those described in this Article 3 and include usual and customary civil, structural, mechanical, and electrical engineering services. Services not set forth in this Article 3 are Supplemental or Additional Services.

§ 3.1.1 The Architect shall manage the Architect's services, research applicable design criteria, attend Project meetings, communicate with members of the Project team, and report progress to the Owner.

§ 3.1.2 The Architect shall coordinate its services with those services provided by the Owner and the Owner's consultants. The Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of, services and information furnished by the Owner and the Owner's consultants. The Architect shall provide prompt written notice to the Owner if the Architect becomes aware of any error, omission, or inconsistency in such services or information.

§ 3.1.3 As soon as practicable after the date of this Agreement, the Architect shall submit for the Owner's approval a schedule for the performance of the Architect's services. The schedule initially shall include anticipated dates for the commencement of construction and for Substantial Completion of the Work as set forth in the Initial Information. The schedule shall include allowances for periods of time required for the Owner's review, for the performance of the Owner's consultants, and for approval of submissions by authorities having jurisdiction over the Project. Once approved by the Owner, time limits established by the schedule shall not, except for reasonable cause, be exceeded by the Architect or Owner. With the Owner's approval, the Architect shall adjust the schedule, if necessary, as the Project proceeds until the commencement of construction.

§ 3.1.4 The Architect shall not be responsible for an Owner's directive or substitution, or for the Owner's acceptance of non-conforming Work, made or given without the Architect's written approval.

§ 3.1.5 The Architect shall contact governmental authorities required to approve the Construction Documents and entities providing utility services to the Project. The Architect shall respond to applicable design requirements imposed by those authorities and entities.

§ 3.1.6 The Architect shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

§ 3.2 Schematic Design Phase Services

§ 3.2.1 The Architect shall review the program and other information furnished by the Owner, and shall review laws, codes, and regulations applicable to the Architect's services.

§ 3.2.2 The Architect shall prepare a preliminary evaluation of the Owner's program, schedule, budget for the Cost of the Work, Project site, the proposed procurement and delivery method, and other Initial Information, each in terms of the other, to ascertain the requirements of the Project. The Architect shall notify the Owner of (1) any inconsistencies discovered in the information, and (2) other information or consulting services that may be reasonably needed for the Project.

§ 3.2.3 The Architect shall present its preliminary evaluation to the Owner and shall discuss with the Owner alternative approaches to design and construction of the Project. The Architect shall reach an understanding with the Owner regarding the requirements of the Project.

§ 3.2.4 Based on the Project requirements agreed upon with the Owner, the Architect shall prepare and present, for the Owner's approval, a preliminary design illustrating the scale and relationship of the Project components.

§ 3.2.5 Based on the Owner's approval of the preliminary design, the Architect shall prepare Schematic Design Documents for the Owner's approval. The Schematic Design Documents shall consist of drawings and other documents including a site plan, if appropriate, and preliminary building plans, sections and elevations; and may include some combination of study models, perspective sketches, or digital representations. Preliminary selections of major building systems and construction materials shall be noted on the drawings or described in writing.

§ 3.2.5.1 The Architect shall consider sustainable design alternatives, such as material choices and building orientation, together with other considerations based on program and aesthetics, in developing a design that is consistent with the Owner's program, schedule and budget for the Cost of the Work. The Owner may obtain more advanced sustainable design services as a Supplemental Service under Section 4.1.1.

§ 3.2.5.2 The Architect shall consider the value of alternative materials, building systems and equipment, together with other considerations based on program and aesthetics, in developing a design for the Project that is consistent with the Owner's program, schedule, and budget for the Cost of the Work.

§ 3.2.6 The Architect shall submit to the Owner an estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.2.7 The Architect shall submit the Schematic Design Documents to the Owner, and request the Owner's approval.

§ 3.3 Design Development Phase Services

§ 3.3.1 Based on the Owner's approval of the Schematic Design Documents, and on the Owner's authorization of any adjustments in the Project requirements and the budget for the Cost of the Work, the Architect shall prepare Design Development Documents for the Owner's approval. The Design Development Documents shall illustrate and describe the development of the approved Schematic Design Documents and shall consist of drawings and other documents including plans, sections, elevations, typical construction details, and diagrammatic layouts of building systems to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, and other appropriate elements. The Design Development Documents shall also include outline specifications that identify major materials and systems and establish, in general, their quality levels.

§ 3.3.2 The Architect shall update the estimate of the Cost of the Work prepared in accordance with Section 6.3.

§ 3.3.3 The Architect shall submit the Design Development Documents to the Owner, advise the Owner of any adjustments to the estimate of the Cost of the Work, and request the Owner's approval.

§ 3.5.2 Competitive Bidding

§ 3.5.2.1 Bidding Documents shall consist of bidding requirements and proposed Contract Documents.

§ 3.5.2.2 The Architect shall assist the Owner in bidding the Project by:

.1 procuring the reproduction of Bidding Documents.

.2 using Owner's approved procedures, facilitating the distribution of Bidding Documents to prospective bidders; requesting their return upon completion of the bidding process, and maintaining a log of distribution and retrieval and of the amounts of deposits, if any, received from and returned to prospective bidders; The Architect shall pay directly for the cost of reproduction, and shall be reimbursed for out-of-pocket reproduction expenses in accordance with Owner's approved procedures.

.3 organizing and conducting a pre-bid conference for prospective bidders, in which the Architect's Consultants shall participate;

.4 preparing responses to questions from prospective bidders and providing clarifications and interpretations of the Bidding Documents to the prospective bidders in the form of addenda; and,

.5 participating in the opening of the bids, and subsequently review bids received, make award recommendations and document and distribute the bidding results, as directed by the Owner.

§ 3.5.2.3 If the Bidding Documents permit substitutions, upon the Owner's written authorization, the Architect shall, consider requests for substitutions and prepare and distribute addenda identifying approved substitutions to all prospective bidders.

§ 3.6.2 Evaluations of the Work

§ 3.6.2.1 The Architect, as a representative of the Owner, and the Architect's Consultants, shall visit the site at intervals appropriate to the stage of construction, or as otherwise required in Section 4.2.3, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine, in general, if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, neither the Architect nor the Architect's Consultant shall be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. On the basis of the site visits, the Architect shall keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work.

§ 3.6.2.2 The Architect has the authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect shall have the authority to require inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 3.6.2.3 The Architect shall interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests shall be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

§ 3.6.2.4 Interpretations and decisions of the Architect shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings. When making such interpretations and decisions, the Architect shall endeavor to secure faithful performance by both Owner and Contractor, shall not show partiality to either, and shall not be liable for results of interpretations or decisions rendered in good faith. The Architect's decisions on matters relating to aesthetic effect shall be final if consistent with the intent expressed in the Contract Documents.

§ 3.6.2.5 Unless the Owner and Contractor designate another person to serve as an Initial Decision Maker, as that term is defined in AIA Document A201–2017, the Architect shall render initial decisions on Claims between the Owner and Contractor as provided in the Contract Documents.

§ 3.6.3 Certificates for Payment to Contractor

§ 3.6.3.1 The Architect shall review and certify the amounts due the Contractor and shall issue certificates in such amounts. The Architect's certification for payment shall constitute a representation to the Owner, based on the Architect's evaluation of the Work as provided in Section 3.6.2 and on the data comprising the Contractor's Application for Payment, that, to the best of the Architect's knowledge, information and belief, the Work has progressed to the point indicated, the quality of the Work is in accordance with the Contract Documents, and that the Contractor is entitled to payment in the amount certified. The foregoing representations are subject to (1) an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, (2) results of subsequent tests and inspections, (3) correction of minor deviations from the Contract Documents prior to completion, and (4) specific qualifications expressed by the Architect.

§ 3.6.3.2 The issuance of a Certificate for Payment shall not be a representation that the Architect has (1) made exhaustive or continuous on-site inspections to check the quality or quantity of the Work, (2) reviewed construction means, methods, techniques, sequences or procedures, (3) reviewed copies of requisitions received from Subcontractors and suppliers and other data requested by the Owner to substantiate the Contractor's right to payment, or (4) ascertained how or for what purpose the Contractor has used money previously paid on account of the Contract Sum.

§ 3.6.3.3 The Architect shall maintain a record of the Applications and Certificates for Payment.

§ 3.6.4 Submittals

§ 3.6.4.1 The Architect and the Architect's Consultant shall review the Contractor's submittal schedule and shall not unreasonably delay or withhold approval of the schedule. The Architect's action in reviewing submittals shall be taken in accordance with the approved submittal schedule or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time, in the Architect's professional judgment, to permit adequate review.

§ 3.6.4.2 The Architect and the Architect's Consultant shall review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. Review of such submittals is not for the purpose of determining the accuracy and completeness of other information such as dimensions, quantities, and installation or performance of equipment or systems, which are the Contractor's responsibility. The Architect's review shall not constitute approval of safety precautions or construction means, methods, techniques, sequences or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 3.6.4.3 If the Contract Documents specifically require the Contractor to provide professional design services or certifications by a design professional related to systems, materials, or equipment, the Architect shall specify the appropriate performance and design criteria that such services must satisfy. The Architect shall review and take appropriate action on Shop Drawings and other submittals related to the Work designed or certified by the Contractor's design professional, provided the submittals bear such professional's seal and signature when submitted to the Architect. The Architect's review shall be for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect shall be entitled to rely upon, and shall not be responsible for, the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals.

§ 3.6.4.4 Subject to Section 4.2, the Architect shall review and respond to requests for information about the Contract Documents. The Architect shall set forth, in the Contract Documents, the requirements for requests for information. Requests for information shall include, at a minimum, a detailed written statement that indicates the specific Drawings or Specifications in need of clarification and the nature of the clarification requested. The Architect's response to such requests shall be made in writing within any time limits agreed upon, or otherwise with reasonable promptness. If appropriate, the Architect shall prepare and issue supplemental Drawings and Specifications in response to the requests for information.

§ 3.6.4.5 The Architect shall maintain a record of submittals and copies of submittals supplied by the Contractor in accordance with the requirements of the Contract Documents.

§ 3.6.5 Changes in the Work

§ 3.6.5.1 The Architect may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. Subject to Section 4.2, the Architect shall prepare Change Orders and Construction Change Directives for the Owner's approval and execution in accordance with the Contract Documents.

§ 3.6.5.2 The Architect shall maintain records relative to changes in the Work.

§ 3.6.6 Project Completion

§ 3.6.6.1 The Architect shall:

.1 conduct inspections to determine the date or dates of Substantial Completion and the date of final completion;

.2 issue Certificates of Substantial Completion;

.3 receive, review and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract Documents and received from the Contractor; and,

.4 issue a final Certificate for Payment based upon a final inspection indicating that, to the best of the Architect's knowledge, information, and belief, the Work complies with the requirements of the Contract Documents.

§ 3.6.6.2 The Architect's inspections shall be conducted with the Owner to check conformance of the Work with the requirements of the Contract Documents and to verify the accuracy and completeness of the list submitted by the Contractor of Work to be completed or corrected.

§ 3.6.6.3 When Substantial Completion has been achieved, the Architect shall inform the Owner about the balance of the Contract Sum remaining to be paid the Contractor, including the amount to be retained from the Contract Sum, if any, for final completion or correction of the Work.

§ 3.6.6.4 The Architect shall forward to the Owner the following information received from the Contractor: (1) consent of surety or sureties, if any, to reduction in or partial release of retainage or the making of final payment; (2) affidavits, receipts, releases and waivers of liens, or bonds indemnifying the Owner against liens; and (3) any other documentation required of the Contractor under the Contract Documents.

§ 3.6.6.5 Prior to the expiration of one year from the date of Substantial Completion, the Architect shall, without additional compensation, conduct a meeting with the Owner to review the facility operations and performance.

ARTICLE 4 SUPPLEMENTAL AND ADDITIONAL SERVICES

§ 4.1 Supplemental Services

§ 4.1.1 The services listed below are not included in Basic Services but may be required for the Project. The Architect shall provide the listed Supplemental Services only if specifically designated in the table below as the Architect's responsibility, and the Owner shall compensate the Architect as provided in Section 11.2. Unless otherwise specifically addressed in this Agreement, if neither the Owner nor the Architect is designated, the parties agree that the listed Supplemental Service is not being provided for the Project.

(Designate the Architect's Supplemental Services and the Owner's Supplemental Services required for the Project by indicating whether the Architect or Owner shall be responsible for providing the identified Supplemental Service. Insert a description of the Supplemental Services in Section 4.1.2 below or attach the description of services as an exhibit to this Agreement.)

Supplemental Services	Responsibility *(Architect, Owner, or not provided)*
§ 4.1.1.1 Programming	
§ 4.1.1.2 Multiple preliminary designs	
§ 4.1.1.3 Measured drawings	

Supplemental Services	Responsibility (Architect, Owner, or not provided)
§ 4.1.1.4 Existing facilities surveys	
§ 4.1.1.5 Site evaluation and planning	
§ 4.1.1.6 Building Information Model management responsibilities	
§ 4.1.1.7 Development of Building Information Models for post construction use	
§ 4.1.1.8 Civil engineering	
§ 4.1.1.9 Landscape design	
§ 4.1.1.10 Architectural interior design	
§ 4.1.1.11 Value analysis	
§ 4.1.1.12 Detailed cost estimating beyond that required in Section 6.3	
§ 4.1.1.13 On-site project representation	
§ 4.1.1.14 Conformed documents for construction	
§ 4.1.1.15 As-designed record drawings	
§ 4.1.1.16 As-constructed record drawings	
§ 4.1.1.17 Post-occupancy evaluation	
§ 4.1.1.18 Facility support services	
§ 4.1.1.19 Tenant-related services	
§ 4.1.1.20 Architect's coordination of the Owner's consultants	
§ 4.1.1.21 Telecommunications/data design	
§ 4.1.1.22 Security evaluation and planning	
§ 4.1.1.23 Commissioning	
§ 4.1.1.24 Sustainable Project Services pursuant to Section 4.1.3	
§ 4.1.1.25 Fast-track design services	
§ 4.1.1.26 Multiple bid packages	
§ 4.1.1.27 Historic preservation	
§ 4.1.1.28 Furniture, furnishings, and equipment design	
§ 4.1.1.29 Other services provided by specialty Consultants	
§ 4.1.1.30 Other Supplemental Services	

§ 4.1.2 Description of Supplemental Services

§ 4.1.2.1 A description of each Supplemental Service identified in Section 4.1.1 as the Architect's responsibility is provided below.

(Describe in detail the Architect's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit. The AIA publishes a number of Standard Form of Architect's Services documents that can be included as an exhibit to describe the Architect's Supplemental Services.)

« »

§ 4.1.2.2 A description of each Supplemental Service identified in Section 4.1.1 as the Owner's responsibility is provided below.

(Describe in detail the Owner's Supplemental Services identified in Section 4.1.1 or, if set forth in an exhibit, identify the exhibit.)

« »

§ 4.1.3 If the Owner identified a Sustainable Objective in Article 1, the Architect shall provide, as a Supplemental Service, the Sustainability Services required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement. The Owner shall compensate the Architect as provided in Section 11.2.

§ 4.2 Architect's Additional Services

The Architect may provide Additional Services after execution of this Agreement without invalidating the Agreement. Except for services required due to the fault of the Architect, any Additional Services provided in accordance with this Section 4.2 shall entitle the Architect to compensation pursuant to Section 11.3 and an appropriate adjustment in the Architect's schedule.

§ 4.2.1 Upon recognizing the need to perform the following Additional Services, the Architect shall notify the Owner with reasonable promptness and explain the facts and circumstances giving rise to the need. The Architect shall not proceed to provide the following Additional Services until the Architect receives the Owner's written authorization:

.1 Services necessitated by a change in the Initial Information, previous instructions or approvals given by the Owner, or a material change in the Project including size, quality, complexity, the Owner's schedule or budget for Cost of the Work, or procurement or delivery method;

.2 Services necessitated by the enactment or revision of codes, laws, or regulations, including changing or editing previously prepared Instruments of Service;

.3 Changing or editing previously prepared Instruments of Service necessitated by official interpretations of applicable codes, laws or regulations that are either (a) contrary to specific interpretations by the applicable authorities having jurisdiction made prior to the issuance of the building permit, or (b) contrary to requirements of the Instruments of Service when those Instruments of Service were prepared in accordance with the applicable standard of care;

.4 Services necessitated by decisions of the Owner not rendered in a timely manner or any other failure of performance on the part of the Owner or the Owner's consultants or contractors;

.5 Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where the Architect is party thereto;

.6 Consultation concerning replacement of Work resulting from fire or other cause during construction.

§ 4.2.2 To avoid delay in the Construction Phase, the Architect shall provide the following services, as required:

.1 Reviewing a Contractor's submittal out of sequence from the submittal schedule approved by the Architect;

.2 Responding to the Contractor's requests for information that are not prepared in accordance with the Contract Documents or where such information is available to the Contractor from a careful study and comparison of the Contract Documents, field conditions, other Owner-provided information, Contractor-prepared coordination drawings, or prior Project correspondence or documentation;

.3 Preparing Change Orders and Construction Change Directives that require evaluation of Contractor's proposals and supporting data, or the preparation or revision of Instruments of Service;

.4 Evaluating an extensive number of Claims as the Initial Decision Maker; or,

.5 Evaluating substitutions proposed by the Owner or Contractor and making subsequent revisions to Instruments of Service resulting therefrom.

§ 4.2.3 The Architect shall provide Construction Phase Services exceeding the limits set forth below as Additional Services. When the limits below are reached, the Architect shall notify the Owner:

.1 « » («») reviews of each Shop Drawing, Product Data item, sample and similar submittals of the Contractor

.2 « » («») visits to the site by the Architect during construction, as required based on progress of the work

.3 « » («») inspections for any portion of the Work to determine whether such portion of the Work is substantially complete in accordance with the requirements of the Contract Documents

.4 « » («») inspections for any portion of the Work to determine final completion.

.5 Conduct progress meetings with Contractor, Consultants and the Owner, including the Architect's during Construction Phase.

§ 4.2.4 Except for services required under Section 3.6.6.5 and those services that do not exceed the limits set forth in Section 4.2.3, Construction Phase Services provided more than 60 days after (1) the date of Substantial Completion of the Work or (2) the initial date of Substantial Completion identified in the agreement between the Owner and Contractor, whichever is earlier, shall be compensated as Additional Services to the extent the Architect incurs additional cost in providing those Construction Phase Services.

§ 4.2.5 If the services covered by this Agreement have not been completed within « » («») months of the date of this Agreement, through no fault of the Architect, extension of the Architect's services beyond that time shall be compensated as Additional Services.

ARTICLE 5 OWNER'S RESPONSIBILITIES

§ 5.1 Unless otherwise provided for under this Agreement, the Owner shall provide information in a timely manner regarding requirements for and limitations on the Project, including a written program, which shall set forth the Owner's objectives; schedule; constraints and criteria, including space requirements and relationships; flexibility; expandability; special equipment; systems; and site requirements.

§ 5.2 The Owner shall establish the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Section 6.1; (2) the Owner's other costs; and, (3) reasonable contingencies related to all of these costs. The Owner shall update the Owner's budget for the Project as necessary throughout the duration of the Project until final completion. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Architect. The Owner and the Architect shall thereafter agree to a corresponding change in the Project's scope and quality.

§ 5.3 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Project. The Owner shall render decisions and approve the Architect's submittals in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Architect's services.

§ 5.4 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions, and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths.

§ 5.5 The Owner shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 5.6 The Owner shall provide the Supplemental Services designated as the Owner's responsibility in Section 4.1.1.

§ 5.7 If the Owner identified a Sustainable Objective in Article 1, the Owner shall fulfill its responsibilities as required in AIA Document E204™–2017, Sustainable Projects Exhibit, attached to this Agreement.

§ 5.8 The Owner shall coordinate the services of its own consultants with those services provided by the Architect. Upon the Architect's request, the Owner shall furnish copies of the scope of services in the contracts between the Owner and the Owner's consultants. The Owner shall furnish the services of consultants other than those designated as the responsibility of the Architect in this Agreement, or authorize the Architect to furnish them as an Additional Service, when the Architect requests such services and demonstrates that they are reasonably required by the scope of the Project. The Owner shall require that its consultants and contractors maintain insurance, including professional liability insurance, as appropriate to the services or work provided.

§ 5.9 The Owner shall furnish tests, inspections and reports required by law or the Contract Documents, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials, unless otherwise specified.

§ 5.10 The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests. The Owner shall not provide legal, accounting and /or insurance services for Architect, Contractor or others.

§ 5.11 The Owner shall provide prompt written notice to the Architect if the Owner becomes aware of any fault or defect in the Project, including errors, omissions or inconsistencies in the Architect's Instruments of Service. This provision does not release the Architect from its primary responsibility for the content of the instruments of Service as defined in paragraph 7.2).

§ 5.12 The Owner shall include the Architect in all communications with the Contractor that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect.

§ 5.13 Before executing the Contract for Construction, the Owner shall coordinate the Architect's duties and responsibilities set forth in the Contract for Construction with the Architect's services set forth in this Agreement. The Owner shall provide the Architect a copy of the executed agreement between the Owner and Contractor, including the General Conditions of the Contract for Construction.

§ 5.14 The Owner shall provide the Architect access to the Project site prior to commencement of the Work and shall obligate the Contractor to provide the Architect access to the Work wherever it is in preparation or progress.

§ 5.15 Within 15 days after receipt of a written request from the Architect, the Owner shall furnish the requested information as necessary and relevant for the Architect to evaluate, give notice of, or enforce lien rights.

ARTICLE 6 COST OF THE WORK

§ 6.1 For purposes of this Agreement, the Cost of the Work shall be the total cost to the Owner to construct all elements of the Project designed or specified by the Architect and shall include contractors' general conditions costs, overhead and profit. The Cost of the Work also includes the reasonable value of labor, materials, and equipment, donated to, or otherwise furnished by, the Owner as negotiated. The Cost of the Work does not include the compensation of the Architect; the costs of the land, rights-of-way, financing, changes in the Work; or other costs that are the responsibility of the Owner.

§ 6.2 The Owner's budget for the Cost of the Work is provided in Initial Information, and shall be adjusted throughout the Project as required under Sections 5.2, 6.4 and 6.5. Evaluations of the Owner's budget for the Cost of the Work, and the preliminary estimate of the Cost of the Work and updated estimates of the Cost of the Work, prepared by the Architect, represent the Architect's judgment as a design professional. It is recognized, however, that neither the Architect nor the Owner has control over the cost of labor, materials, or equipment; the Contractor's methods of determining bid prices; or competitive bidding, market, or negotiating conditions. Accordingly, the Architect cannot and does not warrant or represent that bids or negotiated prices will not vary from the Owner's budget for the Cost of the Work, or from any estimate of the Cost of the Work, or evaluation, prepared or agreed to by the Architect.

§ 6.3 In preparing estimates of the Cost of Work, the Architect shall be permitted to include contingencies for design, bidding, and price escalation; to determine what materials, equipment, component systems, and types of construction are to be included in the Contract Documents; to recommend reasonable adjustments in the program and scope of the Project; and to include design alternates as may be necessary to adjust the estimated Cost of the Work to meet the Owner's budget. The Architect's estimate of the Cost of the Work shall be based on current area, volume or similar conceptual estimating techniques. If the Owner requires a detailed estimate of the Cost of the Work, the Architect shall provide such an estimate, if identified as the Architect's responsibility in Section 4.1.1, as a Supplemental Service.

§ 6.4 If, through no fault of the Architect, the Procurement Phase has not commenced within 90 days after the Architect submits the Construction Documents to the Owner, the Owner's budget for the Cost of the Work shall be adjusted to reflect changes in the general level of prices in the applicable construction market.

§ 6.5 If at any time the Architect's estimate of the Cost of the Work exceeds the Owner's budget for the Cost of the Work, the Architect shall make appropriate recommendations to the Owner to adjust the Project's size, quality, or budget for the Cost of the Work, and the Owner shall cooperate with the Architect in making such adjustments.

§ 6.6 If the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services is exceeded by the lowest bona fide bid or negotiated proposal, the Owner shall

.1 give written approval of an increase in the budget for the Cost of the Work;
.2 authorize rebidding or renegotiating of the Project within a reasonable time;
.3 terminate in accordance with Section 9.5;
.4 in consultation with the Architect, revise the Project program, scope, or quality as required to reduce the Cost of the Work; or,
.5 implement any other mutually acceptable alternative.

§ 6.7 If the Owner chooses to proceed under Section 6.6.4, the Architect shall modify the Construction Documents as necessary to comply with the Owner's budget for the Cost of the Work at the conclusion of the Construction Documents Phase Services, or the budget as adjusted under Section 6.6.1. If the Owner requires the Architect to modify the Construction Documents because the lowest bona fide bid or negotiated proposal exceeds the Owner's budget for the Cost of the Work due to market conditions the Architect could not reasonably anticipate, the Owner shall compensate the Architect for the modifications as an Additional Service pursuant to Section 11.3; otherwise the Architect's services for modifying the Construction Documents shall be without additional compensation. In any event, the Architect's modification of the Construction Documents shall be the limit of the Architect's responsibility under this Article 6.

ARTICLE 7 COPYRIGHTS AND LICENSES

§ 7.1 The Architect and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 7.2 The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the reserved rights of the Architect and the Architect's consultants.

§ 7.3 The Architect grants to the Owner a nonexclusive license to use the Architect's Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations under this Agreement, including prompt payment of all sums due pursuant to Article 9 and Article 11. The Architect shall obtain similar nonexclusive licenses from the Architect's consultants consistent with this Agreement. The license granted under this section permits the Owner to authorize the Contractor, Subcontractors, Sub-subcontractors, and suppliers, as well as the Owner's consultants and separate contractors, to reproduce applicable portions of the Instruments of Service, subject to any protocols established pursuant to Section 1.3, solely and exclusively for use in performing services or construction for the Project. If the Architect rightfully terminates this Agreement for cause as provided in Section 9.4, the license granted in this Section 7.3 shall terminate.

§ 7.3.1 In the event the Owner uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Architect and Architect's consultant(s) from all claims and causes of action arising from such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Architect and its consultants from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's use of the Instruments of Service under this Section 7.3.1. The terms of this Section 7.3.1 shall not apply if the Owner rightfully terminates this Agreement for cause under Section 9.4.

§ 7.4 Except for the licenses granted in this Article 7, no other license or right shall be deemed granted or implied under this Agreement. The Owner shall not assign, delegate, sublicense, pledge or otherwise transfer any license granted herein to another party without the prior written agreement of the Architect. Any unauthorized use of the Instruments of Service shall be at the Owner's sole risk and without liability to the Architect and the Architect's consultants.

§ 7.5 Except as otherwise stated in Section 7.3, the provisions of this Article 7 shall survive the termination of this Agreement.

ARTICLE 8 CLAIMS AND DISPUTES

§ 8.1 General

§ 8.1.1 The Owner and Architect shall commence all claims and causes of action against the other and arising out of or related to this Agreement, whether in contract, tort, or otherwise, in accordance with the requirements of the binding dispute resolution method selected in this Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Architect waive all claims and causes of action not commenced in accordance with this Section 8.1.1.

§ 8.1.2 This Agreement shall be governed by the Laws of the State of Alabama, and the appropriate venue for any Actions arising out of the Agreement shall be a court of proper jurisdiction in Mobile, Alabama.

§ 8.1.3 Indemnification: The CONSULTANT shall indemnify and hold harmless City and its officers, elected officials, agents, representatives, and employees for any and all claims, injuries, losses, diminution in value, damages, liabilities, whether or not currently due, and related expenses to the extent caused by CONSULTANT any negligence, recklessness, intentional tort, intellectual property infringement, or failure to pay a subconsultant or supplier that is committed by CONSULTANT or the CONSULTANT'S agent, consultant under contract, or other entity for which CONSULTANT is legally liable. CONSULTANT shall defend the City, its officials, agents, representatives, and employees against any and all claims arising out of the rendering of or failure to render professional services by CONSULTANT or its agents covered by CONSULTANT'S policy of professional liability insurance in accord with named minimum requirements. The parties acknowledge and agree that this contract requires CONSULTANT to procure and maintain professional liability insurance that satisfies the named requirements. CONSULTANT shall reimburse the City for its reasonable attorney fees, damages, losses, injuries, or other litigation costs in proportion to CONSULTANT'S liability, or in proportion to the extent CONSULTANT participates in resolution of a claim also made against the City. The parties acknowledge and agree that nothing in the foregoing shall be construed to require CONSULTANT to indemnify, hold harmless or defend the City except as permissible under Acts of Alabama 2021-318, or subsequent codifications thereof.

§ 8.1.4 Standard of Performance:
CONSULTANT shall perform all professional services under this contract with the professional skill and care ordinarily provided by a competent design professional practicing under the same or similar circumstances and professional licenses as expeditiously as is prudent considering the ordinary professional skill and care of a competent design professional.

§ 8.1.5 Force Majeure:
In the event that either party hereto shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, lockouts, labor troubles, inability to procure materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, Act of God, or other reason of a like nature not the fault of the party delayed in performing work or doing acts required under the terms of this Agreement, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay.

ARTICLE 9 TERMINATION OR SUSPENSION

§ 9.1 If the Owner fails to make payments to the Architect in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Architect's option, cause for suspension of performance of services under this Agreement. If the Architect elects to suspend services, the Architect shall give seven days' written notice to the Owner before suspending services. In the event of a suspension of services, the Architect shall have no liability to the Owner for delay or damage caused the Owner because of such suspension of services. Before resuming services, the Owner shall pay the Architect all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.2 If the Owner suspends the Project, the Architect shall be compensated for services performed prior to notice of such suspension. When the Project is resumed, the Architect shall be compensated for expenses incurred in the

interruption and resumption of the Architect's services. The Architect's fees for the remaining services and the time schedules shall be equitably adjusted.

§ 9.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Architect, the Architect may terminate this Agreement by giving not less than seven days' written notice.

§ 9.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 9.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Architect for the Owner's convenience and without cause.

§ 9.6 If the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall compensate the Architect for services performed prior to termination, Reimbursable Expenses incurred, and costs attributable to termination, including the costs attributable to the Architect's termination of consultant agreements. Costs attributable to termination do not include anticipated profit on the value of services not performed by the Architect and his Consultants.

§ 9.7 In addition to any amounts paid under Section 9.6, if the Owner terminates this Agreement for its convenience pursuant to Section 9.5, or the Architect terminates this Agreement pursuant to Section 9.3, the Owner shall pay to the Architect the following fees:
(Set forth below the amount of any termination or licensing fee, or the method for determining any termination or licensing fee.)

.1 Termination Fee:

«$0.00»

.2 Licensing Fee if the Owner intends to continue using the Architect's Instruments of Service:

«N/A»

§ 9.8 Except as otherwise expressly provided herein, this Agreement shall terminate one year from the date of Substantial Completion.

§ 9.9 The Owner's rights to use the Architect's Instruments of Service in the event of a termination of this Agreement are set forth in Article 7 and Section 9.7.

ARTICLE 10 MISCELLANEOUS PROVISIONS

§ 10.1 This Agreement shall be governed by the law of the State of Alabama.

§ 10.2 Terms in this Agreement shall have the same meaning as those in AIA Document A201–2017, General Conditions of the Contract for Construction, including the Owner's then-current modifications which may be obtained from the Owner's Architectural Engineering Department Office.

§ 10.3 The Owner and Architect, respectively, bind themselves, their agents, successors, assigns, and legal representatives to this Agreement. Neither the Owner nor the Architect shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Project if the lender agrees to assume the Owner's rights and obligations under this Agreement, including any payments due to the Architect by the Owner prior to the assignment.

§ 10.4 If the Owner requests the Architect to execute certificates, the proposed language of such certificates shall be submitted to the Architect for review at least 14 days prior to the requested dates of execution. If the Owner requests the Architect to execute consents reasonably required to facilitate assignment to a lender, the Architect shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Architect

for review at least 14 days prior to execution. The Architect shall not be required to execute certificates or consents that would require knowledge, services, or responsibilities beyond the scope of this Agreement.

§ 10.5 Nothing contained in this Agreement shall create a contractual relationship with, or a cause of action in favor of, a third party against either the Owner or Architect.

§ 10.6 Unless otherwise required in this Agreement, the Architect shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the Project site.

§ 10.7 The Architect shall have the right to include photographic or artistic representations of the design of the Project among the Architect's promotional and professional materials. The Architect shall be given reasonable access to the completed Project to make such representations. However, the Architect's materials shall not include the Owner's confidential or proprietary information. The Owner shall provide professional credit for the Architect in the Owner's promotional materials for the Project. This Section 10.7 shall survive the termination of this Agreement unless the Owner terminates this Agreement for cause pursuant to Section 9.4.

§ 10.8 If the Architect or Owner receives information specifically designated as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person except as set forth in Section 10.8.1. This Section 10.8 shall survive the termination of this Agreement.

§ 10.8.1 The receiving party may disclose "confidential" or "business proprietary" information after 7 days' notice to the other party, when required by law, arbitrator's order, or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or to the extent such information is reasonably necessary for the receiving party to defend itself in any dispute. The receiving party may also disclose such information to its employees, consultants, or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 10.8.

§ 10.9 The invalidity of any provision of the Agreement shall not invalidate the Agreement or its remaining provisions. If it is determined that any provision of the Agreement violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Agreement shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Agreement.

ARTICLE 11 COMPENSATION

§ 11.1 For the Architect's Basic Services described under Article 3, the Owner shall compensate the Architect as follows:

.1 Stipulated Sum
(Insert amount)

«»

.2 Percentage Basis
(Insert percentage value)

«N/A»

.3 Other
(Describe the method of compensation)

«A. Basic Services Stipulated Sum $
B. Reimbursable Expenses: not to exceed $
C. Total Compensation: not to exceed $»

§ 11.2 For the Architect's Supplemental Services designated in Section 4.1.1 and for any Sustainability Services required pursuant to Section 4.1.3, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

« »

§ 11.3 For Additional Services that may arise during the course of the Project, including those under Section 4.2, the Owner shall compensate the Architect as follows:
(Insert amount of, or basis for, compensation.)

«To be negotiated based on Architect's and/or Architect's Consultants hourly rates but, in no case shall the fee percentage of the extra work exceed the fee schedules established by the Alabama Building Commission for a Group III building or another Group as noted, for total cost of the work. »

§ 11.4 Compensation for Supplemental and Additional Services of the Architect's consultants when not included in Section 11.2 or 11.3, shall be the amount invoiced to the Architect plus «zero» percent («0»%), or as follows:
(Insert amount of, or basis for computing, Architect's consultants' compensation for Supplemental or Additional Services.)

« »

§ 11.5 When compensation for Basic Services is based on a stipulated sum or a percentage basis, the proportion of compensation for each phase of services shall be as follows:

Schematic Design Phase	«twelve and a half »	percent (	«12.5 »%)
Design Development Phase	«fifteen »	percent (	«15 » %)
Construction Documents Phase	«fifty »	percent (	«50 » %)
Procurement Phase	«two and a half »	percent (	«2.5 » %)
Construction Phase	«twenty »	percent (	«20 » %)
Total Basic Compensation	one hundred	percent (	100 %)

§ 11.6 When compensation identified in Section 11.1 is on a percentage basis, progress payments for each phase of Basic Services shall be calculated by multiplying the percentages identified in this Article by the Owner's most recent budget for the Cost of the Work. Compensation paid in previous progress payments shall not be adjusted based on subsequent updates to the Owner's budget for the Cost of the Work.

§ 11.6.1 When compensation is on a percentage basis and any portions of the Project are deleted or otherwise not constructed, compensation for those portions of the Project shall be payable to the extent services are performed on those portions. The Architect shall be entitled to compensation in accordance with this Agreement for all services performed whether or not the Construction Phase is commenced.

§ 11.7 The hourly billing rates for services of the Architect and the Architect's consultants are set forth below. The rates shall be adjusted in accordance with the Architect's and Architect's consultants' normal review practices.
(If applicable, attach an exhibit of hourly billing rates or insert them below.)

«See Exhibit A »

Employee or Category	Rate ($0.00)

§ 11.8 Compensation for Reimbursable Expenses

§ 11.8.1 Reimbursable Expenses are in addition to compensation for Basic, Supplemental, and Additional Services and include expenses incurred by the Architect and the Architect's consultants directly related to the Project, as follows:

.1 Printing, reproductions.

§ 11.8.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Architect and the Architect's consultants plus «zero » percent («0 » %) of the expenses incurred.

§ 11.10 Payments to the Architect
§ 11.10.1 Initial Payments
§ 11.10.1.1
§ 11.10.1.2 If a Sustainability Certification is part of the Sustainable Objective, an initial payment to the Architect of « » ($ « ») shall be made upon execution of this Agreement for registration fees and other fees payable to the Certifying Authority and necessary to achieve the Sustainability Certification. The Architect's payments to the Certifying Authority shall be credited to the Owner's account at the time the expense is incurred.

§ 11.10.2 Progress Payments
§ 11.10.2.1 Payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Architect's invoice. Construction Phase payments shall be monthly based upon percentage of completion.
(Insert rate of monthly or annual interest agreed upon.)

«0 » % « »

§ 11.10.2.2 The Owner shall not withhold amounts from the Architect's compensation to impose a penalty or liquidated damages on the Architect, or to offset sums requested by or paid to contractors for the cost of changes in the Work, unless the Architect agrees or has been found liable for the amounts in a binding dispute resolution proceeding.

§ 11.10.2.3 Records of Reimbursable Expenses, expenses pertaining to Supplemental and Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times.

ARTICLE 12 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:
(Include other terms and conditions applicable to this Agreement.)

«.1 The Architect and the Architect's Consultants shall perform Construction Contract Administration Services consistent with the General Conditions specified in the AIA Documents, including the Owner's then-current modifications and the Owner's Supplemental Conditions of the Construction Contract, current as of the date of this agreement both of which may be obtained from the Owner's Architectural Engineering Department.

.2 The Architect shall provide the final estimate for construction cost, complete set of drawings, project manual and addenda in electronic format along with the certification of the bids and recommendation for contract award.

.3 Drawings shall be in AutoCad Version 14 or later. Project manual shall be in Microsoft Word version 97 or later. Estimates to be Microsoft Excel 97 or later. Both should be turned over to Owner at the end of Construction Phase.

.4 Architects shall assist in making permitting application to Authorities having Jurisdiction as per Article 3.4.2 of this document.»

ARTICLE 13 SCOPE OF THE AGREEMENT

§ 13.1 This Agreement represents the entire and integrated agreement between the Owner and the Architect and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both the Owner and Architect.

§ 13.2 This Agreement is comprised of the following documents identified below:

.1 AIA Document B101™–2017, Standard Form Agreement Between Owner and Architect
   a. Proposal for Architectural Services, Exhibit A
   b. Insurance Requirements, Exhibit 1
   c. Architect's Certificate of Insurance with Endorsements

d. Architect's E-Verify Documentation

.2 AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, dated as indicated below:
(Insert the date of the E203-2013 incorporated into this agreement.)

«N/A »

.3 Exhibits:
(Check the appropriate box for any exhibits incorporated into this Agreement.)

[« »] AIA Document E204™–2017, Sustainable Projects Exhibit, dated as indicated below:
(Insert the date of the E204-2017 incorporated into this agreement.)

«N/A »

[« »] Other Exhibits incorporated into this Agreement:
(Clearly identify any other exhibits incorporated into this Agreement, including any exhibits and scopes of services identified as exhibits in Section 4.1.2.)

«N/A »

.4 Other documents:
(List other documents, if any, forming part of the Agreement.)

« »

ARTICLE 14 NON DISCRIMINATION

§ 14.1 Consultant shall comply with all Federal, State and local laws concerning nondiscrimination, including but not limited to City of Mobile Ordinance No. 14-034 which requires, *inter alia*, that all contractors performing work for the City of Mobile not discriminate on the basis of race, creed, color, national origin or disability, require that all subcontractors they engage do the same, and make every reasonable effort to assure that fifteen percent of the work performed under contract be awarded to socially and economically disadvantaged individuals and business entities.

ARTICLE 15 IMMIGRATION LAW

§ 15.1 By signing this contract, the contracting parties affirm, for the duration of the agreement, that they will not violate federal immigration law or knowingly employ, hire for employment, or continue to employ an unauthorized alien within the State of Alabama. Furthermore, a contracting party found to be in violation of this provision shall be deemed in breach of the agreement and shall be responsible for all damages resulting therefrom.

ARTICLE 16 PUBLIC CONTRACTS WITH ENTITIES ENGAINGIN IN CERTAIN BOYCOTT ACTIVITIES

§ 16.1 By signing this contract, the Consultant further represents and agrees that it is not currently engaged in, nor will it engage in, any boycott of a person or entity based in or doing business with a jurisdiction with which the State of Alabama can enjoy open trade.

ARTICLE 17 SEVERABILITY CLAUSE

§ 17.1 In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid or illegal or unenforceable provision had never been contained herein. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the court or other tribunal making such determination is authorized and instructed to modify this Agreement so as to effect the original intent of the parties as closely as possible so that the transactions and agreements contemplated herein are consummated as originally contemplated to the fullest extent possible.

This Agreement entered into as of the day and year first written above.

City of Mobile

OWNER *(Signature)*	**ARCHITECT** *(Signature)*
«William S. Stimpson, Mayor »« »	« »« »
(Printed name and title)	*(Printed name, title, and license number, if required)*

ATTEST:

City Clerk

STATE OF _____
COUNTY OF _____
Before me, the undersigned a Notary Public in and for said County and State, personally appeared _____ as _____ of _____ and after being duly sworn, did depose and say that he, as such officer and with full authority, signed the above and foregoing voluntarily as the act of _____.
Sworn to and subscribed for me this ___ day of _____, 20___.

NOTARY PUBLIC
My Commission Expires: _____

RESTORE ACT

FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITIONS

U.S. Department of the Treasury

February 2022

TABLE OF CONTENTS

RESTORE ACT FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITIONS

PREFACE

A grant agreement is comprised of the following documents:

1. A Notice of Award from the Department of the Treasury ("Treasury");
2. The RESTORE Act Financial Assistance Standard Terms and Conditions ("Standard Terms and Conditions");
3. The RESTORE Act Financial Assistance Program-Specific Terms and Conditions ("Program-Specific Terms and Conditions");
4. An approved application, including all documents, certifications, and assurances that are part of the approved application;
5. An approved scope of work;
6. Any approved budget; and,
7. Any special terms and conditions applied by Treasury to the award ("Special Award Conditions").

The recipient must comply with—and require each of its subrecipients, contractors, and subcontractors employed in the completion of the activity, project, or program to comply with—the RESTORE Act, Treasury's implementing regulations at 31 C.F.R. Part 34, all applicable federal statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, any program guidance issued by Treasury (including the RESTORE Frequently Asked Questions), Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this federal financial assistance award ("Award"), as applicable, in addition to the certifications and assurances required at the time of application.

Any inconsistency or conflict in Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this Award will be resolved according to the following order of precedence: federal laws, Executive Orders, federal regulations, applicable notices published in the Federal Register, OMB circulars, Treasury's Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions.

Some of these Standard Terms and Conditions contain, by reference or substance, a summary of pertinent federal statutes, federal regulations published in the Federal Register (Fed. Reg.) or Code of Federal Regulations (C.F.R.), EOs, or OMB circulars. In particular, these Standard Terms and Conditions incorporate many of the provisions contained in OMB's Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ("Uniform Guidance," 2 C.F.R. Part 200), which supersedes former OMB Circular A-102 (the former grants management common rule), OMB Circular A-133 (single audit requirements), and all former OMB circulars containing the cost principles for grants and cooperative agreements. To the extent that it is a summary, such a provision is not in derogation of, or an amendment to, any such statute, regulation, EO, or OMB circular. Unless a definition is provided here, definitions can be found in the RESTORE Act (Public Law No. 112-141 (July 6, 2012), Treasury's implementing regulations (79 Fed. Reg. 48039 (Aug. 15, 2014) and 79 Fed. Reg. 61236 (Oct. 10, 2014), as codified at 31 C.F.R. Part 34), or 2 C.F.R. Part 200.

A PROGRAM-SPECIFIC TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT

In addition to all the Standard Terms and Conditions described in Sections C through T of this document, all Treasury RESTORE Act awards made under the Direct Component include the following Program-Specific Terms and Conditions:

1. Administrative Costs

a. Administrative costs are defined as indirect costs for administration incurred by the recipient that are allocable to activities authorized under the RESTORE Act, as specified in 31 C.F.R. § 34.2. Administrative costs do not include:

   i. Direct costs that directly support the scope of work and are identified as direct costs in the approved award budget;

   ii. Indirect costs that are identified specifically with, or readily assignable to facilities, as defined in 2 C.F.R. § 200.414; and

   iii. Indirect costs of subrecipients.

b. Of the amounts received from Treasury under the Direct Component, not more than three percent may be used for administrative costs. The three percent limit on administrative costs may be applied to the total amount of funds received by a recipient either on a grant-by-grant basis or on an aggregate basis. For the latter method, amounts used for administrative costs may not at any time exceed three percent of the aggregate of:

   i. The amounts received under a component (i.e., Direct Component or Centers of Excellence) by a recipient, beginning with the first grant through the most recent grant, and

   ii. The amounts in the Trust Fund that are allocated to, but not yet received by, the grantee under 31 C.F.R. § 34.103, consistent with the definition of administrative costs in 31 C.F.R. § 34.2.

c. Up to 100 percent of program income, as defined in 2 C.F.R. § 200.1 and elaborated in 2 C.F.R. § 200.307, may be used to pay for allowable administrative costs, subject to the three percent cap. Program income may also be used to defray other allowable costs under the award.

2. Oil Spill Liability Trust Fund

The recipient must not seek any compensation for the approved program or project from the Oil Spill Liability Trust Fund. If the recipient is authorized to make subawards, the recipient must not use Direct Component funds to make subawards to fund activities for which any claim for compensation was filed and paid out by the Oil Spill Liability Trust Fund after July 6, 2012.

3. Remedies for Noncompliance

a. If Treasury determines that the recipient has expended Direct Component funds to cover the cost of any ineligible activities, in addition to the remedies available in Section M of these Standard Terms and Conditions, per 31 C.F.R. § 34.804, Treasury will make no additional payments to the recipient from the Gulf Coast Restoration Trust Fund (Trust Fund), including no payments from the Trust Fund for

activities, projects, or programs until the recipient has either (1) deposited an amount equal to the amount expended for the ineligible activities in the Trust Fund, or (2) Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the RESTORE Act.

b. If Treasury determines the recipient has materially violated the terms of this Award, Treasury will make no additional funds available to the recipient from any part of the Trust Fund until the recipient corrects the violation.

B PROGRAM-SPECIFIC TERMS AND CONDITIONS - AWARDS UNDER THE CENTERS OF EXCELLENCE RESEARCH GRANTS PROGRAM

In addition to all the Standard Terms and Conditions described in Sections C through T of this document, all Treasury RESTORE Act awards under the Centers of Excellence Research Grants Program include the following Program-Specific Terms and Conditions:

1. **Allowable Costs**

In addition to the prohibitions contained in 2 C.F.R. Part 200, Subpart E (*Cost Principles*), the following costs are unallowable unless approved in writing by Treasury:

a. Construction, including the alteration, repair, or rehabilitation of existing structures;

b. Facilities costs that are allowable as indirect costs in a federally approved negotiated indirect cost rate; and

c. Acquisition of land or interests in land.

2. **Prior Approval for Changes in Centers of Excellence**

a. The recipient must immediately notify Treasury if it anticipates selecting a new entity or consortium to serve as a Center of Excellence or making other changes to the initial selection of Center(s) of Excellence described in the scope of work.

b. After the recipient notifies Treasury pursuant to (a) and finalizes the selection, the recipient must promptly inform Treasury of the following:

i. Name of the Center of Excellence and the entity selected to administer it, including the names of member organizations if the entity is a consortium;

ii. The Data Universal Numbering System (DUNS) Number of the entity or Unique Entity Identifier (UEI) Number as applicable;

iii. Location of the entity;

iv. The discipline or disciplines, as set forth in Section 1605(d) of the RESTORE Act and Treasury's implementing regulations at 31 C.F.R. § 34.704(b), that will serve as a focus of research for the selected Center or Centers of Excellence;

v. Documentation of the competitive process used to select the Center or Centers of Excellence, including all documentation to demonstrate the recipient complied with the selection requirements set forth in Section 1605 of the RESTORE Act and Treasury's implementing regulations at 31 C.F.R. § 34.704(b); and

vi. The estimated budget for the Center, including the total allocation of funded dollars for the Center.

3. **Performance Reports**

In addition to the reporting requirements in Section F, pursuant to 31 C.F.R. § 34.706, the recipient must submit an annual report to the Gulf Coast Ecosystem Restoration Council ("Council"), in a form prescribed by the Council that includes information on subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient is a consortium, the annual report must also identify the

consortium members. This information will be included in the Council's annual report to Congress. The recipient must provide a copy of this report to Treasury when it submits the report to the Council.

C APPLICABLE LAWS, REGULATIONS, AND PROGRAM REQUIREMENTS

This Award is subject to the following federal laws, regulations, and requirements. This list is not exclusive:

1. The RESTORE Act, Pub. L. No. 112-141 (July 6, 2012);
2. Treasury's implementing regulations, 31 C.F.R. Part 34;
3. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, Subparts A through F, and any Treasury regulations incorporating these requirements;
4. OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180 including the requirement to include a term or condition in all lower-tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulations at 31 C.F.R. Part 19;
5. Governmentwide Requirements for Drug-Free Workplace (Financial Assistance), 31 C.F.R. Part 20;
6. New Restrictions on Lobbying, 31 C.F.R. Part 21;
7. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170;
8. Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25;
9. Recipient Integrity and Performance Matters, Appendix XII to 2 C.F.R. Part 200;
10. Award Term related to Trafficking in Persons, 2 C.F.R. Part 175;.
11. Treasury's RESTORE Act Frequently Asked Questions (FAQs) and other program guidance; and
12. Any special award conditions included in the award.

D USE OF FUNDS AND FINANCIAL REQUIREMENTS

1. **Scope of Work**

The recipient must only use funds obligated and disbursed under this Award for the purpose of carrying out activities described in the attached approved scope of work. The recipient must not incur or pay any expenses under this Award for activities not related to the attached approved scope of work unless Treasury first approves an Award amendment explicitly modifying the approved scope of work to include those activities.

2. **Pre-award Costs**

The recipient may obligate funds under this Award only during the period of performance specified in the Notice of Award, which is the time period during which the recipient may incur new obligations and costs to carry out the work authorized under this Award. The only exception is for costs related to award reporting and closeout after the end of the period of performance, or costs incurred prior to the effective date of this Award, which are allowable only if:

a. Treasury specifically authorized these costs in writing on or after the issuance date of this Award;

b. Incurring these costs was necessary for the efficient and timely performance of the scope of work; and

c. These costs would have been allowable if incurred after the date of the award.

3. **Indirect Costs**

a. The recipient may only charge indirect costs to this Award if these costs are allowable under 2 C.F.R. Part 200, Subpart E (*Cost Principles*). For Direct Component awards, there is a three percent limit on indirect costs per 31 C.F.R. § 34.204. Please see the RESTORE Act Frequently Asked Questions (FAQs) related to the Direct Component Program for more information on the limitations on indirect costs (administrative costs) at https://home.treasury.gov/system/files/216/May-2020-Direct-Component-FAQ-Update-final-5-21-2020.pdf. Indirect costs charged to the award must be consistent with an accepted de minimis rate or the indirect cost rate agreement negotiated between the recipient and its cognizant agency (defined as the federal agency that is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, see 2 C.F.R. § 200.1) and must be included in the recipient's budget.

b. Unallowable direct costs are not recoverable as indirect costs.

c. The maximum dollar amount of allocable indirect costs charged to this Award shall be the lesser of:

i. The line item amount for the indirect costs contained in the approved budget, including all budget revisions approved in writing by the Treasury; or,

ii. The total indirect costs allocable to this Award based on the indirect cost rate approved by a cognizant or oversight federal agency and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.

4. **Cost Sharing and Budget Limitations**

a. There is not a cost sharing or matching requirement for Treasury's RESTORE Act grant programs. However, if matching funds are included in the approved award budget, the recipient must obtain and use these matching funds for the purposes of the award.

b. The recipient shall not request or receive additional funding beyond what was included in the approved application for the attached approved scope of work from any federal or non-federal source without first notifying Treasury.

5. **Program Income**

Program Income is defined in 2 C.F.R. § 200.1 as gross income earned by the non-federal entity that is directly generated by a supported activity or earned as a result of the federal award during the period of performance except as provided by 2 C.F.R. § 200.307(f). As allowed by 2 C.F.R. § 307(b), Treasury authorizes costs incidental to the generation of program income that have not been charged to the award to be deducted from the gross income to determine program income for this award (i.e., net program income). Any program income generated by the recipient or the subrecipient during the period of performance of the award or period of performance of the subrecipient agreement, as applicable, must be included in the approved budget and be used for the purposes of the Award and under the

conditions of these Standard Terms and Conditions and any Special Award Conditions, i.e., solely to accomplish the approved scope of work. All program income determinations are project scope-specific and should be determined prior to award or at the earliest point possible post-award.

6. **Incurring Costs or Obligating Federal Funds Beyond the Expiration Date**

The recipient must not incur costs or obligate funds under this Award for any purpose pertaining to the operation of the activity, project, or program beyond the end of the period of performance. The only costs that are authorized for a period up to 120 days following the end of the period of performance are those strictly associated with closeout activities. Closeout activities are normally limited to the preparation of final progress, financial, and required audit reports unless otherwise approved in writing by Treasury. Under extraordinary circumstances, and at Treasury's sole discretion, Treasury may approve the recipient's request for an extension of the 120-day closeout period.

7. **Tax Refunds**

Refunds of taxes paid under the Federal Insurance Contributions Act (FICA) and the Federal Unemployment Tax Act (FUTA) that are received by the recipient during or after the period of performance must be refunded or credited to Treasury if these taxes were paid out of RESTORE Act funds in accordance with 2 C.F.R. Part 200, Subpart E (*Cost Principles*). The recipient agrees to contact Treasury immediately upon receipt of these refunds.

8. **Requirement to Maintain a Conflict-of-Interest Policy**

Recipient understands and agrees it must maintain a conflict-of-interest policy consistent with 2 C.F.R. § 200.318(c), and that such conflict-of-interest policy is applicable to each activity funded under this award. Recipients and subrecipients must disclose in writing to Treasury or the pass-through agency, as appropriate, any potential conflict of interest affecting the awarded funds in accordance with 2 C.F.R. § 200.112.

9. **Prohibition on Use of Funds for Certain Telecommunications and Video Surveillance Services or Equipment**

a. Recipients must comply with 2 C.F.R. § 200.216 with respect to obligations and expenditures of Treasury's RESTORE Act grants funded on or after 8/13/2020. As required by 2 C.F.R. § 200.216, Treasury's RESTORE Act recipients and subrecipients are prohibited from obligating or expending grant funds to procure or obtain; extend or renew a contract to procure or obtain; or enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that use covered telecommunications equipment or services as a substantial or essential component of any system or as critical technology as part of any system.

b. Covered telecommunications equipment or services are defined as follows:

i. Telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities);

ii. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities);

iii. Telecommunications or video surveillance services provided by such entities or using such equipment; or

iv. Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of the People's Republic of China.

c. Whenever procuring, contracting for, or obtaining telecommunications or video surveillance services or equipment, the recipient must make a good-faith effort to ascertain that none of the equipment or services are from a prohibited source. The recipient must review the list of excluded parties in the System for Award Management (SAM) (https://www.sam.gov) for entities excluded from receiving federal awards for "covered telecommunications equipment or services."

d. The recipient must ensure that the prohibition on covered telecommunications and video surveillance services and equipment flows down to all lower-tier transactions, to include all subawards and contracts.

10. **Limitation on Use of Funds for Research Involving Human Subjects**

a. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged to this Award for human subject's research, until the appropriate documentation is approved in writing by Treasury.

b. The Federal policy for the protection of human subjects (the "Common Rule") as codified in 45 C.F.R. Part 46, Subpart A, defines a human subject as a living individual about whom an investigator conducting research obtains (1) information or biospecimens through intervention or interaction with the individual (e.g., surveys and focus groups), and uses, studies, or analyzes the information or biospecimens or (2) uses, studies, analyzes, or generates identifiable private information or identifiable biospecimens. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.

c. The recipient and subrecipient, as appropriate, must maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient must submit appropriate documentation to Treasury for approval by the appropriate Treasury officials. This documentation may include:

i. Documentation establishing approval of the project by an institutional review board (IRB) approved for federal-wide use under Department of Health and Human Services guidelines;

ii. Documentation to support an exemption for the project;

iii. Documentation to support deferral for an exemption or IRB review; or

iv. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.

11. **Limitation on Use of Funds for Foreign Travel**

a. The recipient and subrecipient may not use funds from this Award for travel outside of the United States unless Treasury provides prior written approval.

b. The recipient and subrecipient must comply with the provisions of the Fly America Act, as amended, (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131–301-10.143.

c. The Fly America Act requires that federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.

d. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website http://www.gsa.gov/portal/content/103191. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website http://www.state.gov/e/eeb/tra/.

e. If a foreign air carrier is anticipated to be used for any portion of travel funded under this Award, the recipient must receive prior approval from Treasury. When requesting such approval, the recipient must provide a justification in accordance with guidance provided by 41 C.F.R. § 301–10.142, which requires the recipient to provide Treasury with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the recipient meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the recipient must provide Treasury with a copy of the agreement or a citation to the official agreement available on the GSA website. Treasury shall make the final determination and notify the recipient in writing. Failure to adhere to the provisions of the Fly America Act will result in the recipient not being reimbursed for any transportation costs for which the recipient improperly used a foreign air carrier.

12. **Subawards**

a. Recipients that enter into subawards under this award must execute a legally binding written agreement with the subrecipient which includes a budget by federal object class categories or fixed amount (2 C.F.R. § 200.332). This agreement must incorporate all the terms and conditions of this Award, including any applicable Special Award Conditions, and must include the information at 2 C.F.R. § 200.332(a). The recipient must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. § 200.332 , including but not limited to monitoring use of RESTORE Act funds and compliance with all terms and conditions; following up on any deficiencies identified as a result of onsite or desk

reviews and/or audits; and reviewing and correcting as necessary all subrecipient performance and financial reporting before including this information on the recipients' required RESTORE Act grant program's Performance Progress Reports (PPR) and Federal Financial Report (SF-425) reports.

b. The recipient must evaluate and document each subrecipient's risk of noncompliance with federal statutes, regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring strategy, as described in 2 C.F.R. § 200.332.

c. The recipient must monitor the subrecipient's use of federal funds through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient is administering the subaward in compliance with the RESTORE Act, Treasury's implementing regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any applicable Special Award Conditions, and to ensure that the scope of work is being appropriately carried out and milestones are achieved.

d. The recipient must provide training and technical assistance to the subrecipient as necessary.

e. The recipient must, if necessary, take appropriate enforcement actions against non-compliant subrecipients.

f. If lower-tier subawards are authorized by Treasury, the recipient must ensure that a subrecipient who makes a subaward applies the terms and conditions of this Award, including any Special Award Conditions, to all lower-tier subawards through a legally binding written agreement, and that a subrecipient who makes a subaward carries out all the responsibilities of a pass-through entity described at 2 C.F.R. § 200.332.

g. The recipient must verify that no subrecipient appears on the excluded party list on sam.gov. If lower-tier subawards are authorized by Treasury, the recipient must ensure that a subrecipient who makes a subaward verifies that this lower-tier subrecipient does not appear on the excluded parties list in sam.gov prior to issuing the subaward.

h. The recipient must maintain written standards of conduct governing the performance of its employees involved in executing this Award and administration of subawards consistent with 2 C.F.R. § 200.318(c)(1).

    i. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward.

    ii. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients.

    iii. A recipient may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.

    iv. The standards of conduct must provide for disciplinary actions to be

applied for violations of such standards by officers, employees, or agents of the recipient.

E EFFECT OF A GOVERNMENT SHUTDOWN ON DISBURSEMENTS AND THE AVAILABILITY OF TREASURY PERSONNEL

In the event of a federal government shutdown, Treasury will issue guidance to the recipient concerning the expected effects on this Award.

F RECIPIENT REPORTING AND AUDIT REQUIREMENTS

1. **Financial Reports**

   a. The recipient must submit a "Federal Financial Report" (SF-425) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a Special Award Condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-425 must be submitted within 120 days after the end of the period of performance.

   b. In the remarks section of each SF-425 submitted, the recipient must describe by federal budget class category the use of all funds received by the recipient and subrecipient (if applicable).

   c. The report must be signed by an authorized certifying official who is the employee authorized by the recipient organization to submit financial data on its behalf.

   d. The recipient must submit all financial reports via Grant Solutions (http://www.GrantSolutions.gov), unless otherwise specified by Treasury in writing.

2. **Performance Reports**

   a. The recipient must submit an SF-PPR ("Performance Progress Report"), a "RESTORE Act Status of Performance Report," (standard format provided by Treasury, OMB Approval No. 1505-0250) and an updated "RESTORE Act Milestones Report," (standard format provided by Treasury, OMB Approval No. 1505-0250) on a semi-annual basis for the periods ending March 31 and September 30, or any portion thereof, unless otherwise specified in a Special Award Condition. Reports are due no later than 30 days following the end of each reporting period, except the final report, which is due 120 days following the end of the period of performance.

   b. The recipient must submit all performance reports in (a) above, via http://www.GrantSolutions.gov, unless otherwise specified in writing by Treasury, and the recipient must complete these reports according to the following instructions:

      i. SF-PPR: In the "performance narrative" attachment (section B of the SF-PPR), the recipient must provide the following information:

         a) In Section B-1:

            1) Summarize activities undertaken during the reporting period by the recipient and any subrecipients (if applicable);

            2) Summarize any key accomplishments, including milestones completed for the reporting period;

            3) List any contracts awarded during the reporting period, along with the name of the contractor and its principal, the DUNS number of the contractor, the value of the contract,

the date of award, a brief description of the services to be provided, and whether or not local preference was used in the selection of the contractor; and

4) If the recipient or any subrecipient is authorized to make subawards, list any subawards executed during the reporting period, along with the name of the entity and its principal, the DUNS number of the entity, the value of the agreement, the date of award, and a brief description of the scope of work.

b) In Section B-2:

1) Indicate if any operational, legal, regulatory, budgetary, and/or ecological risks, and/or any public controversies, have materialized. If so, indicate what mitigation strategies have been undertaken to attenuate these risks or controversies; and

2) Summarize any challenges that have impeded the recipient's ability to accomplish the approved scope of work on schedule and on budget. If the scope of work is not on schedule, the recipient should propose a revised schedule and update its milestone report.

c) In Section B-3:

Summarize any significant findings or events, including any data compiled, collected, or created, if applicable.

d) In Section B-4:

Describe any activities to disseminate or publicize results of the activity, project, or program, including data and its repository and citations for publications resulting from this Award.

e) In Section B-5:

1) Describe all efforts taken to monitor contractor and/or subrecipient performance, including site visits, during the reporting period.

2) For subawards, indicate whether the subrecipient(s) submitted an audit to the recipient, and if so, whether the recipient issued a management decision on any findings;

3) For awards where Davis-Bacon Act provisions are applicable, indicate whether the recipient and/or subrecipient(s) received and reviewed certified weekly payroll records and/or whether the recipient or subrecipient(s) conducted labor interviews; and

4) Describe any other activities or relevant information not already provided.

f) In Section B-6:

Summarize the activities planned for the next reporting period.

ii. "RESTORE Act Status of Performance Report": Instructions are provided on the report form.

iii. "RESTORE Act Milestones Report": Instructions are provided on the report form.

3. **Interim Reporting on Significant Developments per 2 C.F. R. § 200.329(e)**

a. Events may occur between the scheduled performance reporting dates that have significant impact upon the activity, project, or program. In such cases, the recipient must inform Treasury as soon as the following types of conditions become known:

i. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of this Award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation; and

ii. Favorable developments, which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

b. The recipient must:

i. Promptly provide to Treasury and the Treasury Inspector General a copy of all state or local inspector general reports, audit reports other than those prepared under the Single Audit Act or OMB's implementing regulation at 2 C.F.R. Part 200, Subpart F - Audit Requirements, and reports of any other oversight body, if such report pertains to an award under any RESTORE Act program, including the Comprehensive Plan Component and Spill Impact Component;

ii. Immediately notify Treasury and the Treasury Inspector General of any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds; and

iii. Promptly notify Treasury upon the selection of a contractor or subrecipient performing work under this Award and include the name and DUNS/UEI number for the subrecipient or contractor, and the total amount of the contract or subaward.

4. **Audit Requirements**

The recipient is responsible for complying, and ensuring all subrecipients comply, with all audit requirements of the Single Audit Act and 2 C.F.R. Part 200 Subpart F – Audit Requirements.

5. **Operational Self-Assessment**

The recipient must submit a revised *Operational Self-Assessment* form no later than June 30th of each calendar year for the duration of this Award. Only one *Operational Self-Assessment* must be submitted per recipient per year. In completing the form, the recipient must note controls or activities that have changed from its previous submission. The *Operational Self-Assessment* is electronically available and may be completed and submitted via a MAX.gov Federal Community link. The form is completed in MAX.gov and can be found on Treasury's Direct Component Resources webpage for reference at https://home.treasury.gov/policy-issues/financial-markets-financial-institutions-and-fiscal-service/restore-act/direct-component/direct-component-resources.

6. **Reporting Requirements under the Federal Funding Accountability and Transparency Act (FFATA) of 2006, Pub. L. No. 109-282, as amended by the Digital Accountability and Transparency Act (DATA Act) of 2014, Pub. L. No. 113-101**

The award term set forth in Appendix A to 2 C.F.R. Part 170 applies and is set forth in Appendix I to this document.

7. **System for Award Management (SAM.gov) and Universal Identifier Requirements**

The award term set forth in Appendix A to 2 C.F.R. Part 25 applies and is as set forth in Appendix II to this document.

8. **Reporting Requirements for Status of Real Property or Interest in Real Property**

The recipient must complete and submit to Treasury a report on the status of the real property or interest in real property in which the federal government retains an interest, using a *SF-429 Real Property Status Report* form annually for the first three years after real property acquisition or completion of construction, and thereafter every five years until the end of the Estimated Useful Life or time of disposition, whichever is less. See also Section Q.

9. **Reporting on Lobbying**

a. Solely for the purposes of reporting on lobbying, "recipient" is used as defined at 31 C.F.R. § 21.105(0), as including all contractors, subcontractors at any tier, and subgrantees at any tier of the recipient of funds received in connection with a Federal contract, grant, loan, or cooperative agreement. The term excludes an Indian tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law. Solely for the purposes of reporting on lobbying, "award recipient" refers to the recipient of this RESTORE Act award from Treasury.

b. All recipients must comply with the provisions of 31 U.S.C. § 1352, and Treasury's implementing regulations at 31 C.F.R. Part 21. No appropriated funds may be expended by the recipient of a Federal grant to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant or the extension, continuation, renewal, amendment, or modification of any Federal grant.

c. The award recipient must include a statement in all subawards, contracts and subcontracts exceeding $100,000 in federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352,

d. Each "person" who requests or receives from Treasury a RESTORE Act grant shall file with Treasury a certification, set forth in Appendix A of 31 C.F.R. Part 21, that the person has not made, and will not make, any payment prohibited under 31 U.S.C. § 1352, as amended.

   i. As defined in 31 U.S.C. § 1352(g)(3), the term "person"—includes an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit; but does not include an Indian tribe, tribal organization, or any other Indian organization eligible to receive Federal contracts, grants, cooperative agreements, or loans from an agency but only with respect to expenditures by such tribe or organization that are made for purposes specified in subsection (a) and are permitted by other Federal law.

   ii. The certification shall be filed pursuant to 31 C.F.R. § 21.110.

iii. Any subrecipient, at any tier, who receives a subaward exceeding $100,000 under this award, shall file with the tier above them a certification, set forth in appendix A of 31 C.F.R. Part 21, that the subrecipient as not made, and will not make, any payment prohibited by 31 C.F.R. § 21.100(a). Pursuant to 31 C.F.R. 21.110(d), the certification shall be filed to the next tier above.

iv. Any contractor or subcontractor, at any tier, who receives a contract or subcontract exceeding $100,000 under this award, shall file with the tier above them a certification, set forth in Appendix A of 31 C.F.R. Part 21, that the contractor or subcontractor has not made, and will not make, any payment prohibited by 31 U.S.C. § 1352, as amended. Pursuant to 31 C.F.R. 21.110(d), the certification shall be filed to the next tier above.

v. Every certification filed shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared with any tier to which the erroneous representation if forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification. If a person fails to file a required certification, the United States may pursue all available remedies, including those authorized by 31 U.S.C. § 1352.

vi. Pursuant to 31 C.F.R. § 21.110(c), every recipient must file a new disclosure form at the end of each calendar quarter in which a payment, or an agreement to make a payment, is made which would have otherwise required reporting at the time of application. Moreover, if an event occurs during the calendar quarter which materially affects the accuracy of information reported on the disclosure form previously submitted, the submitter must file a new disclosure form. Events which “materially affect” the accuracy of information already reported include:

   a) A cumulative increase of $25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;

   b) A change in the persons(s) influencing or attempting to influence; and/or

   c) A change in the Federal official(s) contacted to influence or attempt to influence a covered Federal action,

vii. The award recipient must submit its form SF-LLLs, as well as those received from subrecipients, contractors and subcontractors, to Treasury within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.

viii. The award recipient must require subrecipients, contractors and subcontractors to submit form SF-LLL to the award recipient within 15 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure from previously filed.

G FINANCIAL MANAGEMENT SYSTEM AND INTERNAL CONTROL REQUIREMENTS

1. Pursuant to 2 C.F.R. § 200.302, Recipients that are states must expend and account for Award funds in accordance with the applicable state laws and procedures for expending and accounting for the state's own funds. All other recipients must expend and account for Award funds in accordance with federal laws and procedures. In addition, all recipients' financial management systems must be sufficient to:

    a. Permit the preparation of accurate, current, and complete SF-425, SF-PPR, RESTORE Act Milestones Report, and RESTORE Act Status of Performance Reports, as well as reporting on subawards, if applicable, and any additional reports required by any Special Award Conditions;

    b. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with all applicable federal, state, and local requirements, including the RESTORE Act, Treasury implementing regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and retain all supporting documentation to allow this tracing of funds;

    c. Allow for the comparison of actual expenditures with the amount budgeted for each Award made to the recipient by Treasury under the RESTORE Act grant programs;

    d. Identify and track all RESTORE Act awards received and expended by the assigned grant number, which is the Universal Award ID (as provided by Treasury), the year the Award was made, the awarding agency (Treasury), and the program's CFDA title and CFDA number (21.015);

    e. Record the source and application of funds for all activities funded by this Award, as well as all awards, authorizations, obligations, unobligated balances, assets, expenditures, program income, and interest earned on federal advances, and allow users to tie these records to source documentation such as cancelled checks, paid bills, payroll and attendance records, contract and subaward agreements, etc.; and

    f. Ensure effective control over, and accountability for, all federal funds, and all property and assets acquired with federal funds. The recipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.

2. The recipient must establish written procedures to implement the requirements set forth in section H below (Award Disbursement), as well as written procedures to determine the allowability of costs in accordance with 2 C.F.R. Part 200, subpart E (*Cost Principles*) and the terms and conditions of this Award.

3. The recipient must establish and maintain effective internal controls over this Award in a manner that provides reasonable assurance that the recipient is managing this Award in compliance with the RESTORE Act, Treasury's implementing regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The recipient must evaluate and monitor its compliance, and the compliance of any subrecipients, with the RESTORE Act, Treasury's implementing regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and promptly remedy any identified instances of noncompliance. When and if an instance of noncompliance cannot be remedied by the recipient, the recipient must promptly report

the instance of noncompliance to Treasury and Treasury's Inspector General, followed by submitting a proposed mitigation plan to Treasury.

4. The recipient must take reasonable measures to safeguard protected personally identifiable information (PII), as defined in 2 C.F.R 200.1, consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.

H RECORDS RETENTION REQUIREMENTS

1. The recipient must retain all records pertinent to this Award for a period of three years from the date of submission of the final expenditure report (final SF-425), as described in 2 C.F.R. § 200.334. While electronic storage of records (backed up as appropriate) is preferable, the recipient has the option to store records in hardcopy (paper) format. For the purposes of this section, the term "records" includes but is not limited to:

    a. Copies of all contracts and all documents related to a contract, including the Request for Proposal (RFP), all proposals/bids received, all meeting minutes or other documentation of the evaluation and selection of contractors, any disclosed conflicts of interest regarding a contract, all signed conflict of interest forms, all conflict of interest and other procurement rules governing a particular contract, and any bid protests;

    b. Copies of all subawards and all documents related to a subaward. For competitively selected subawards, documents may include those relevant to and required by the recipient's or subrecipient's selection process such as the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms;

    c. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients;

    d. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of costs charged to this Award;

    e. All supporting documentation for the performance outcome and other information reported on the recipient's SF-425s, SF-PPRs, RESTORE Act Milestones Reports, and RESTORE Act Status of Performance Reports; and

    f. Any reports, publications, and data sets from any research conducted under this Award.

2. If any litigation, claim, investigation, or audit relating to this Award or an activity funded with Award funds is started before the expiration of the three-year period following submission of the final expenditure report, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

3. If the recipient is authorized to enter into contracts to complete the approved scope of work, the recipient must include in its legal agreement with the contractor a requirement that the contractor retain all records in compliance with 2 C.F.R. § 200.334.

4. If the recipient is authorized to make subawards, the recipient must include in its legal agreement with the subrecipient a requirement that the subrecipient retain all records in compliance with 2 C.F.R. § 200.334.

I THE FEDERAL GOVERNMENT'S RIGHT TO INSPECT, AUDIT, AND INVESTIGATE

1. **Access to Records**

   a. Treasury, the Treasury Office of Inspector General, the Government Accountability Office, or any of their authorized representatives have the right of timely and unrestricted access to any documents, papers or other records, including electronic records, of the recipient that are pertinent to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents, in accordance with 2 C.F.R. § 200.337. This right also includes timely and reasonable access to the recipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

   b. If the recipient is authorized to make subawards, the recipient must include in its legal agreement or contract with the subrecipient a requirement that the subrecipient make available to Treasury, the Treasury Office of Inspector General, the Government Accountability Office, or any of their authorized representatives any documents, papers or other records, including electronic records, of the subrecipient, that are pertinent to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained (see Section F above).

   c. If the recipient is authorized to enter into contracts to complete the approved scope of work, the recipient must include in its contract a requirement that the contractor make available to Treasury, the Treasury Office of Inspector General, the Government Accountability Office, or any of their authorized representatives any documents, papers or other records, including electronic records, of the contractor that are pertinent to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the contractor's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are retained (see Section H above).

2. **Access to the Recipient's Sites**

   a. The Treasury, the Treasury Office of Inspector General, and Government Accountability Office shall have the right during normal business hours to conduct announced and unannounced onsite and offsite physical visits of recipients and their subrecipients and contractors corresponding to the duration of their records retention obligation for this Award.

J AWARD DISBURSEMENT

1. Unless otherwise specified in a Special Award Condition, Treasury will make advance payments under this Award upon request. However, if one of the following occurs, Treasury will require Award funds to be disbursed on a reimbursement basis either with or without pre-approval of drawdown requests: (1) Treasury determines that the recipient does not meet the financial management system standards (see Section E) included in these Standard Terms and Conditions, (2) Treasury determines that the recipient has not established procedures that will minimize the time elapsing between the transfer of funds and disbursement, or (3) Treasury determines that the recipient is in noncompliance with the RESTORE Act, Treasury's implementing regulations, other pertinent federal statutes, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and/or any Special Award Conditions, and determines that the

appropriate remedy is to require payment on a reimbursement basis.

2. If reimbursement is used, Treasury may require pre-approval of drawdown requests. If Treasury requires pre-approval of drawdown requests, Treasury will provide the recipient with instructions on what billing to submit. Treasury will make payment within 30 calendar days after receipt of the billing, unless Treasury determines the request to be improper, in which case payment will not be made.

3. To the extent available, the recipient must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments of Award funds.

4. Treasury will use the Department of Treasury's Automated Standard Application for Payment (ASAP) system to disburse payments of Award funds. In order to receive payments, the recipient must first enroll in ASAP.gov. Treasury creates and funds account(s) for recipients in ASAP.gov, and recipients access their account(s) online to request funds. All Award funds will be disbursed electronically using the Automated Clearing House (ACH) for next day or future-day payments only. Awards paid through ASAP.gov may contain controls or withdrawal limits set by Treasury.

5. Requirements applicable to recipients that are states: Payment methods of state agencies or instrumentalities must be consistent with Treasury-State agreements under the Cash Management Improvement Act, 31 C.F.R. Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers," and Treasury Financial Manual (TFM) 4A-2000 Overall Disbursing Rules for All Federal Agencies.

6. Requirements applicable to recipients that are not states: The recipient must minimize the time between the transfer of funds from Treasury and the use of the funds by the recipient. Advance payments to the recipient must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient in carrying out the purpose of the approved activity, project, or program. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the parish or county for activity, project, or program costs and the proportionate share of any allowable indirect costs. Advances should not be drawn down more than three business days before expenditure. Advanced funds not disbursed in a timely manner must be promptly returned to Treasury. The recipient must make timely payment to contractors (vendors) in accordance with the contract provisions.

7. Advances of federal funds must be deposited and maintained in United States Government-insured interest-bearing accounts whenever possible. The recipient is not required to maintain a separate depository account for receiving Award funds. If the recipient maintains a single depository account where advances are commingled with funds from other sources, the recipient must maintain on its books a separate subaccount for the Award funds. Consistent with the national goal of expanding opportunities for women-owned and minority-owned business enterprises, the recipient is encouraged to ensure fair consideration of women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

8. The recipient must maintain advances of federal funds in interest-bearing accounts, unless one of the following conditions applies:

    a. The recipient receives less than $250,000 in federal awards per year;

    b. The best reasonably available interest-bearing account would not be expected to earn interest in excess of $500 per year on federal cash balances; or

    c. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.

9. Interest earned amounts up to $500 per year may be retained by the non-federal entity for administrative expense. Any additional interest earned on federal advance payments deposited in interest-bearing accounts must be remitted annually to the Department of Health and Human Services, Payment Management System, (PMS) through an electronic medium using either Automated Clearing House (ACH) network or a Fedwire Funds Service payment.

K NOTIFICATIONS AND PRIOR APPROVALS

1. Notifications

a. In addition to other notifications required under these Standard Terms and Conditions, the recipient must promptly notify Treasury in writing whenever a vacancy or change to key personnel listed in the award application occurs or is anticipated.

b. Except for changes described in (2) below, the recipient may revise the budget without prior approval. If the recipient alters the budget, the recipient must provide a revised budget form (SF-424A or SF-424C, as applicable) to Treasury as an attachment to the SF-PPR, reflecting all budget revisions from the same period covered by the SF-PPR. Acceptance of such budget information does not constitute Treasury's approval of the revised budget.

2. Prior Approvals

a. The recipient must obtain prior written approval from Treasury whenever any of the following actions is anticipated:

i. A change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval);

ii. A need to extend the period of performance;

iii. A need for additional federal funds to complete the activity, project, or program;

iv. The transfer of funds among direct cost categories if this Award exceeds the Simplified Acquisition Threshold (defined at 2 C.F.R. § 200.1) and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by Treasury;

v. Any transfer between the non-construction and construction budget lines;

vi. The use of funds to reimburse the recipient for pre-award costs;

vii. The inclusion of costs that require prior approval in accordance with 2 C.F.R. Part 200, Subpart E—Cost Principles, unless described in the application and approved in this Award, including but not limited to costs related to foreign travel and research on human subjects (which includes surveys and focus groups);

viii. The subawarding, transferring or contracting out of any work under this Award (this provision does not apply to the acquisition of supplies, material, equipment or general support services), unless described in the application and approved in this Award;

ix. Termination of a subaward prior to the expiration of the agreement with the subrecipient;

x. The commencement of any construction under the award;

xi. The purchase of equipment under the award;

xii. The use of real property in which there is a recorded federal interest for purposes other than purposes of award; and

xiii. The disposition of real property or equipment with a fair market value exceeding $5,000.

L AMENDMENTS AND CLOSEOUT

1. **Amendments**

a. The terms of this Award may be amended with the written approval of the recipient and Treasury.

b. Treasury reserves the right to unilaterally amend the terms of this Award if required by federal law or regulation.

c. An amendment is required whenever Treasury and the recipient wish to:

i. Make a material change to the award scope of work;

ii. Extend the award period of performance;

iii. Increase or decrease the amount of funds on a RESTORE Act grant;

iv. Unless described in the application and funded in the approved federal awards, the subawarding, transferring or contracting out of any work under a federal award, to include the selection of a Center or Centers of Excellence not specified in the approved scope of work, or the termination of a subaward included in the approved scope of work prior to the expiration of the agreement with the subrecipient. This provision does not apply to the acquisition of supplies, material, equipment or general support services;

v. Change the approved cost-sharing or matching provided by the recipient; or

vi. Transfer funds between the construction and nonconstruction budget line items.

d. Requests for amendments must be submitted via GrantSolutions.gov, unless Treasury specifically waives this requirement, and must be signed by the recipient's Authorized Official;

e. Request for amendments must contain the following information, unless otherwise indicated by Treasury:

i. A revised change in scope, whenever a material change in scope is requested or whenever the recipient intends to subaward, transfer or contract out of any work under a federal award, include the selection of a Center or Centers of Excellence not specified in the approved scope of work, or termination of a subaward included in the approved scope of work prior to the expiration of the agreement with the subrecipient. This scope of work should be in redline format to clearly identify the changes from the original scope of work and must include revised performance measures and a justification for the proposed revision to the scope of work;

ii. A revised detailed budget, whenever the recipient intends to make changes to the original approved budget to reflect a request for increased or decreased federal funding, a change in matching funds, or

transfers between line items. This detailed budget should show the original budget for each line item, the requested change for each line item, and an explanation or justification for each requested line item change;

iii. A revised period of performance and revised milestone chart, whenever a time extension is requested, as well as a justification for the time extension request, an explanation of how the recipient will accomplish the scope of work in the revised timeframe, and a discussion of risks that could further impact the schedule, and a risk mitigation strategy to reduce the likelihood of these schedule risks or their impact if they do occur; and

iv. Any other supporting documentation as appropriate and as requested by Treasury.

2. **Closeout**

a. Treasury will closeout this Award when it determines that all applicable administrative actions and all required work of this Award have been completed.

b. Within 120 calendar days after the end of the period of performance, unless the recipient requests, and Treasury approves, an extension, the recipient must submit any outstanding SF-PPR and RESTORE Act Status of Performance reports, as well as the required reporting on subawards, if applicable, plus a final SF-425 report. In the remarks section of the final SF-425 report, the recipient must describe by federal budget class category the final use of all funds received by the recipient and subrecipient (if applicable). The subrecipient must submit to the recipient, no later than 90 calendar days (or an earlier date as agreed upon by the pass-through entity and subrecipient) after the end date of the period of performance, all financial, performance, and other reports as required by the terms and conditions of the federal award. The recipient may approve an extension when requested and justified by the subrecipient.

c. The recipient must liquidate all obligations incurred under this Award not later than 120 calendar days after the end of the period of performance, or at closeout of the Award by Treasury.

d. The recipient must promptly refund any balances of unobligated cash that Treasury paid. If the recipient is required to refund any balances, the recipient should contact Treasury for instructions.

e. Following receipt of reports in paragraph (a) of this section, Treasury will make upward or downward adjustments to the allowable costs, and then make prompt payment to the recipient for allowable, unreimbursed costs.

f. The recipient must account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with 2 C.F.R. § § 200.310 through 200.316 and § 200.330.and Section Q of these terms and conditions

g. If the recipient does not submit all reports in accordance with 2 C.F.R. § 200.344, and the terms and conditions of this Award within one year of the period of performance end date, Treasury will proceed to close out the Award without the missing reports. Treasury will also report the recipient ‘s material failure to comply with the terms and conditions of this Award with the OMB-designated integrity and performance system (currently FAPIIS) and may pursue other remedies for noncompliance, as listed in Section M.

h. The closeout of this Award does not affect any of the following:

i. The right of Treasury or pass-through entity to disallow costs and recover funds on the basis of a later audit or other review. Treasury or pass-through entity must make any cost disallowance determination and notify the non-Federal entity within the record retention period.

ii. The requirement for the recipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments.

iii. The ability of the Federal awarding agency to make financial adjustments to a previously closed award such as resolving indirect cost payments and making final payments.

iv. Audit requirements in 2 C.F.R. Part 200, Subpart F.

v. Property management and disposition requirements in 2 C.F. R. §§ 200.310 through 200.316.

vi. Records retention as required in 2 C.F.R. §§ 200.334 through 200.337.

i. After closeout of the Federal award, a relationship created under the Federal award may be modified or ended in whole or in part with the consent of the Federal awarding agency or pass-through entity and the non-Federal entity, provided the responsibilities of the non-Federal entity referred to in 2 C.F.R. § 200.344(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the non-Federal entity, as appropriate.

M TERMINATION AND REMEDIES FOR NONCOMPLIANCE

1. If Treasury determines that the recipient has failed to comply with the RESTORE Act, Treasury's implementing regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, or any Special Award Conditions, Treasury may take any of the following actions (in addition to the remedies in Section A.3, above, applicable to Direct Component awards):

    a. Impose additional Special Award Conditions such as:

        i. Allowing payment only on a reimbursement basis, with pre-approval of drawdown requests;

        ii. Requiring additional reporting or more frequent submission of the SF-425, SF-PPR, or RESTORE Act Status of Performance Report;

        iii. Requiring additional activity, project, or program monitoring;

        iv. Requiring the recipient or one or more of its subrecipients to obtain technical or management assistance; and/or

        v. Establishing additional actions that require prior approval;

    b. Temporarily withhold payments pending correction of the noncompliance;

    c. Disallow from this Award all or part of the cost of the activity or action not in compliance;

    d. Wholly or partly suspend or terminate this Award;

    e. Withhold additional Awards;

    f. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180 and Treasury's implementing regulations at 31 C.F.R. Part 19; and/or

    g. Take any other remedies that may be legally available.

2. Treasury will notify the recipient in writing of Treasury's proposed determination that an instance of noncompliance has occurred, provide details regarding the instance of noncompliance, and indicate the remedy that Treasury proposes to pursue. The recipient will have 30 calendar days to respond and provide information and documentation contesting Treasury's proposed determination or suggesting an alternative remedy.

3. Treasury will consider any and all information provided by the recipient and issue a final determination in writing, which will state Treasury's final findings regarding noncompliance and the remedy to be imposed.

4. In extraordinary circumstances, Treasury may require that any of the remedies above take effect immediately upon notice in writing to the recipient. In such cases, the recipient may contest Treasury's determination or suggest an alternative remedy in writing to Treasury, and Treasury will issue a final determination.

5. Instead of, or in addition to, the remedies listed above, Treasury may refer the noncompliance to the Treasury Office of Inspector General for investigation or audit. Treasury will refer all allegations of fraud, waste, or abuse to the Treasury Inspector General.

6. Treasury may terminate this Award in accordance with 2 C.F.R. § 200.340. Requests for termination by the recipient must also be in accordance with 2 C.F.R. § 200.340. Such requests must be in writing and must include the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. If Treasury determines that the remaining portion of this Award will not accomplish the purpose of this Award, Treasury may terminate this Award in its entirety.

7. If this Award is terminated, Treasury will update or notify any relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. § 417b and 31 U.S.C. § 3321, as implemented at 2 C.F.R. Part 180, and Treasury's implementing regulation at 31 C.F.R. Part 19.

8. Costs that result from obligations incurred by the recipient during a suspension or after termination are not allowable unless Treasury expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if: (1) the costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination and are not in anticipation of it; and (2) the costs would be allowable if the Award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

9. Notwithstanding the foregoing, consistent with 2 C.F.R. 200.340, Treasury may also **unilaterally terminate this award in whole or in part** if the award no longer effectuates the program goals or agency priorities.

N DEBTS

1. **Payment of Debts Owed the Federal Government**

   a. Any funds paid to the recipient in excess of the amount to which the recipient is finally determined to be authorized to retain under the terms of this Award constitute a debt to the federal government.

   b. Any debts determined to be owed the federal government must be paid promptly by the recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made. Interest, penalties, and administrative charges (see paragraphs c, d, and e below) shall be charged on delinquent debts in accordance with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Treasury will refer any

debt that is more than 120 days delinquent to Treasury's Bureau of the Fiscal Service for debt collection services.

c. The minimum annual interest rate to be assessed on any debts is the Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm. The assessed rate shall remain fixed for the duration of the indebtedness, based on the beginning date in Treasury's written demand for payment.

d. Penalties on any debts shall accrue at a rate of not more than 6 percent per year or such other higher rate as authorized by law.

e. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by Treasury.

f. Funds for payment of a debt must not come from other federally sponsored programs. Verification that other federal funds have not been used will be made, e.g., during on-site visits and audits.

2. **Effect of Judgment Lien on Eligibility for Federal Grants, Loans, or Programs**

Pursuant to 28 U.S.C. § 3201(e), unless waived in writing by Treasury, a debtor who has a judgment lien against the debtor's property for a debt to the United States shall not be eligible to receive any grant or loan that is made, insured, guaranteed, or financed directly or indirectly by the United States or to receive funds directly from the federal government in any program, except funds to which the debtor is entitled as beneficiary, until the judgment is paid in full or otherwise satisfied.

O NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance. The recipient is required to comply with all non-discrimination requirements summarized in this section, and to ensure that all subawards and contracts contain these nondiscrimination requirements.

1. **Statutory Provisions**

a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) prohibits discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;

b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) prohibits discrimination on the basis of sex under federally assisted education programs or activities;

c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) prohibits discrimination on the basis of handicap under any program or activity receiving or benefitting from federal assistance;

d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance;

e. Title II of the Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.) ("ADA"), including the ADA Amendments Act of 2008 (Public Law 110-325), ("ADAAA"), prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private

entities that provide public transportation; and

f. Any other applicable non-discrimination law(s).

2. **Regulatory Provisions**

a. Treasury's Title VI regulations, 31 C.F.R. Part 22, implement Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d, et seq.) which prohibits discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;

b. Treasury's Title IX regulations, 31 C.F.R. Part 28, implement Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) which prohibits discrimination on the basis of sex under federally-assisted education programs or activities**;**

c. Treasury's Age Discrimination regulations, 31 C.F.R. Part 23, implement the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.

3. **Other Provisions**

a. Parts II and III of EO 11246 (30 Fed. Reg. 12319, 1965), "Equal Employment Opportunity," as amended by EO 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), require federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of EO 11246 and Department of Labor regulations implementing EO 11246 (41 C.F.R. § 60-1.4(b), 1991).

b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requires federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

4. **Title VII Exemption for Religious Organizations**

Generally, Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000e et seq., provides that it shall be an unlawful employment practice for an employer to discharge any individual or otherwise to discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin. However, Title VII, 42 U.S.C. § 2000e-1(a), expressly exempts from the prohibition against discrimination on the basis of religion, a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

5. **Protections for Whistleblowers**

In accordance with 41 U.S.C. § 4712, neither the recipient nor any of its subrecipients, contractors (vendors), or subcontractors may discharge, demote, or otherwise discriminate against an employee as a reprisal for disclosing information to a person or entity listed below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant.

The list of persons and entities referenced in the paragraph above includes the following:

a. A Member of Congress or a representative of a committee of Congress;

b. An Inspector General;

c. The Government Accountability Office;

d. A Treasury employee responsible for contract or grant oversight or management;

e. An authorized official of the Department of Justice or other law enforcement agency:

f. A court or grand jury; and/or

g. A management official or other employee of the recipient, subrecipient, vendor, contractor (vendor), or subcontractor who has the responsibility to investigate, discover, or address misconduct.

Recipients, subrecipients, and contractors shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.

P REQUIREMENT TO CHECK DEBARMENT AND SUSPENSION STATUS OF SUBRECIPIENTS, CONTRACTORS, SUBCONTRACTORS, AND VENDORS

1. Recipients that are authorized to enter into subawards or contracts to accomplish all or a portion of the approved scope of work must verify that a proposed subrecipient or contractor (if the contract is expected to equal or exceed $25,000) or its principals, does not appear on the federal government's Excluded Parties List prior to executing an agreement or contract with that entity. Recipients may not enter into a subaward or contract with an entity that appears on the Excluded Parties List. The Excluded Parties List is accessible at http://www.sam.gov.

2. The recipient must ensure that any agreements or contracts with subrecipients or contractors (vendors) require that they verify that their contractors (for contracts expected to equal or exceed $25,000), subcontractors (for subcontracts expected to equal or exceed $25,000), or principals that the subrecipients or contractors engage to accomplish the scope of work, if applicable, do not appear on the federal government's Excluded Parties List. Subrecipients and contractors may not enter into a contract or subcontract with an entity, or that entity's principals, if that entity or its principals appear on the Excluded Parties List.

3. The recipient must include a term or condition in all lower-tier covered transactions (subawards, contracts, and subcontracts described in 31 C.F.R. Part 19, subpart B) that the award is subject to 31 C.F.R. Part 19.

Q PROCUREMENT

1. **General Provisions**

a. When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with 2 C.F.R. § 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by 2 C.F.R. § 200.327.

b. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in 2 C.F.R. § 200.318 through 200.327.

2. **Solid Waste Disposal**

The recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds $10,000 or the value of the quantity acquired by the preceding fiscal year exceeded $10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

3. **Subawards**

a. When the recipient makes a subaward to a subrecipient that is authorized to enter into contracts for the purpose of completing the subaward scope of work, the recipient must require the subrecipient to comply with the requirements contained in this section.

b. The recipient, subrecipient, contractor, and/or subcontractor must not sub-grant or sub-contract any part of the approved project to any agency or employee of Treasury and/or other federal department, agency, or instrumentality without the prior written approval of Treasury. Treasury will notify the recipient in writing of the final determination.

4. **Minority and Women-Owned Business Enterprises**

Pursuant to 2 C.F.R. § 200.321, recipients and subrecipients must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:

a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;

c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in (a) through (e) of this paragraph.

5. **Domestic Preference for Procurement**

Recipients are encouraged, to the greatest extent practicable, to provide a preference for the purchase, acquisition, or use of goods, products, or material produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products).

See 2 C.F.R. § 200.322 for definitions of "manufactured products" and "produced in the United States." This requirement must be included in all subawards including all contracts and purchase orders for work or products under this award pursuant to 2 C.F.R. § 200.322 and Executive Order 14005 Ensuring the Future is Made in All of America by All of America's Worker (January 25, 2021).

R ENVIRONMENTAL REQUIREMENTS

The recipient must comply with all environmental standards, and provide information requested by Treasury relating to compliance with environmental standards, including but not limited to the following federal statutes, regulations, and EOs. If the recipient is permitted to make any subawards, the recipient must include the environmental statutes, regulations, and executive orders listed below in any agreement or contract with a subrecipient, and require the subrecipient to comply with all of these and to notify the recipient if the subrecipient becomes aware of any impact on the environment that was not noted in the recipient's approved application package:

1. National Historic Preservation Act, as amended (54 U.S.C. § 300101 et seq.) and Archeological and Historic Preservation Act, as amended (54 U.S.C. § 312501 et seq.)

2. The National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.)

3. Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and EO 11738

4. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 et seq.)

5. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)

6. The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)

7. The Coastal Barriers Resources Act, as amended, (16 U.S.C. § 3501 et seq.)

8. The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 et seq.)

9. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f-j)

10. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 et seq.)

11. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note)

12. Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. §1801)

13. Marine Mammal Protection Act, as amended (16 U.S.C § 31)

14. Migratory Bird Treaty Act, as amended (16 U.S.C. §§ 703-712)

15. Responsibilities of Federal Agencies to Protect Migratory Birds, EO 13186

16. Bald and Golden Eagle Protection Act, as amended (16 U.S.C. § 668-668d)

17. Marine Protection, Research and Sanctuaries Act (33 U.S.C. §§ 1401-1445 and 16 U.S.C. § 1431—1445)

18. National Marine Sanctuaries Act, as amended (16 U.S.C. § 1431 et seq.)

19. Rivers and Harbors Act of 1899 (33 U.S.C § 407)

20. Environmental Justice in Minority Populations and Low-Income Populations, EO 12898, as amended

21. Flood Management, EO 11988, as amended by EO 13690, which was revoked by EO

13807 on August 15, 2017 and reinstated by EO 14030 on May 20, 2021, reestablishing the Federal Flood Risk Management Standard (FFRMS)

22. Protection of Wetland, EO11990, May 24, 177, as amended by EO 12608

23. Farmland Protection Policy Act, as amended (7 U.S.C. § 4201 et. seq.)

24. Coral Reef Protection, EO 13089

25. Invasive Species, EO 13112

S REAL PROPERTY, CONSTRUCTION, EQUIPMENT AND SUPPLIES

1. **General Requirements**

   a. The recipient must comply with the property standards at 2 C.F.R. § 200.310 through 200.316 for real property, equipment, supplies, and intangible property.

2. **Real Property and Acquisition of Land and Land Interests**

   a. No real property or interest in real property may be acquired under this Award unless authorized in the approved scope of work.

   b. In accordance with 31 C.F.R. § 34.803(f), no land or interests in land, such as easements, or right of ways, may be acquired under this Award unless the recipient can provide documentation satisfactory to Treasury that the land or interest in land was acquired by purchase, exchange, or donation from a willing seller.

3. **Compliance with State, Local and Federal Requirements**

   The project must comply with all applicable federal laws and regulations, and with all requirements for state, and local laws and ordinances to the extent that such requirements do not conflict with federal laws. The recipient is also responsible for supervising the design, bidding, construction, and operation of construction projects in compliance with all award requirements. The recipient must comply with, and must require all contractors and subcontractors, to comply with all federal, state, and local laws and regulations. The recipient must ensure compliance with special award conditions which may contain conditions that must be satisfied prior to advertisement of bids, start of construction, or another critical event.

4. **Title**

   a. Prior to receiving Treasury authorization to start construction, the recipient must furnish evidence, satisfactory to Treasury, that the recipient has acquired good and merchantable title free of all mortgages, foreclosable liens, or encumbrances, to all land, rights of way, and easements necessary for the completion of the project.

   b. When property has been newly acquired for the project, the recipient must provide the following as evidence of clear title to the property:

      i. A copy of the recorded deed or equivalent conveyance document showing the recipient acquired title to the property; and

      ii. A copy of the title insurance (also known as title policy), title report, or title opinion (by attorney(s) licensed in the jurisdiction where the property is located) completed after the real estate acquisition showing the recipient obtained title to the property free of any encumbrances (i.e., foreclosable liens, easements, or any other limitations on use that interferes with the recipient's intended use, operation, construction, maintenance of the

property, or Treasury's federal interest). The title insurance, title report, or title opinion should include the legal description of the property.

c. When the property to be used for the project has not been newly acquired, the recipient must provide the following as evidence of clear title to the property both of the items listed in (b) above, provided that the copy of the title insurance, title report, title opinion, or equivalent must be completed within the last year. If such evidence is more than one year old, the recipient must provide Treasury with an explanation, which Treasury may in its discretion decline to accept.

d. When easements, rights-of-way, or other rights are required for the completion of the project, the recipient must provide the following documentation:

   i. A copy of the easement deed or equivalent conveyance document; and

   ii. A copy of the title insurance, title report, or title opinion (by attorney(s) licensed in the jurisdiction where the property is located).

e. When use of or access to leased property is required for the project, the recipient must provide the following evidence of control of the leased property:

   i. A copy of the lease signed by the lessor and recipient that provides a lease term equivalent to the estimated useful life (EUL) of the project or renewable for that period; and

   ii. A certification from the recipient that it has control of all project property or improvements to the property and is not aware of any material restrictions or encumbrances that could interfere with any award purpose for the duration of the EUL. If this changes within the course of the EUL, the recipient must provide timely notice to Treasury. The federal interest may be waived, if it is decided that recording the federal interest is not feasible, then Treasury may include a special award condition on the award that the recipient will repay the federal interest if the lessor terminates the lease before the EUL of the project expires or if the recipient or lessor uses the property in a manner inconsistent with the public purpose(s) of the award during the EUL of the improvements or construction, as applicable.

f. When the project involves linear construction/improvement, road construction, or other less common types of construction, recipients should contact Treasury for guidance on the types of evidence of title required.

g. Notwithstanding (a)-(f), Treasury may in its discretion accept only a copy of the title insurance, title report, title opinion, or equivalent as evidence of title (or easement or other rights) if the recipient is unable to produce the relevant conveyance document.

h. In all cases, recipients must disclose any ongoing litigation concerning the project property prior to seeking Treasury's permission to proceed with construction.

5. **Permitting Requirements**

Prior to receiving Treasury permission to proceed with construction, the recipient must furnish evidence, satisfactory to Treasury, that recipient has received all federal, state and local permits necessary for the completion of the project. In extraordinary circumstances and at Treasury's sole discretion, Treasury may accept alternate documentation such as, draft permits, which must be finalized within a specified time as determined by Treasury after approval of a request for notice to proceed with construction.

6. **Estimated Useful Life**

a. Property that is acquired or improved, in whole or in part, with federal assistance is held in trust by the recipient for the purpose(s) for which the award was made for the Estimated Useful Life. Estimated Useful Life means the period of years that constitutes the expected useful lifespan of a project, as determined by Treasury. The recipient must propose an Estimated Useful Life from the date of construction completion either prior to award or initiation of construction. If the Estimated Useful Life is provided in the application, Treasury's issuance of the grant agreement represents its concurrence with the recipient's proposed Estimated Useful Life.

b. The recipient's obligation to the federal government continues for the Estimated Useful Life of the project, as determined by Treasury, during which Treasury retains an undivided equitable reversionary interest (the "federal interest") in the property acquired or improved, in whole or in part, with the Treasury investment.

c. If Treasury determines that the recipient has failed or fails to meet its obligations under the terms and conditions of this award, Treasury may exercise its rights or remedies with respect to its federal interest in the project. However, Treasury's forbearance in exercising any right or remedy in connection with the federal interest does not constitute a waiver thereof.

d. At its discretion, Treasury may waive the requirement to establish an Estimated Useful Life for environmental restoration projects.

7. **Recording the Federal Interest in the Real Property**

Pursuant to 2 C.F.R. § 200.316, Treasury retains an undivided equitable reversionary interest in real property (a "federal interest") that is acquired or improved, in whole or in part with RESTORE Act Direct Component funds, which must be held in trust by the recipient for the benefit of the project for the Estimated Useful Life of the project.

To document the federal interest, the recipient must prepare and properly record a "Covenant of Purpose, Use and Ownership" (Covenant), or, where a subrecipient is the title owner, the recipient must ensure that the subrecipient prepares and properly records a "Covenant of Purpose, Use and Ownership" (Covenant) on the property acquired or improved with RESTORE Act Direct Component funds. This Covenant does not establish a traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest, or the ability of Treasury to foreclose on the real property at any time. Rather, pursuant to the Covenant, the recipient and/or the subrecipient, as applicable, acknowledges that it holds title to the real property in trust for the public purposes of the financial assistance award and agrees, among other commitments, that it will repay the federal interest if it disposes of or alienates its interest in the real property, or uses it in a manner inconsistent with the public purposes of the award, during the Estimated Useful Life of the property.

a. The Covenant must be satisfactory in form and substance to Treasury and must include the name and current address of the recipient and/or subrecipient (if applicable), the award number, amount, date of award, subrecipient agreement (if applicable), date of the purchase of property (if applicable), and the Estimated Useful Life of the project. It must also include statements that the real property will only be used for purposes consistent with the RESTORE Act and Treasury's implementing regulations, 31 C.F.R. Part 34; that it will not be mortgaged or used as collateral, sold, or otherwise transferred to another party without the written permission of Treasury; and that the federal interest cannot be subordinated, diminished, nullified, or released through encumbrance of the property, transfer of the property to another party, or any other action the recipient/subrecipient takes without the written permission of Treasury.

b. The recipient agrees to provide to Treasury a title insurance (also known as title

policy), title report, or title opinion as to the title owner of the property, and to properly record the Covenant, in accordance with applicable law in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the real property during its Estimated Useful Life, and that Treasury retains an undivided equitable reversionary interest in the real property to the extent of its participation in the project for which funds have been awarded.

c. Treasury requires title insurance, a title report, or a title opinion from the recipient to substantiate that the Covenant has been properly recorded.

d. Failure to properly and timely file and maintain documentation of the federal interest may result in appropriate enforcement action, including, but not limited to, disallowance of the cost of the acquisition or improvement by Treasury.

e. The Federal Interest must be perfected and recorded/filed in accordance with state and/or local law concurrent with the acquisition of the real property, where an award includes real property acquisition, and for construction of buildings and projects to improve the real property, no later than the date construction and/or improvement work commences.

f. When the Estimated Useful Life of the project is ended, the federal interest is extinguished, and Treasury has no further interest in the real property.

g. Exclusions from the requirement that the federal interest on real property be recorded will be at Treasury's sole discretion. The types of projects for which Treasury may agree to this exclusion include, but are not limited to, the following: work which involves no above grade structures, work within utility easements, work on leased property, improvements to state parks, water and sewer lateral line projects affecting private properties, and shoreline stabilization projects and other restoration projects.

8. **Use of Real Property**

Encumbering real property on which there is a federal interest without prior Treasury approval is an unauthorized use of the property and of project trust funds under this award. See 2 C.F.R. § 200.316. Real property or interest in real property may not be used for purposes other than the authorized purpose of the award without the express, prior written approval of Treasury, for as long as the federal government retains an interest in the property. The property must not be sold, conveyed, transferred, assigned, mortgaged, or in any other manner encumbered except as expressly authorized in writing by Treasury. The recipient must maintain facilities constructed or renovated with grant funds in a manner consistent with the purposes for which the funds were provided for the duration of the Estimated Useful Life.

In the event that the real property or interest in real property is no longer needed for the originally authorized purpose, the recipient must obtain disposition instructions from Treasury consistent with 2 C.F.R. § 200.311.

9. **Administration, Operation and Maintenance**

The recipient agrees to administer, operate, and maintain the project for its Estimated Useful Life in the same manner in which it operates and maintains similar facilities and equipment owned by it, and in accordance with state and local standards, laws and regulations. The recipient must not be in breach of its obligations under this award except to the extent the failure to fulfill any obligation is due to an Uncontrollable Force. "Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the party claiming the Uncontrollable Force that prevents the recipient from honoring its contractual obligations under this Agreement and which, by

exercise of the recipient's reasonable care, diligence and foresight, such recipient was unable to avoid. Uncontrollable Forces include, but are not limited to:

a. Strikes or work stoppage;

b. Floods, earthquakes, or other natural disasters;

c. Terrorist acts; and

d. Final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the recipient, claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction. Neither the unavailability of funds or financing, nor conditions of national or local economies or markets must be considered an Uncontrollable Force.

10. **Commencement of Construction**

The recipient must not commence construction prior to the date of the Award. The recipient must make a written request to Treasury for permission to commence with construction after the construction contractor has been selected and at least 30 days prior to construction. For project costs to be eligible for Treasury reimbursement, Treasury must determine that the award of all contracts with associated costs are in compliance with the scope of the project and all terms and conditions of this award, and that all necessary permits have been or will be obtained, all Special Award Conditions tied to the commencement of construction have been satisfied, and the federal interest is secure. No construction funds may be drawn from ASAP without Treasury's written permission. If the recipient commences construction prior to Treasury's determination, the recipient proceeds at its own risk.

Treasury will only review contract amendments or change orders which change the scope of a contract.

11. **Insurance**

The recipient must, at a minimum, provide the equivalent insurance coverage for real property improved with federal funds as provided to property owned by the recipient state, county or parish, in compliance with 2 C.F.R. § 200.310.

12. **Bonding**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the recipient or pass-through entity may request in writing that Treasury accept its bonding policy and requirements. If Treasury determines that the federal interest in the project is adequately protected, the recipient or pass-through entity need not comply with the following three bonding requirements. For all other recipients and pass-through entities, the minimum requirements for construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold are as follows:

a. A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual instruments as may be required within the time specified.

b. A performance bond on the part of the contractor for 100 percent of the contract

price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

c. A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

13. **Floodplain Requirements**

In accordance with 44 C.F.R. Part 9, prior to Treasury’s permission to commence construction in a designated 100-year floodplain, the recipient must provide evidence satisfactory to Treasury of a Floodplain Notice, that the 30-day period established for receipt of comments from the public in response to public notice published regarding the potential for adverse project impact on the values and functions of a designated 100-year floodplain has expired and that identified concerns (if any) have been addressed to Treasury’s satisfaction. This notice may be satisfied through a federal/state environmental assessment process used as the vehicle for public notice, involvement, and explanation per 44 C.F.R. § 9.8(2).

In addition, prior to Treasury’s authorization to commence construction of structures and/or buildings within a designated 100-year floodplain, the recipient must provide evidence satisfactory to Treasury of the following:

a. Floodplain Protection: That the project engineer/architect has certified that the project facility will be adequately protected from damage by floods in this area of apparent potential flood hazard. The evidence must include adequate justification for the Base Flood Elevation designation for the financial assistance award site.

b. Floodplain Insurance: That the community is participating in the National Flood Insurance Program, and that as required, the recipient will purchase flood insurance.

14. **Goals for Women and Minorities in Construction**

Department of Labor regulations set forth in 41 C.F.R. § 60-4 establish goals and timetables for participation of minorities and women in the construction industry. These regulations apply to all federally assisted construction contracts in excess of $10,000. The recipient must comply with these regulations and must obtain compliance with 41 C.F.R. § 60-4 from contractors and subcontractors employed in the completion of the project by including such notices, clauses and provisions in the Solicitations for Offers or Bids as required by 41 C.F.R. § 60-4.

a. The goal for participation of women in each trade area must be as follows: From April 1, 1981, until further notice: 6.9 percent;

b. All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, must hereafter be incorporated by reference into these Special Award Conditions; and,

c. Goals for minority participation must be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The recipient must include the “Standard Federal Equal Employment Opportunity Construction Contract Specifications” (or cause them to be included, if appropriate) in all federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those

published pursuant to 41 C.F.R. § 60-4.6.

15. **Davis Bacon Act, as amended (40 U.S.C. §§ 3141–3148)**

Davis-Bacon Act-related provisions outlined in 33 U.S.C. § 1372 are applicable to RESTORE Act grants that fund a construction project that is a "treatment works" project as defined in 33 U.S.C. § 1292; or a construction project regardless of whether it is a "treatment works" project when RESTORE Act Direct Component grant funds are used on a construction project in conjunction with federal assistance from another federal agency operating under an authority that requires the enforcement of Davis-Bacon Act-related provisions.

a. "Treatment works" is defined in 33 U.S.C. § 1292, and means any:

i. Devices and systems:

1) Used in the storage, treatment, recycling, and reclamation of municipal sewage or industrial wastes of a liquid nature to implement 33 U.S.C. § 1281; or

2) Necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall ewers, sewage collection systems, pumping, power, and other equipment, and their appurtenances; extensions, improvements, remodeling, additions, and alterations to those devices and system; and

ii. Elements essential to provide a reliable recycled supply of water such as standby treatment units and clear well facilities;

iii. Acquisition of the land that will be an integral part of the treatment process (including land used for the storage of treated wastewater in land treatment systems prior to land application) or will be used for ultimate disposal of residues resulting from such treatment and acquisition of other land, and interests in land, that are necessary for construction; or

Any other method or system for preventing, abating, reducing, storing, treating, separating, or disposing of municipal waste, including storm water runoff, or industrial waste, including waste in combined storm water and sanitary sewer systems.

b. When Davis-Bacon Act-related provisions applies, the recipient must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141–3144, and §§ 3146–3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction") in all prime construction contracts in excess of $2,000 which is entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from Federal funds. The recipient must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. For information on the current prevailing wage rate determination for a specific locality go to https://sam.gov/content/wage-determinations. If there is no prevailing wage rate determination for your locality, recipients should contact the U.S. Department of Labor at 1-866-487-2365 on how to obtain a prevailing wage rate determination.

c. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. In accordance with the statute and regulations, contractors are required to pay wages to laborers and mechanics at

a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor and required to pay wages not less than once a week. The contractor shall submit weekly for each week in which any contract work is performed, a copy of all payrolls to the recipient. The required weekly payroll information may be submitted in any form desired. A contractor may use Form WH–347 which is available at https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification.

d. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. The recipient must report all suspected or reported violations to Treasury.

e. The wage determination (including any additional classification and wage rates) and the Davis-Bacon poster (WH–1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. The posters can be found at https://www.dol.gov/whd/programs/dbra/wh1321.htm.

f. The recipient must include all the following contract clauses outlined in 29 C.F.R. § 5.5(a) in all construction contracts subject to the Davis-Bacon and Related Acts requirements, which are in excess of $2,000 and entered into for the actual construction, alteration and/or repair, including painting and decorating, of a public building or public work, or building or work financed in whole or in part from RESTORE Act Direct Component grant funds, and ensure that any subrecipient also includes these contract clauses in all construction contracts subject to the Davis-Bacon Act requirements (see Appendix III of this document).

g. **Contract Provision for Contracts in Excess of $100,000*:* Contract Work Hours and Safety Standards Act**. All contracts awarded by the recipient or subrecipient in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations at 29 C.F.R. § 5.5(b). Under 40 U.S.C. § 3702, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. **These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.** The recipient or subrecipient shall insert the clauses set forth in 29 C.F.R. §§ 5.5(b)(1) through (4) in full in any contract in an amount in excess of $100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 C.F.R. § 5.5(a). As used in this paragraph, the terms *laborers* and *mechanics* include watchmen and guards. See Appendix IV of this document for the Contract Clauses Required for Contracts Subject to the Requirements of the Contract Work Hours and Safety Standards Act.

h. In addition to the clauses contained in 29 C.F.R. § 5.5(b), in any contract subject only to the Contract Work Hours and Safety Standards Act and not to any of the other statutes cited in 29 C.F.R. § 5.1, the recipient or subrecipient shall insert a

clause requiring that the contractor or subcontractor shall maintain payrolls and basic payroll records during the course of the work and shall preserve them for a period of three years from the completion of the contract for all laborers and mechanics, including guards and watchmen, working on the contract. Such records shall contain the name and address of each such employee, social security number, correct classifications, hourly rates of wages paid, daily and weekly number of hours worked, deductions made, and actual wages paid. Further, the recipient or subrecipient shall insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the recipient, Department of Treasury, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

i. **Enforcement**: In accordance with 29 C.F.R. § 5.6(a)(1), Treasury has the responsibility to ascertain whether the clauses required by 29 C.F.R. § 5.5 have been inserted in the contracts subject to the labor standards provisions of the Acts contained in 29 C.F.R. § 5.1. Pursuant to 29 C.F.R. § 5.6(a)(3), Treasury may cause investigations to be made by the recipient as may be necessary to ensure compliance with the labor standards clauses required by 29 C.F.R. § 5.5 and the applicable statutes listed in 29 C.F.R. § 5.1. Investigations shall be made of all contracts with such frequency as may be necessary to ensure compliance. Such investigations shall include interviews with employees, which shall be taken in confidence, and examinations of payroll data and evidence of registration and certification with respect to apprenticeship and training plans. In making such examinations, particular care shall be taken to determine the correctness of classifications and to determine whether there is a disproportionate employment of laborers and of apprentices or trainees registered in approved programs. Such investigations shall also include evidence of fringe benefit plans and payments thereunder. Complaints of alleged violations shall be given priority.

16. **Equal Opportunity Clause**

Pursuant to 41 C.F.R. § 60-1.4(b), federally-assisted construction contracts, for construction which is not exempt from the requirements of the equal opportunity clause, 41 C.F.R. Part 60-1—Obligations of Contractors and Subcontractors, the recipient hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 C.F.R. Chapter 60, which is paid for in whole or in part with funds obtained from the federal government or borrowed on the credit of the federal government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause: See Appendix V for the full text of 41 C.F.R. § 60-1.4.

17. **Revised ADA Standards for Accessible Design for Construction Awards**

The U.S. Department of Justice has issued revised regulations implementing Title II of the ADA (28 C.F.R. Part 35) and Title III of the ADA (28 C.F.R. Part 36). The revised regulations adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards). The 2010 Standards are an acceptable alternative to the Uniform Federal Accessibility Standards (UFAS). Treasury deems compliance with the 2010 Standards to be an acceptable means of complying with the Section 504 accessibility requirements for new construction and alteration projects. All new construction and alteration projects must comply with the 2010 Standards.

18. **Supplies and Equipment**

a. Requirements that are applicable to recipients that are states:

i. Equipment: The recipient must use, manage, and dispose of equipment acquired under this Award in accordance with state laws and procedures.

ii. Supplies: If the recipient has a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the activity, project, or program and the supplies are not needed for any other federal award, the recipient must report the value and the retention or sale of such supplies by submitting to Treasury a completed *SF-428 Tangible Personal Property Report* and *SF-428-B Final Report Form* no later than 60 days after the end of the Period of Performance.

b. Requirements that are applicable to recipients that are not states:

i. Equipment and Supplies: During the period of performance, the recipient must seek disposition instructions from Treasury for equipment and/or unused or residual supplies acquired under this Award if the current fair market value of the equipment and/or unused or residual supplies is greater than $5,000 per unit. The recipient must seek disposition instructions before disposing of the property by submitting a completed *SF-428 Tangible Personal Property Report* and *SF-428-C Disposition Request/Report*. Not later than 60 days after the end of the period of performance, the recipient must submit to Treasury a completed *SF-428 Tangible Personal Property Report* and *SF-428-B Final Report Form* if the recipient retains any equipment with a current fair market value greater than $5,000 per unit or a residual inventory of unused supplies exceeding $5,000 in total aggregate value upon termination or completion of the activity, project, or program and the equipment and/or supplies are not needed for any other federal award.

T MISCELLANEOUS REQUIREMENTS AND PROVISIONS

The recipient must comply with all miscellaneous requirements and provisions described in this section and, when applicable, require its subrecipients, contractors, and subcontractors to comply. This list is not exclusive:

1. **Prohibition Against Assignment by the Recipient**

Notwithstanding any other provision of this Award, the recipient must not transfer, pledge, mortgage, or otherwise assign this Award, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of Treasury.

2. **Disclaimer Provisions**

a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any subaward, contract, or subcontract under this Award.

b. The acceptance of this Award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

3. **Prohibited and Criminal Activities**

a. The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the federal government for money (including money representing grants, loans or other benefits).

b. False Statements, as amended (18 U.S.C. § 1001) provides that whoever makes or presents any materially false, fictitious, or fraudulent statements to the United States shall be subject to imprisonment of not more than five years.

c. False, Fictitious, or Fraudulent Claims, as amended (18 U.S.C. § 287) provides that whoever makes or presents a false, fictitious, or fraudulent claim against or to the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided in 18 U.S.C. § 287.

d. False Claims Act (31 U.S.C. §§ 3729-3732), provides that suits under this act can be brought by the federal government, or a person on behalf of the federal government, for false claims under federal assistance programs

e. Copeland "Anti-Kickback" Act (41 U.S.C §§ 1320a-7b(b)) prohibits a person or organization engaged in a federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

4. **Limitations on Political Activities of Employees**

The recipient must comply, as applicable, with provisions of the Hatch Act, as amended (5 U.S.C. §§ 1501-1508 and §§ 7321-7326) which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

5. **Drug-Free Workplace**

The recipient must comply with the provisions of the Drug-Free Workplace Act of 1988 (Public Law 100-690, Title V, Sec. 5153, as amended by Public Law 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102), and Treasury implementing regulations at 31 C.F.R. Part 20, which require that the recipient take steps to provide a drug-free workplace.

6. **Increasing Seat Belt Use in the United States**

Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 8, 1997), Recipient should encourage its employees and should encourage contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

7. **Reducing Text Messaging While Driving**

Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 1, 2009), recipient should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and recipient should establish workplace safety policies to decrease accidents caused by distracted drivers.

8. **Minority Serving Institutions (MSIs) Initiative**

Pursuant to EOs 13555 and13270, as amended, Treasury is strongly committed to broadening the participation of MSIs in its financial assistance programs. Treasury's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. Treasury encourages recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at http://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html.

9. **Research Misconduct**

Treasury adopts, and applies to Awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the EO of the President's Office of Science and Technology Policy on December 6, 2000 (65 Fed. Reg. 76260 (2000)). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Recipients that conduct research funded by Treasury must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Recipients also have the primary responsibility to prevent, detect, and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the Award, up to and including Award termination and possible suspension or debarment. Treasury requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to Treasury, which will also notify the Treasury Office of Inspector General of such allegation. Once the recipient has investigated the allegation, it will submit its findings to Treasury. Treasury may accept the recipient's findings or proceed with its own investigation; Treasury shall inform the recipient of the Treasury's final determination.

10. **Care and Use of Live Vertebrate Animals**

Recipients must comply with the Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended, (7 U.S.C. § 2131 et seq.) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 C.F.R. Parts 1, 2, and 3; the Endangered Species Act, as amended, (16 U.S.C. § 1531 et seq.); Marine Mammal Protection Act, as amended, (16 U.S.C. § 1361 et seq.) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act, as amended, (16 U.S.C. § 4701 et seq.) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by federal financial assistance.

11. **The Trafficking Victims Protection Act of 2000, as amended, (22 U.S.C. § 7104(g)), and the implementing regulations at 2 C.F.R. Part 175**

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, as defined in 2 C.F.R. §175.25(d), without penalty to the federal government, if the recipient or subrecipient engages in certain activities related to trafficking in persons.

a. Provisions applicable to a recipient that is a private entity:

i. You as the recipient, your employees, subrecipients under this Award,

and subrecipients' employees may not—

a) Engage in severe forms of trafficking in persons during the period of time that this Award is in effect;

b) Procure a commercial sex act during the period of time that this Award is in effect; or

c) Use forced labor in the performance of this Award or subawards under this Award.

ii. We as the federal awarding agency may unilaterally terminate this Award, without penalty, if you or a subrecipient that is a private entity —

a) Is determined to have violated a prohibition in paragraph a.1 of this Section V.10; or

b) Has an employee who is determined by the agency official authorized to terminate this Award to have violated a prohibition in paragraph a.1 of this Section V.10 through conduct that is either—

1) Associated with performance under this Award; or

2) Imputed to you or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 31 C.F.R. Part 19.

b. Provision applicable to a recipient other than a private entity. We as the federal awarding agency may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity—

i. Is determined to have violated an applicable prohibition in paragraph a.1 of this Section V.10; or

ii. Has an employee who is determined by the agency official authorized to terminate this Award to have violated an applicable prohibition in paragraph (a) of this Section through conduct that is either:

a) Associated with performance under this Award; or

b) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," as implemented by our agency at 31 C.F.R. Part 19.

c. Provisions applicable to any recipient:

i. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition of this section.

ii. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:

a) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and

b) Is in addition to all other remedies for noncompliance that are available to us under this Award.

iii. You must include the requirements of this section in any subaward you

make to a private entity.

d. *Definitions*. For purposes of this award term:

i. "Employee" means either:

a) An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Award; or

b) Another person engaged in the performance of the project or program under this Award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

ii. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

iii. "Private entity":

a) Means any entity other than a state, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25.

b) Includes:

1) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b); or

2) A for-profit organization.

iv. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at § 103 of the TVPA, as amended (22 U.S.C. § 7102).

12. **Publications and Signage**

Any publications (written, curricula, visual, sound, reports, or websites) except scientific articles or papers appearing in scientific, technical, or professional journals or signage produced with funds from this Award, which informs the public about the activities funded in whole or in part by this Award, must clearly display the following language:

Publications:

"This project was funded in whole or in part by grant [number] awarded by the U.S. Department of the Treasury under the RESTORE Act [Direct Component or Centers of Excellence Research Grants] program. The opinions, statements, findings, conclusions, and recommendations contained herein are those of the author(s) or contributor(s) and do not necessarily represent the official position, views, or policies of the U.S. Department of the Treasury. References to specific individuals, agencies, companies, products, or services should not be considered an endorsement by the author(s), contributor(s), or the U.S. Department of the Treasury."

Signage:

"This project was funded by a grant from the U.S. Department of the Treasury under the

RESTORE Act [Direct Component or Centers of Excellence Research Grants] Program."

13. **Copyright**

If applicable, Recipient may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under this award in accordance with 2 C.F.R. § 200.315(b). The U.S. Department of the Treasury reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use the work, in whole or in part (including create derivative works), for Federal Government purposes, and to authorize others to do so. Treasury also reserves the right, at its discretion, not to publish deliverables and other materials developed under this award as a Treasury resource.

Products and deliverables developed with award funds and published as a U.S. Department of the Treasury resource will contain the following copyright notice:

"This resource was developed under a federal award and may be subject to copyright. The U.S. Department of the Treasury reserves a royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use the work for Federal Government purposes and to authorize others to do so. This resource may be freely distributed and used for noncommercial and educational purposes only."

14. **Homeland Security Presidential Directive 12**

If the performance of this Award requires the recipient's personnel to have routine access to Treasury-controlled facilities and/or Treasury-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, Treasury will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under this Award must comply with Treasury personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors", FIPS PUB 201, as amended, and OMB Memorandum M-05-24, as amended. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this section. Treasury may delay final payment under this Award if the subrecipient or contractor fails to comply with the requirements listed in this section. The recipient must insert the following term in all subawards and contracts when the subrecipient or contractor is required to have routine physical access to a Treasury-controlled facility or routine access to a Treasury-controlled information system:

a. The subrecipient or contractor must comply with Treasury personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication, FIPS PUB 140-2, as amended, for all employees under this subaward or contract who require routine physical access to a federally controlled facility or routine access to a federally controlled information system.

b. The subrecipient or contractor must account for all forms of government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by Treasury:

    i. When no longer needed for subaward or contract performance;

ii. Upon completion of the subrecipient or contractor employee's employment; or

iii. Upon subaward or contract completion or termination.

15. **Export Control**

a. This clause applies to the extent that this Award involves access to export-controlled items.

b. In performing this financial assistance Award, the recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR) issued by the Department of Commerce (DOC). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The recipient shall establish and maintain effective export compliance procedures throughout performance of the Award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.

c. Definitions:

i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730–774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.

ii. Deemed Export/Re-export. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the United States. If such a release occurs abroad, it is considered a deemed re-export to the foreign national's home country. Licenses from DOC may be required for deemed exports or re-exports.

d. The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable federal statutes, EOs, and/or regulations, including the EAR.

e. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports.

f. Nothing in the terms of this Award is intended to change, supersede, or waive the requirements of applicable federal statutes, EOs, and/or regulations.

g. Compliance with this section will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120–130), including releases of such items to foreign nationals.

h. The recipient shall include this clause, including this paragraph (i), in all lower-tier

transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled items.

APPENDIX I: 2 C.F.R. PART 170, APPENDIX A

I. Reporting Subawards and Executive Compensation

a. Reporting of first-tier subawards.

1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that equals or exceeds $30,000 in Federal funds for a subaward to a non-Federal entity or Federal agency (see definitions in paragraph e. of this award term).

2. Where and when to report.

i. The non-Federal entity or Federal agency must report each obligating action described in paragraph a.1. of this award term to http://www.fsrs.gov.

ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

3. What to report. You must report the information about each obligating action that the submission instructions posted at http://www.fsrs.gov specify.

b. Reporting total compensation of recipient executives for non-Federal entities.

1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if -

i. The total Federal funding authorized to date under this Federal award equals or exceeds $30,000 as defined in 2 CFR 170.320;

ii. in the preceding fiscal year, you received -

(A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards), and

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and,

iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report executive total compensation described in paragraph b.1. of this award term:

i. As part of your registration profile at https://www.sam.gov.

ii. By the end of the month following the month in which this award is made, and annually thereafter.

c. Reporting of Total Compensation of Subrecipient Executives.

1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier non-Federal entity subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if -

i. in the subrecipient's preceding fiscal year, the subrecipient received -

(A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards) and,

(B) $25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and

subawards); and

ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at http://www.sec.gov/answers/execomp.htm.)

2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:

i. To the recipient.

ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.

d. Exemptions.

If, in the previous tax year, you had gross income, from all sources, under $300,000, you are exempt from the requirements to report:

i. Subawards, and

ii. The total compensation of the five most highly compensated executives of any subrecipient.

e. Definitions. For purposes of this award term:

1. Federal Agency means a Federal agency as defined at 5 U.S.C. 551(1) and further clarified by 5 U.S.C. 552(f).

2. Non-Federal entity means all of the following, as defined in 2 CFR part 25:

i. A Governmental organization, which is a State, local government, or Indian tribe;

ii. A foreign public entity;

iii. A domestic or foreign nonprofit organization; and,

iv. A domestic or foreign for-profit organization

3. Executive means officers, managing partners, or any other employees in management positions.

4. Subaward:

i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.

ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see 2 CFR 200.331).

iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.

5. Subrecipient means a non-Federal entity or Federal agency that:

i. Receives a subaward from you (the recipient) under this award; and

ii. Is accountable to you for the use of the Federal funds provided by the subaward.

6. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)).

APPENDIX II: 2 C.F.R. PART 25, APPENDIX A

A. Requirement for System for Award Management

Unless you are exempted from this requirement under 2 CFR 25.110, you as the recipient must maintain current information in the SAM. This includes information on your immediate and highest level owner and subsidiaries, as well as on all of your predecessors that have been awarded a Federal contract or Federal financial assistance within the last three years, if applicable, until you submit the final financial report required under this Federal award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Federal award term.

B. Requirement for Unique Entity Identifier

If you are authorized to make subawards under this Federal award, you:

1. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you until the entity has provided its Unique Entity Identifier to you.

2. May not make a subaward to an entity unless the entity has provided its Unique Entity Identifier to you. Subrecipients are not required to obtain an active SAM registration, but must obtain a Unique Entity Identifier.

C. Definitions

For purposes of this term:

1. System for Award Management (SAM) means the Federal repository into which a recipient must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the SAM internet site (currently at https://www.sam.gov).

2. Unique Entity Identifier means the identifier assigned by SAM to uniquely identify business entities.

3. Entity includes non-Federal entities as defined at 2 CFR 200.1 and also includes all of the following, for purposes of this part:

   a. A foreign organization;

   b. A foreign public entity;

   c. A domestic for-profit organization; and

   d. A Federal agency.

4. Subaward has the meaning given in 2 CFR 200.1.

5. Subrecipient has the meaning given in 2 CFR 200.1.

APPENDIX III: DAVIS-BACON AND RELATED ACTS REQUIREMENTS

1. Minimum wages.

(i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 C.F.R. part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 C.F.R. . § 5.5(a)(1)(iv); also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in § 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph (a)(1)(ii) of 29 C.F.R. .§ 5.1 and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii)

(A) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the

contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of 29 C.F.R. . § 5.5, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding.

The Department of Treasury or recipient 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 the contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, Treasury or the recipient may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records.

(i) Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 C.F.R. 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

(ii)

(A) The contractor shall submit weekly for each week in which any contract work is performed a copy

of all payrolls to the recipient. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 C.F.R. 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at https://www.dol.gov/agencies/whd/government-contracts/construction/payroll-certification or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the recipient, the contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of 29 C.F.R. § 5.5 for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the sponsoring government agency (or the applicant, sponsor, or owner).

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 C.F.R. part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 C.F.R. part 5, and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 C.F.R. part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this 29 C.F.R. . § 5.5.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

(iii) The contractor or subcontractor shall make the records required under paragraph (a)(3)(i) of 29 C.F.R. § 5.5 available for inspection, copying, or transcription by authorized representatives of the recipient, Department of Treasury, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 C.F.R. 5.12.

4. Apprentices and trainees -

(i) Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training

Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 C.F.R. 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 C.F.R. part 30.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 C.F.R. part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses contained in 29

C.F.R. 5.5(a)(1) through (10), and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with all the contract clauses in 29 C.F.R. 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 C.F.R. 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 C.F.R. 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 C.F.R. parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 C.F.R. parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

(i) By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 C.F.R. 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

APPENDIX IV: CONTRACT CLAUSES REQUIRED FOR CONTRACTS SUBJECT TO THE REQUIREMENTS OF THE CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(1) Overtime requirements. 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 and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph 1 of 29 C.F.R.§ 5.5(b), the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 clause set forth in paragraph 1 of 29 C.F.R. § 5.5(b), 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 set forth in paragraph 1 of 29 C.F.R. § 5.5(b).

(3) Withholding for unpaid wages and liquidated damages. The Department of Treasury or recipient 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 as provided in the clause set forth in paragraph 2 of 29 C.F.R. § 5.5(b).

(4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph 1 through 4 of 29 C.F.R. § 5.5(b) 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 subcontractor with the clauses set forth in paragraph 1 through 4 of 29 C.F.R. § 5.5(b).

APPENDIX V: 41 C.F.R. § 60-1.4

During the performance of this contract, the contractor agrees as follows:

1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

   Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.

3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The [recipient] further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the [recipient] so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The [recipient] agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The [recipient] further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the [recipient] agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

SPECIAL AWARD CONDITIONS

1. Non-Duplicative Use of RESTORE Act Funds
   The Recipient will not seek any compensation for the approved project from any other funding source, including without limitation the Oil Spill Liability Trust Fund. Should such funding be received, the Recipient will immediately notify the Grants Officer in writing. If the Recipient is authorized to make subawards, the Recipient will not use RESTORE Act funds to make subawards to fund any activities for which claims were filed with the Oil Spill Liability Trust Fund after July 6, 2012.
2. Project Performance Reporting – GRANTS
   The Recipient must submit project performance reports through the Council's Restoration Assistance and Award Management System (RAAMS) or any successor system on an annual basis. The performance report is due on July 30th of each year, which is 30 calendar days after the end of the reporting period. Performance reports covering the annual reporting period will be due every year of the award, with a final performance report that summarizes the activities and findings of the award due 90 calendar days after the end of the period of performance. This SAC supersedes section B.O1.C of the RESTORE Council Financial Assistance ST&C's dated August 2015, which states that performance reports are due with the same frequency as the financial reports.
3. Updates to the Observational Data Plan
   The recipient will update the project's Observational Data Plan to include any plan details listed as "Not available (N/A)" or "To be determined (TBD)", or that are in other ways left unspecified in the current version of the Observational Data Plan. Updated plan details will include specific start and end dates that accurately reflect the period of observational data collection. For all plan details provided via updated Observational Data Plan; the recipient will make any corresponding updates to metrics details in the grant management platform (i.e., PIPER). The recipient must deliver updated plans to the Council at least annually until all "N/A", "TBD", and unspecified items are provided, and to correct any inaccuracies until all information is final. The first updated plan must include time frames for providing any missing information. Updated plans provided to the Council must conform to the structure of the template provided on the Council website. A completed Observational Data Closeout Report must be submitted and approved prior to the closeout of the award.
4. Update to the Data Management Plan
   The recipient will update the project's Data Management Plan to include any plan details listed as "Not available (N/A)" or "To be determined (TBD)", or that are in other ways left unspecified in the current the Data Management Plan. Updated plan details will include specific start and end dates that accurately reflect the period of observational data collection. The recipient must deliver updated plans to the Council at least annually until all "N/A", "TBD", or unspecified items are provided, and to correct inaccuracies until all information is final. The first updated plan must include timeframes for providing any missing information. Updated plans provided to the Council must conform to the structure of the template provided on the Council website. A completed Data Management Closeout Report must be submitted and approved prior to the closeout of the award.
5. Observational Data Management and Delivery
   A. Data Sharing
   All data compiled, collected, or created under this federal award must be provided to the Council on a yearly basis and be publicly visible and accessible in a timely manner, free of charge or at minimal cost to the user that is no more than the cost of distribution to the user, except where limited by law, regulation, policy, or national security requirements. Data are

to be made available in a form that would permit further analysis or reuse, i.e., data must be encoded in a machine-readable format, using existing open format standards; and data must be sufficiently documented, using open metadata standards, to enable users to independently read and understand the data (for example, a PDF version of observational data is not a valid data delivery format). The public facing, anonymously accessible data location (internet URL address) of the data should support a service-oriented architecture to maximize sharing and reuse of structured data and be included in the Performance Report. Data should undergo quality control (QC) and a description of the QC process and results should be referenced in the metadata.

B. Timeliness

Data must be provided to the Council on a yearly basis, and the public must be given access to data no later than two years after the data are first collected and verified, or two years after the original end date of the period of performance set out in the award agreement (not including any extension or follow-on funding) whichever first occurs.

C. Data produced under this award and made available to the public must be accompanied by the following statement: "The [report, presentation, video, etc.] and all associated data and related items of m were prepared by [recipient name] under Award No. [number] from the Gulf Coast Ecosystem Restoration Council (RESTORE Council). The data, statements, findings, conclusions, and recommendations are those of the author[s] and do not necessarily reflect any determinations, views, or policies of the RESTORE Council.

D. Failure to Share Data

Failing or delaying to make data accessible in accordance with the submitted Data Management Plan and the terms hereof may lead to enforcement actions and be considered by the Council when making future award decisions. Funding recipients are responsible for ensuring that these conditions are also met by subrecipients and subcontractors.

E. Data Citation

Publications based on data, and new products derived from source data, must cite the data used according to the conventions of the Publisher and use Digital Object Identifiers (DOIs), if available. All data and derived products that are used to support the conclusions of a publication must be made available in a form that permits verification and reproducibility of the results.

CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

Appendix II to Part 200 - Contract Provisions for Non-Federal Entity Contracts Under Federal Awards

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

(A) Contracts for more than the simplified acquisition threshold, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of $10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on

the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR § 401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended - Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689) - A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) - Contractors that apply or bid for an award exceeding $100,000 must 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 must 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 non-Federal award.

(J) See § 200.323.

(K) See § 200.216.

(L) See § 200.322.