

CONTRACT DOCUMENTS, GENERAL CONDITIONS,  
TECHNICAL AND SUPPLEMENTAL SPECIFICATIONS

# CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD

RESTORE GRANT PROJECT NO. GNSSP20AL0006-01-00

STATE EXPENDITURE PLAN #22

CANAL ROAD IMPROVEMENTS E OF SR-161

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CITY PROJECT

ACCESS IMPROVEMENTS AND MULTI-USE TRAIL CONNECTIONS  
FROM CALLAWAY DR TO WILSON BLVD

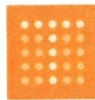
FOR

**CITY OF ORANGE BEACH, ALABAMA**



**MARCH 2022**

PREPARED BY



thompson  
ENGINEERING



THOMPSON PROJECT NO. 20-1101-0085

CITY REQUISITION NO. 2022-0428

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# SECTION I INVITATION TO BID

## PUBLIC NOTICE

Separate sealed bids will be received by the City of Orange Beach at the City Hall Municipal Complex, 4099 Orange Beach Blvd, Highway 161, Orange Beach, Alabama 36561, until **11:00 AM CDT on April 28, 2022**, and at that time publicly opened and read aloud for the construction of:

Project Name: **CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD**

The project consists of RESTORE Grant Project No. GNSSP20AL0006-01-00 State Expenditure Plan #22 Canal Rd Improvements E of SR-161 and City Project Access Improvements and Multi-Use Trail Connections from Callaway Dr to Wilson Blvd. The project consists of constructing road widening, roundabout, access management, and multi-use trail from SR-161 to Wilson Blvd. Work will include demolition, grading, drainage, base and paving work as outlined in the bid documents. The Contractor shall provide all labor, machinery and materials as per specifications to complete all work as listed in the bid documents.

The PLANS, SPECIFICATIONS and CONTRACT DOCUMENTS may be obtained from the Orange Beach City Hall, 4099 Orange Beach Blvd, Orange Beach, Alabama, Monday thru Friday from 8:00 a.m. until 5:00 p.m. or downloaded from the City's website at [www.orangebeachal.gov](http://www.orangebeachal.gov) on the Bids tab found on the Purchasing page.

The BID SCHEDULE may also be examined at the following locations:

- A. Alabama Department of Economic and Community Affairs  
Office of Minority Business Enterprise  
401 Alamo Avenue  
Montgomery, AL 39104

Any contract awarded under this Invitation for Bids may be paid for in whole or in part with grant funding from the Gulf Coast Ecosystem Restoration Council ("RESTORE Council", also "Council") 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 the funding award, the RESTORE Council Financial Assistance Standard Terms and Conditions, including any Special Award Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 U. S. C. 1321(t) et seq., the U.S. Department of the Treasury Regulations 31 C. F. R. § 34 et seq., including 31 C. F. R. §§ 34, Subpart F, all applicable terms and conditions in 2 C. F. R. Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, as amended, (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable. Notwithstanding the above, neither ADCNR nor the RESTORE Council, or any of their agents, representatives, or employees, is or will be a party to this Invitation for Bids or any resulting contract. Further, any contractor awarded a contract under this Invitation for Bids shall not be deemed to be an agent, representative, employee or servant of ADCNR or the RESTORE Council.

All bidders must provide documentation of a Dun & Bradstreet (DUNS) number and register with SAM.gov.

Minority and women's business enterprises are solicited to bid on this contract as prime contractors and are encouraged to make inquiries regarding potential subcontracting opportunities and equipment, material and/or supply needs.

All bidders must make positive efforts to use small and minority owned business and women business enterprises.

A certified check or Bid Bond payable to the City of Orange Beach in an amount not less than five percent (5%) of the amount of the Bid must accompany the bidder's proposal.



A **pre-bid conference will be held on Thursday, April 14, 2022, at 10:00 AM CDT** at the City Hall Municipal Complex located at 4099 Orange Beach Blvd, Orange Beach, Alabama. **Prospective bidders, subcontractors and vendors are strongly encouraged to attend.**

Work will begin in accordance with the Notice to Proceed with work completed by a fixed **CALENDAR DATE of MAY 17, 2024**. Liquidated damages shall be assessed as per ALDOT standard specifications, section 108.

Sealed bids must be mailed or delivered to the City of Orange Beach prior to the public opening. All sealed bids must be clearly and legibly marked "SEALED BID", the bidder's name, the name of the bid, and the opening date and time. Contact Renee Eberly at (251) 981-6806 or [reberly@orangebeachal.gov](mailto:reberly@orangebeachal.gov) with any questions.

Sealed bids may be mailed to the following address:

City of Orange Beach, ATTN: City Clerk, PO Box 458, Orange Beach, Alabama 36561

Or hand delivered to:

City of Orange Beach, ATTN: City Clerk, 4099 Orange Beach Blvd, Orange Beach, Alabama 36561

Bids must be submitted on Bid Forms furnished by the City of Orange Beach or copies thereof. All Bidders bidding in amounts exceeding \$50,000 must be licensed under the provision of Title 34, Chapter 8, Code of Alabama 1975. Unless otherwise specified, a bidder must submit evidence that he is pre-qualified to bid State of Alabama Department of Transportation (ALDOT) projects. The bidder must be on ALDOT's "Bidder's List" in effect at the time of the pre-bid meeting.

Any contractor that desires to bid as a prime contractor must have the following major classification of license per Section 230-X-.27 of the State of Alabama Licensing Board for General Contractors Administrative Code before a contract is to be awarded:

- a.) Highways and Streets

The total amount of uncompleted work under contract to a contractor must not exceed the amount of his or her qualification certificate.

Out of state corporations shall furnish a certificate of authority to transact business in Alabama. Out of state limited liability companies shall provide proof of registration to transact business in this state.

All bidders must comply with Section 31-13-9, Code of Alabama 1975. Any bidder who employs persons in the State of Alabama must provide proof of enrollment in the E-Verify program along with the bid (see [www.uscis.gov/everify](http://www.uscis.gov/everify)).

All license requirements for the city and state apply and must be met prior to bid opening.

**FAXED BIDS WILL NOT BE ACCEPTED.** Be advised that overnight delivery by express or courier to Orange Beach is not guaranteed. The City of Orange Beach reserves the right to reject any or all bids, to waive technical or legal deficiencies, to re-bid, and to accept any bid that it may deem to be in the best interest of the City.

THE CITY OF ORANGE BEACH, ALABAMA

City of  
**Orange Beach**  
A L A B A M A  
Life is better here

**INVITATION TO BID**

Requisition No. 2022-0428

- INVITATION TO BID DATE:** March 21, 2022
- BID TITLE:** Canal Road Improvements from SR-161 to Wilson Blvd
- PLACE OF BID OPENING:** City of Orange Beach, City Hall, 4099 Orange Beach Blvd
- BIDS MUST BE RECEIVED BEFORE:** April 28, 2022 @ 11:00 a.m. Central Time
- BIDS WILL BE PUBLICLY OPENED:** April 28, 2022 @ 11:00 a.m. Central Time

Sealed bids will be received by the City of Orange Beach at the Office of the City Clerk in Orange Beach until the above time and date at which time they will be publicly opened and read aloud as soon thereafter as practicable.

NOTE: For this bid to be considered responsive, all information in this section should be supplied, as appropriate, or the entire bid may be disqualified. Bid response must be in ink or typed with original signature. If you are unable to furnish an item as specified and desire to offer a substitute, give full description of the item. No errors will be corrected after bids are opened. No prices shall include State or Federal Excise Taxes. The City of Orange Beach reserves the right to accept or reject all bids or any portion thereof. The City reserves the right to require a bid bond, in which case specific information shall be provided in the documents.

**ALL BIDS MUST BE RETURNED AS FOLLOWS:**

All bidders must use the bid form provided in the bid documents and show on the envelope "SEALED BID", the bidder's name, the name of the bid, and the opening date and time. Each bid must be in a separate envelope. Sealed bids may be mailed or delivered to the City of Orange Beach at the following addresses.

**US Postal Service**

City of Orange Beach  
Attn: Sealed Bid for Canal Road Improvements  
from SR-161 to Wilson Blvd  
P.O. Box 458  
Orange Beach, AL 36561

**Courier (UPS, FEDEX, etc.)**

City of Orange Beach  
Attn: Sealed Bid for Canal Road Improvements  
from SR-161 to Wilson Blvd  
4099 Orange Beach Blvd.  
Orange Beach, AL 36561

Contact **Kit Alexander** at **251-981-2616** or **Tim Tucker** at **251-747-1599** for questions concerning technical specifications. Contact **Renee Eberly** at **251-981-6979** for questions concerning technical specifications or general bid procedures.

## **SECTION II**

# **INSTRUCTIONS TO BIDDERS & GENERAL CONDITIONS**

### **ARTICLE 1 – INTRODUCTION**

All bidders will be bound to the general conditions and requirements set forth in these general instructions. Applicability of general conditions as stated below shall be determined by the City of Orange Beach. All bids must be submitted on and in accordance with the instructions provided by the City of Orange Beach.

### **ARTICLE 2 – BID DOCUMENTS**

A complete set of Bid Documents is included herein. Copies of the complete set of Bid Documents may be inspected and/or obtained from the Orange Beach City Hall, 4099 Orange Beach Blvd, Orange Beach, Alabama, Monday thru Friday from 8:00 a.m. until 5:00 p.m. or downloaded from the City's website at [www.orangebeachal.gov](http://www.orangebeachal.gov) on the Bids tab found on the Purchasing page.

Addenda to this bid document, if any, including written answers to questions, will be posted on the City's website at [www.orangebeachal.gov](http://www.orangebeachal.gov) on the Bids tab found on the Purchasing page. Addenda and updates may not be sent directly to firms. Bidders submitting a bid should check the website daily for addenda and updates. Bidders should print out, sign and return addenda with their proposal. Failure to do so may result in disqualification.

This project shall be constructed in accordance with the Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 edition, and any Special Provisions included herein. The contractor can use the following link to access the standard specifications:

<https://www.dot.state.al.us/publications/Construction/Specifications.html>

This project shall also be constructed in accordance with the applicable Alabama Department of Transportation 2021 Special and Standard Highway Drawings (U.S. Customary Units of Measurement) and any Special Project Details included in the plans. The contractor can use the following link to access the special and standard drawings:

[https://alletting.dot.state.al.us/Docs/Standard\\_Drawings/StdSpecialDrawingsEnglish2021.htm](https://alletting.dot.state.al.us/Docs/Standard_Drawings/StdSpecialDrawingsEnglish2021.htm)

### **ARTICLE 3 – QUALIFICATIONS OF BIDDERS**

All Bidders bidding in amounts exceeding \$50,000 must be licensed under the provision of Title 34, Chapter 8, Code of Alabama 1975. Unless otherwise specified, a bidder must submit evidence that he is pre-qualified to bid State of Alabama Department of Transportation (ALDOT) projects. The bidder must be on ALDOT's "Bidder's List" in effect at the time of the pre-bid meeting.

Any contractor that desires to bid as a prime contractor must have the following major classification of license per Section 230-X-.27 of the State of Alabama Licensing Board for General Contractors Administrative Code before a contract is to be awarded:

- a) Highways and Streets

The total amount of uncompleted work under contract to a contractor must not exceed the amount of his or her qualification certificate.

Out of state corporations shall furnish a certificate of authority to transact business in Alabama. Out of state limited liability companies shall provide proof of registration to transact business in this state.

All bidders must comply with Section 31-13-9, Code of Alabama 1975. Any bidder who employs persons in the State of Alabama must provide proof of enrollment in the E-Verify program along with the bid (see [www.uscis.gov/everify](http://www.uscis.gov/everify)).

All license requirements for the city and state apply and must be met prior to bid opening.

#### **ARTICLE 4 – EXAMINATION OF BID DOCUMENTS AND PROJECT SITE**

The bidder is expected to examine carefully the site of the proposed work, the plans, specifications, special provisions and contract documents before submitting a proposal. The submission of a bid shall be considered conclusive evidence that the bidder has made such examination and is satisfied as to the conditions to be encountered in performing the work and as to the requirements of the contract. It will be conclusive evidence that the bidder has also investigated and is satisfied with the sources of supply for all materials.

Plans, surveys, measurements, dimensions, calculations, estimates and statements as to the condition under which the work is to be performed are believed to be correct, but the bidders must examine for themselves, as no allowance will be made for any errors or inaccuracies that maybe found therein.

#### **ARTICLE 5 – INTERPRETATIONS AND ADDENDA**

All questions about the meaning or intent of the Bidding Documents are to be submitted to the City or Engineer in writing. Questions received less than seven days prior to the date for opening of Bids may not be answered. Only questions answered by Addenda will be binding. Oral statements or instructions may not be relied upon and will not be binding or legally effective.

The City will issue Addenda to clarify discrepancies, ambiguities or omissions and post such on the City's website at [www.orangebeachal.gov](http://www.orangebeachal.gov) on the Bids tab found on the Purchasing page. Addenda shall become part of the Bid Documents and all bidders must acknowledge receipt of Addenda on their Bid Form or their bid will be rejected. Bidders shall be bound by all Addenda.

#### **ARTICLE 6 – CONTRACT TIME**

The time set for completion of the work is a fixed calendar date as specified in the Agreement.

#### **ARTICLE 7 – LIQUIDATED DAMAGES**

Provisions for liquidated damages, if any, for failure to successfully execute the work within the contract time are specified in the Agreement.

#### **ARTICLE 8 – CHANGE ORDERS**

Change orders needed for addition, deletion, or revision of work or an adjustment in the contract price or contract times shall be made in accordance ALDOT Standard Specifications, Section 104.03 Extra Work.

#### **ARTICLE 9 – PRE-BID CONFERENCE**

A non-mandatory pre-bid conference will be held at the time and location stated in the Invitation to Bid. Prospective bidders are strongly encouraged to attend. Representatives of the City and Engineer will be present to discuss the project and receive questions. The City and Engineer will transmit to all prospective bidders of record such Addenda as Engineer considers necessary in response to questions arising at the conference. Oral statements or instructions may not be relied upon and will not be binding or legally effective. Any Addenda transmitted to prospective bidders of record will also

be posted on the City's website at [www.orangebeachal.gov](http://www.orangebeachal.gov) on the Bids tab found on the Purchasing page.

## **ARTICLE 10 – PREPARATION OF BID**

The bid must be submitted using the Bid Forms included in the Bid Documents. The bidder shall specify all unit prices. All information required by the Bid Documents must be given to constitute a complete bid.

All words and figures must be in ink or typed. If a unit price or a lump sum bid already entered by the bidder on the Bid Forms is to be altered, it should be crossed out with ink and the new unit price or lump sum bid entered above or below it and initialed by the bidder, also with ink or typed. All bids shall remain valid for ninety (90) days after bid opening.

The bidder's proposal must be signed with ink by as follows:

- i. A Bid by a corporation shall be executed in the corporate name by a corporate officer (whose title must appear under the signature), accompanied by evidence of authority to sign. The corporate address and state of incorporation shall be shown.
- ii. A Bid by a limited liability company shall be executed in the name of the firm by a member or other authorized person and accompanied by evidence of authority to sign. The state of formation of the firm and the official address of the firm shall be shown.
- iii. A Bid by a joint venture shall be executed by an authorized representative of each joint venturer in the manner indicated on the Bid Form. The address of the joint venture shall be shown.
- iv. A Bid by an individual shall show the Bidder's name and official address.

The Bid shall contain acknowledgement of receipt of all Addenda, the numbers of which shall be filled in on the Bid Form.

## **ARTICLE 11 – BASIS OF BID**

Bidders shall submit a Bid on a unit price basis for each item of work listed on the Bid Forms. The "Amount Bid" price for each "Item No." will be the product of "Total Quantity" for the item and corresponding "Unit Price" offered by the Bidder. The total of all amounts unit price bid items will be the sum of these "Amount Bid" prices.

Discrepancies between the multiplication of unit price bids for any items will be in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum.

## **ARTICLE 12 – BID GUARANTEE**

No bid will be considered unless accompanied by a bid bond, certified check, or other negotiable instrument accompanying a bid, equivalent to five (5) percent of the bid price, as assurance that the bidder will, upon acceptance of the bid, execute such contractual instruments as may be required within the time specified.

All sureties shall be made payable to the "City of Orange Beach, Alabama" and shall remain valid for ninety (90) days after bid opening. If a bid bond is used by the bidder it shall be:

- In a form satisfactory to the City;
- With a surety company licensed, authorized to do business in, and subject to the jurisdiction of the courts of the State of Alabama; and
- Conditioned upon the faithful performance by the principal of the agreements contained in the sub-bid or the general bid.

All bid guarantees, except those of the three lowest bidders, will be returned following the opening and checking of the proposals. The bid guarantees of the three lowest bidders will be returned after the contract has been awarded.

### **ARTICLE 13 – DELIVERY AND SUBMISSION OF BID**

Bids must be submitted on Bid Forms furnished by the City of Orange Beach or copies thereof. Sealed bids must be mailed or delivered to the City of Orange Beach prior to the public opening. All sealed bids must be clearly and legibly marked “SEALED BID”, the bidder’s name, the name of the bid, and the opening date and time. Contact Renee Eberly at (251) 981-6806 or [reberly@orangebeachal.gov](mailto:reberly@orangebeachal.gov) with any questions.

Sealed bids may be mailed to the following address:

City of Orange Beach, ATTN: City Clerk, PO Box 458, Orange Beach, Alabama 36561

Or hand delivered to:

City of Orange Beach, ATTH: City Clerk, 4099 Orange Beach Blvd, Orange Beach, Alabama 36561

All bids received after the time stated in the Invitation to Bid will not be accepted and will be returned to the Bidder unopened. Whether sent by mail or by means of personal delivery, the Bidder assumes responsibility for having bids delivered on time at the place specified. The Bidder assumes risk of delay in the mail.

The submission of a Bid will be construed to mean that the Bidder is fully informed as to the extent and character of the supplies, materials or equipment required, and as a representation that the Bidder can furnish the supplies, materials or equipment satisfactorily in complete compliance with the specifications.

### **ARTICLE 14 – MODIFICATION AND WITHDRAWAL OF BID**

A Bid may be withdrawn, by an appropriate document duly executed and delivered in the same manner used to submit a Bid, at any time prior to the scheduled bid opening time. Upon receipt of such notice, the unopened Bid will be returned to the Bidder.

If a Bidder wished to modify its Bid prior to the bid opening, Bidder must withdraw its initial Bid in the manner specified above and submit a new Bid prior to the scheduled bid opening time.

No Bidder may withdraw his/her Bid for a period of thirty (30) days after the bid opening.

### **ARTICLE 15 – OPENING OF BIDS**

Bids will be opened at the time and place indicated in the Invitation to Bid and at that time publicly opened and read aloud.

### **ARTICLE 16 – EVALUATION OF BIDS AND AWARD OF CONTRACT**

The City reserves the right to reject any or all Bids, including without limitation, nonconforming, nonresponsive, unbalanced, or conditional Bids. The City will reject the Bid of any Bidder that the City finds, after reasonable inquiry and evaluation, to not be responsible.

Proposals will be considered nonconforming and may be rejected in the City's sole discretion for any of the following reasons:

- If the proposal is on a form other than that furnished by the City, or if the form is altered or any portion thereof is detached;

- If there are unauthorized additions, conditional or altered bids, or irregularities of any kind which may tend to make the proposal or any portion thereof incomplete, indefinite or ambiguous as to its meaning; or
- If the bidder adds any provisions reserving the right to accept or reject an award, or to enter into a contract pursuant to an award.

In evaluating Bids, the City will consider whether or not the Bids comply with the prescribed requirements and other data requested in the Bid Documents or prior to the Notice of Award. In evaluating whether a Bidder is responsible, the City will consider the qualifications of the Bidder and may consider the qualifications and experience of subcontractors proposed for those portions of the work for which the identity of subcontractors must be submitted as provided in the Bid Documents. The City may conduct such investigations as the City deems necessary to establish the responsibility, qualifications, and financial ability of Bidders and any proposed subcontractor.

Any or all of the following reasons may be deemed by City in its sole discretion as being sufficient for the disqualification of a bidder and the rejection of his proposal:

- More than one proposal for the same work from an individual, firm, or corporation under the same or different name;
- Evidence of collusion among bidders;
- Failure to submit all required information requested in the bid specifications;
- Unqualified to complete the work as demonstrated by previous project experience and reference checks;
- Lack of competency or of adequate machinery, plant or other equipment, as revealed by the statement of bidders qualification or otherwise;
- Failure to pay, or satisfactorily settle, all bills due for labor and materials on former contracts;
- Default or unsatisfactory performance on previous contracts;
- Failure to be licensed by the State of Alabama;
- Such disqualification would be in the best interests of the City.

After the Bids opened and read, they will be compared on the basis of the total price for all sections of work to be charged to perform the work and any such additional considerations as may be identified in the Bid Documents. The results of such comparisons will be immediately available to the public. In case of a discrepancy between the prices written in words and those written figures, the prices written in words shall govern. In case of a discrepancy between the total shown in the proposal and that obtained by adding the products of the quantities of items and unit bid prices, the latter shall govern.

If a contract is to be awarded, the award will be made to the lowest responsible and qualified bidder whose proposal complies with all the requirements prescribed. The successful bidder will be notified, in writing, mailed to the address on his or her proposal, that his or her bid has been accepted and that the bidder has been awarded the contract.

The award shall not be considered official until such time that an award letter has been issued by the City of Orange Beach. No presumption of award shall be made by the bidder until such documents are in hand. Verbal notification of award is not considered official. Any action by the bidder to assume otherwise is done so at his/her own risk and the City will not be held liable for any expense incurred by a bidder that has not received an official award.

Determination of the lowest Bidder will be based on the Base Bid, or the Base Bid with any combination of Additive Alternates the City deems to be in its best interest, for the work described on the Bid Forms.

The City reserves the right to cancel the award of any contract at any time before the execution of such contract by all parties without any liability of the City.

## **ARTICLE 17 – BONDS AND INSURANCE**

### **Bonding Requirements**

At the time of the execution of the contract, the successful bidder shall furnish the following bonds:

#### Performance Bond

A performance bond on the part of the contractor for 100 percent of the contract price to secure fulfillment of all the contractor's obligations under this contract.

#### Labor and Materials Payment Bond

A payment bond on the part of the contractor for 100 percent of the contract price 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.

Each bond shall be:

- 1) in a form satisfactory to the City;
- 2) with a surety company licensed and authorized to do business and with a resident agent designated for services of process in the State of Alabama; and
- 3) conditioned upon the faithful performance by the principal of the agreements contained in the original bid.

All premiums for the contract bonds are to be paid by the contractor.

### **Insurance Requirements**

Contractor agrees, at its sole expense, to maintain on a primary and non-contributory basis during the life of this Contract, or the performance of Work hereunder, insurance coverages, limits, and endorsements as set out below. Contractor agrees to obtain Commercial General Liability, Business Auto Liability, Worker's Compensation, and Commercial Umbrella/Excess Liability before starting the work. Contractor also agrees to undertake the obligation to insure that all subcontractors abide by these same insurance requirements.

The Contractor agrees the insurance requirements herein as well as City's review or acknowledgment is not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the Contractor under this Contract.

#### Commercial General Liability

Contractor agrees to maintain Commercial General Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$2,000,000 Annual Aggregate. Contractor agrees its coverage will not contain any restrictive endorsement(s) excluding or limiting Product/Completed Operations, Independent Contractors, Broad Form Property Damage, X-C-U Coverage, Contractual Liability, or Cross Liability.

#### Business Automobile Liability

Contractor agrees to maintain Business Automobile Liability at a limit of liability not less than \$1,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned, and Hired Automobiles.

#### Worker's Compensation & Employer's Liability

Regardless of any "minimum requirements" of the State of Alabama, Contractor shall obtain Worker's Compensation insurance covering all workers involved in the Work. (Note: Elective exemptions or coverage through an employee leasing arrangement will violate this requirement.) Subcontractor shall



also obtain Employer's Liability insurance with minimum limits of \$500,000 Each Accident, \$500,000 Disease Policy Limit, and \$500,000 Each Employee.

#### Commercial Umbrella/Excess Liability

Contractor agrees to maintain either a Commercial Umbrella or Excess Liability at a limit of liability not less than \$1,000,000 Each Occurrence, \$1,000,000 Aggregate. The Contractor agrees to endorse the City as an "Additional Insured" on the Commercial Umbrella/Excess Liability, unless the Commercial Umbrella/Excess Liability provides coverage on a pure/true follow-form basis, or the City is automatically defined as an Additional Protected Person.

#### Additional Insured Endorsements

The Contractor agrees to endorse the City as an Additional Insured on the Commercial General Liability with the following Additional Insured endorsement, or similar endorsement providing equal or broader Additional Insured coverage than:

- CG2010 10 01 – Additional Insured; Owners, Lessees, or Contractors, OR
- CG2010 07 04 – Additional Insured; Owners, Lessees, or Contractors; Scheduled Person or Organization endorsement

The name of the organization endorsed as Additional Insured for all endorsements shall read "City of Orange Beach."

#### Deductibles, Coinsurance Penalties & Self-Insured-Retention

Contractor agrees to be fully and solely responsible for any deductible, coinsurance penalty, or self-insured retention expenses; including any loss not covered because of coinsurance penalty, or coverage exclusion or limitation. The Contractor agrees any Self-Insured-Retention or deductible shall not exceed \$25,000. For deductible amounts that exceed this amount, the Contractor agrees, when requested by City, to maintain a Commercial Surety Bond in an amount equal to said deductible amount.

#### Waiver of Subrogation

Contractor agrees by entering into this written Contract to a Waiver of Subrogation in favor of the City. If a policy prohibits waiving subrogation rights without an endorsement, the Contractor agrees to endorse it with a Waiver of Transfer of Rights of Recovery against Others, or an equivalent endorsement. This Waiver of Subrogation requirement shall not apply to any policy which voids coverage if subrogation is waived.

#### Right to Revise or Reject

The City reserves the right to revise any insurance requirement based on insurance market conditions affecting the availability or affordability of coverage; or changes in the scope of work/specifications affecting the applicability of coverage. Additionally, the City reserves the right, but not the obligation, to review and reject and insurance policies failing to meet the criteria stated herein, or any insurer(s) providing coverage, due to its poor financial condition or failure to operate legally in the State of Alabama. In such events, City shall provide Contractor written notice of such revisions or rejections.

#### No Representation of Coverage Adequacy

The coverages, limits, or endorsements required herein protect the primary interests of the City, and the Contractor agrees in no way should these coverages, limits, or endorsements required be relied upon when assessing the extent or determining appropriate types and limits of coverage to protect the Contractor against any loss exposures, whether as a result of the Project or otherwise.

#### Certificate of Insurance

Contractor agrees to provide City a Certificate of Insurance evidencing the above coverages. If the Contractor receives a non-renewal or cancellation or other material change notice from an insurance carrier affording coverage required herein, Contractor agrees to notify the City immediately with

specifics as to which coverage is no longer in compliance. The City shall have the right, but not the obligation, of prohibiting Contractor from entering the Work site until a new Certificate of Insurance is provided to the City evidencing the replacement coverage. The Contractor agrees the City reserves the right to withhold payment to Contractor until evidence of reinstated or replacement coverage is provided to the City. If the Contractor fails to maintain the insurance as set forth herein, the Contractor agrees the City shall have the right, but not the obligation, to purchase replacement insurance, which the Contractor agrees to reimburse any premiums or expenses incurred by the City.

The Contractor agrees the Certificate(s) of Insurance shall:

- 1) Clearly indicate the City has been endorsed on the Commercial Umbrella/Excess Liability and Commercial General Liability policy as an Additional Insured. Clearly indicate the project name and project number.
- 2) Clearly indicated Certificate Holder(s) as follows:

Original to: City of Orange Beach  
Attn: City Clerk  
P.O. Box 458  
Orange Beach, AL 36561  
Fax (251) 981-1442

## **ARTICLE 18 – FAMILIARITY WITH LAWS**

The bidder is assumed to have made himself or herself familiar with all federal and state laws and all local bylaws, ordinances and regulations which in any manner affect those engaged or employed on the work or affect the materials or equipment used in the work or affect the conduct of the work, and the bidder, if awarded the contract, shall be obligated to perform the work in conformity with said laws, by-laws, ordinances and regulations notwithstanding its ignorance thereof. If the bidder shall discover any provision in the plans or specifications which is in conflict with any such law, by-law, ordinance or regulation the bidder shall forthwith report it to the City in writing.

Any contract awarded under this Invitation for Bids may be paid for in whole or in part with grant funding from the Gulf Coast Ecosystem Restoration Council (“RESTORE Council”, also “Council”) 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 the funding award, the RESTORE Council Financial Assistance Standard Terms and Conditions, including any Special Award Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 U. S. C. 1321(t) et seq., the U.S. Department of the Treasury Regulations 31 C. F. R. § 34 et seq., including 31 C. F. R. §§ 34, Subpart F, all applicable terms and conditions in 2 C. F. R. Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements, as amended, (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable. Notwithstanding the above, neither ADCNR nor the RESTORE Council, or any of their agents, representatives, or employees, is or will be a party to this Invitation for Bids or any resulting contract. Further, any contractor awarded a contract under this Invitation for Bids shall not be deemed to be an agent, representative, employee or servant of ADCNR or the RESTORE Council.

All bidders must provide documentation of a Dun & Bradstreet (DUNS) number and register with SAM.gov.

**ARTICLE 19 – CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

Documentation of compliance with MBE/WBE requirements is a matter of contractor responsibility. When subcontracting, the contractor must submit documentation of good faith efforts to meet the project’s MBE/WBE requirements before contracted work can commence. MBE/WBE requirements and required documentation can be found in the Required Attachments for RESTORE Oil Spill Impact Component Construction Contracts attached herein. Failure on the part of the contractor to submit proper documentation may cause the City not to execute or to terminate the contract.

**ARTICLE 20 – EXECUTION OF CONTRACT**

When the City issues a Notice of Award to the successful Bidder, it shall be accompanied by the unexecuted counterparts of the Agreement along with other contract documents as identified in the Agreement and Notice of Award. Within 15 days thereafter, the successful Bidder shall execute and deliver the required number of contract documents. No contract shall be considered in effect until it has been fully executed by all parties.

Failure to execute the Agreement and furnish required contract documents after Notice of Award shall be just cause for the cancellation of the award and the forfeiture of the bid guarantee which shall become the property of the City, not as a penalty, but in liquidation of damages sustained. Award may then be made to the next lowest responsible bidder, or the work may be re-advertised as the City may determine at its sole discretion.

**ARTICLE 21 – BUSINESS LICENSE**

The successful bidder will be required to obtain a City of Orange Beach Business License in order to operate within the Corporate Limits.

# **SECTION III**

## **BID FORM**

### **CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD**

RESTORE Grant Project No. GNSSP20AL0006-01-00 State Expenditure Plan #22  
Canal Rd Improvements E of SR-161

&

City Project Access Improvements and Multi-Use Trail Connections  
from Callaway Dr to Wilson Blvd

To the City of Orange Beach, Alabama, herein called the City, the Bidder declares as follows:

- 1) All interested in the Bid as Principals are named herein;
- 2) This bid is not made jointly, or in conjunction, cooperation or collusion with any other person, firm, corporation, or other legal entity;
- 3) No officer, agent or employee of the City is directly or indirectly interested in this Bid;
- 4) The bidder has carefully examined the site of the proposed work and fully informed and satisfied himself as to the conditions there existing, the character and requirements of the proposed work, the difficulties attendant upon its execution and the accuracy of all estimated quantities stated in this Bid, and the bidder has carefully read and examined the Drawings, Agreement, Specifications and other Contract Documents therein referred to and knows and understands the terms and provisions thereof;
- 5) The bidder understands that if the Bid is accepted the bidder will contract with the City, as provided in the Contract Documents, this Bid Form being part of said Contract Documents, and that the bidder will supply or perform all labor, services, plant, machinery, apparatus, appliances, tools, supplies and all other activities required by the Contract Documents in the manner and within the time therein set forth, and that the bidder will take in full payment therefore the following item prices;
- 6) This bid will remain valid for ninety (90) days after bid opening.
- 7) It is the intention of this contract that the items listed below describe completely and thoroughly the entirety of the work as shown on the plans and as described in the specifications. All other items required to accomplish the above items are considered to be subsidiary work, unless shown as a pay item; and
- 8) Contractor agrees to complete all work within the contract time set forth in the Agreement.

LINE NO.	ITEM NO.	DESCRIPTION	RESTORE GRANT QUANTITY	CITY PROJECT QUANTITY	TOTAL QUANTITY	UNIT	UNIT PRICE	AMOUNT BID
<b>BASE BID:</b>								
1	201A-002	CLEARING AND GRUBBING (MAXIMUM ALLOWABLE BID \$ 8,000 PER ACRE) (APPROXIMATELY 12.0 ACRES)	0.8	0.2	1	LUMP SUM	\$	\$
2	206C-000	REMOVING CONCRETE SIDEWALK	2630	1091	3721	SQUARE YARD	\$	\$
3	206C-010	REMOVING CONCRETE DRIVEWAY	285	17	302	SQUARE YARD	\$	\$
4	206C-017	REMOVING CONCRETE PAD	0	17	17	SQUARE YARD	\$	\$
5	206D-000	REMOVING PIPE	2705	0	2705	LINEAR FOOT	\$	\$
6	206D-002	REMOVING CURB	189	936	1125	LINEAR FOOT	\$	\$
7	206D-003	REMOVING CURB AND GUTTER	83	44	127	LINEAR FOOT	\$	\$
8	206D-011	REMOVING FENCE	0	303	303	LINEAR FOOT	\$	\$
9	206E-000	REMOVING HEADWALLS	47	0	47	EACH	\$	\$
10	206E-002	REMOVING JUNCTION BOXES	2	0	2	EACH	\$	\$
11	209A-000	MAILBOX RESET, SINGLE	16	0	16	EACH	\$	\$
12	209A-002	MAILBOX RESET, MULTIPLE	2	0	2	EACH	\$	\$
13	210A-000	UNCLASSIFIED EXCAVATION	4556	2421	6977	CUBIC YARD	\$	\$
14	210D-020	BORROW EXCAVATION (LOOSE TRUCKBED MEASUREMENT)(A2 OR BETTER)	10932	4190	15122	CUBIC YARD	\$	\$
15	214A-000	STRUCTURE EXCAVATION	1636	664	2300	CUBIC YARD	\$	\$
16	214B-001	FOUNDATION BACKFILL, COMMERCIAL	677	261	938	CUBIC YARD	\$	\$
17	230A-000	ROADBED PROCESSING	70	0	70	ROADBED STATION	\$	\$
18	301A-008	CRUSHED AGGREGATE BASE COURSE, TYPE B, PLANT MIXED, 5" COMPACTED THICKNESS	4800	4565	9365	SQUARE YARD	\$	\$
19	301A-012	CRUSHED AGGREGATE BASE COURSE, TYPE B, PLANT MIXED, 6" COMPACTED THICKNESS	16307	0	16307	SQUARE YARD	\$	\$
20	401A-000	BITUMINOUS TREATMENT A	21106	4565	25671	SQUARE YARD	\$	\$
21	405A-000	TACK COAT	6440	758	7198	GALLON	\$	\$
22	408A-052	PLANING EXISTING PAVEMENT (APPROXIMATELY 1.10" THRU 2.0" THICK)	8858	3439	12297	SQUARE YARD	\$	\$
23	410H-000	MATERIAL REMIXING DEVICE	1	0	1	EACH	\$	\$
24	424A-336	SUPERPAVE BITUMINOUS CONCRETE WEARING SURFACE LAYER, 3/8" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE A/B	500	306	806	TON	\$	\$
25	424A-360	SUPERPAVE BITUMINOUS CONCRETE WEARING SURFACE LAYER, 1/2" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE C/D	4657	490	5147	TON	\$	\$
26	424B-651	SUPERPAVE BITUMINOUS CONCRETE UPPER BINDER LAYER, 1" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE C/D	1852	217	2069	TON	\$	\$
27	424B-655	SUPERPAVE BITUMINOUS CONCRETE UPPER BINDER LAYER, PATCHING, 1" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE C/D	251	12	263	TON	\$	\$

LINE NO.	ITEM NO.	DESCRIPTION	RESTORE GRANT QUANTITY	CITY PROJECT QUANTITY	TOTAL QUANTITY	UNIT	UNIT PRICE	AMOUNT BID
28	424B-657	SUPERPAVE BITUMINOUS CONCRETE UPPER BINDER LAYER, LEVELING, 1/2" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE C/D	996	0	996	TON	\$	\$
29	424B-681	SUPERPAVE BITUMINOUS CONCRETE LOWER BINDER LAYER, 1" MAXIMUM AGGREGATE SIZE MIX, ESAL RANGE C/D	1930	0	1930	TON	\$	\$
30	430B-040	AGGREGATE SURFACING (CRUSHED AGGREGATE BASE, TYPE B)	1698	500	2198	TON	\$	\$
31	450A-006	REINFORCED CEMENT CONCRETE PAVEMENT, 10 INCHES THICK	664	0	664	SQUARE YARD	\$	\$
32	516D-000	PEDESTRIAN BRIDGE	1	0	1	LUMP SUM		
33	530A-001	18" ROADWAY PIPE (CLASS 3 R.C.)	218	18	236	LINEAR FOOT	\$	\$
34	530B-014	36" SPAN, 23" RISE ROADWAY PIPE (CLASS 3 R.C.) (EXTENSION)	0	18	18	LINEAR FOOT	\$	\$
35	532A-030	12" SLOTTED DRAIN PIPE	0	40	40	LINEAR FOOT	\$	\$
36	532A-032	18" SLOTTED DRAIN PIPE	100	60	160	LINEAR FOOT	\$	\$
37	533A-855	12" STORM SEWER PIPE	0	125	125	LINEAR FOOT	\$	\$
38	533A-097	15" STORM SEWER PIPE (CLASS 3 R.C.)	0	24	24	LINEAR FOOT	\$	\$
39	533A-098	18" STORM SEWER PIPE (CLASS 3 R.C.)	1546	90	1636	LINEAR FOOT	\$	\$
40	533A-099	24" STORM SEWER PIPE (CLASS 3 R.C.)	577	864	1441	LINEAR FOOT	\$	\$
41	533A-900	4" STORM SEWER PIPE (PVC)	22	0	22	LINEAR FOOT	\$	\$
42	533B-099	29" SPAN, 18" RISE STORM SEWER PIPE (CLASS 3 R.C.)	152	0	152	LINEAR FOOT	\$	\$
43	533B-100	36" SPAN, 23" RISE STORM SEWER PIPE (CLASS 3 R.C.)	13	0	13	LINEAR FOOT	\$	\$
44	535B-088	22" SPAN, 14" RISE SIDE DRAIN PIPE (CLASS 3 R.C.)	904	0	904	LINEAR FOOT	\$	\$
45	535B-090	18" SPAN, 11" RISE SIDE DRAIN PIPE (CLASS 3 R.C.)	56	0	56	LINEAR FOOT	\$	\$
46	535B-091	29" SPAN, 18" RISE SIDE DRAIN PIPE (CLASS 3 R.C.)	1532	0	1532	LINEAR FOOT	\$	\$
47	600A-000	MOBILIZATION	1	0	1	LUMP SUM	\$	\$
48	602A-000	RIGHT OF WAY MARKERS	9	0	9	EACH	\$	\$
49	608A-000	SEPARATION GEOTEXTILE	4800	4565	9365	SQUARE YARD	\$	\$
50	610A-004	LOOSE RIPRAP, CLASS 2, 24" THICK	0	11	11	SQUARE YARD	\$	\$
51	610D-003	FILTER BLANKET, GEOTEXTILE	0	16	16	SQUARE YARD	\$	\$
52	614A-000	SLOPE PAVING	1	0	1	CUBIC YARD	\$	\$
53	618A-000	CONCRETE SIDEWALK, 4" THICK	578	76	654	SQUARE YARD	\$	\$
54	618A-001	CONCRETE SIDEWALK, 6" THICK	1121	222	1343	SQUARE YARD	\$	\$
55	618B-003	CONCRETE DRIVEWAY, 6" THICK (INCLUDES WIRE MESH)	452	0	452	SQUARE YARD	\$	\$
56	618C-002	DIRECTIONAL TACTILE WARNING SURFACE INDICATORS	56	0	56	SQUARE FOOT	\$	\$

LINE NO.	ITEM NO.	DESCRIPTION	RESTORE GRANT QUANTITY	CITY PROJECT QUANTITY	TOTAL QUANTITY	UNIT	UNIT PRICE	AMOUNT BID
57	618D-000	CURB RAMP	375	97	472	SQUARE YARD	\$	\$
58	619A-000	12" ROADWAY PIPE END TREATMENT, CLASS 1	0	1	1	EACH	\$	\$
59	619A-001	15" ROADWAY PIPE END TREATMENT, CLASS 1	0	1	1	EACH	\$	\$
60	619A-002	18" ROADWAY PIPE END TREATMENT, CLASS 1	5	0	5	EACH	\$	\$
61	619A-101	18" SIDE DRAIN PIPE END TREATMENT, CLASS 1	5	1	6	EACH	\$	\$
62	619A-202	24" ROADWAY PIPE END TREATMENT, CLASS 1 (DOUBLE LINE)	0	1	1	EACH	\$	\$
63	619B-018	36" SPAN, 23" RISE ROADWAY PIPE END TREATMENT, CLASS 1	0	1	1	EACH	\$	\$
64	619B-115	18" SPAN, 11" RISE SIDE DRAIN PIPE END TREATMENT, CLASS 1	2	0	2	EACH	\$	\$
65	619B-116	22" SPAN, 14" RISE SIDE DRAIN PIPE END TREATMENT, CLASS 1	30	0	30	EACH	\$	\$
66	619B-117	29" SPAN, 18" RISE SIDE DRAIN PIPE END TREATMENT, CLASS 1	38	0	38	EACH	\$	\$
67	619B-267	29" SPAN, 18" RISE ROADWAY PIPE END TREATMENT, CLASS 1 (DOUBLE LINE)	1	0	1	EACH	\$	\$
68	620A-000	MINOR STRUCTURE CONCRETE	1	1	2	CUBIC YARD	\$	\$
69	621A-011	JUNCTION BOXES, TYPE 1 OR 1P	37	0	37	EACH	\$	\$
70	621A-019	JUNCTION BOXES, TYPE 1 OR 2P	2	0	2	EACH	\$	\$
71	621C-140	INLETS, OPEN THROAT	4	0	4	EACH	\$	\$
72	621E-004	MANHOLES, TYPE L OR M (STORM)	3	2	5	EACH	\$	\$
73	621H-001	INLET TOPS, CURB & GUTTER	24	0	24	EACH	\$	\$
74	621H-002	INLET TOPS, CURB & GUTTER (DOUBLE)	7	0	7	EACH	\$	\$
75	621H-003	INLET TOPS, GUTTER	3	0	3	EACH	\$	\$
76	623A-000	CONCRETE GUTTER	368	0	368	LINEAR FOOT	\$	\$
77	623B-000	CONCRETE CURB, TYPE N	2209	897	3106	LINEAR FOOT	\$	\$
78	623B-001	CONCRETE CURB, TYPE N SPECIAL	208	0	208	LINEAR FOOT	\$	\$
79	623B-150	CONCRETE CURB, TYPE RIBBON	242	0	242	LINEAR FOOT	\$	\$
80	623B-151	CONCRETE CURB, TYPE TRUCK APRON	633	0	633	LINEAR FOOT	\$	\$
81	623C-000	COMBINATION CURB & GUTTER, TYPE C	1599	102	1701	LINEAR FOOT	\$	\$
82	623C-003	COMBINATION CURB & GUTTER, TYPE C (MODIFIED)	22	0	22	LINEAR FOOT	\$	\$
83	645J-500	MANHOLE CONE RESET	4	0	4	EACH	\$	\$
84	645K-500	MANHOLE FRAME AND COVER RESET	4	0	4	EACH	\$	\$

LINE NO.	ITEM NO.	DESCRIPTION	RESTORE GRANT QUANTITY	CITY PROJECT QUANTITY	TOTAL QUANTITY	UNIT	UNIT PRICE	AMOUNT BID
85	650A-000	TOPSOIL	1890	2100	3990	CUBIC YARD	\$	\$
86	654A-001	SOLID SODDING (BERMUDA)	31200	4700	35900	SQUARE YARD	\$	\$
87	665A-000	TEMPORARY SEEDING	7	1	8	ACRE	\$	\$
88	665B-001	TEMPORARY MULCHING	21	3	24	TON	\$	\$
89	665E-000	POLYETHYLENE	1000	500	1500	SQUARE YARD	\$	\$
90	665G-000	SAND BAGS	500	250	750	EACH	\$	\$
91	665I-000	TEMPORARY RIPRAP, CLASS 2	500	250	750	TON	\$	\$
92	665J-002	SILT FENCE	13728	1000	14728	LINEAR FOOT	\$	\$
93	665N-001	TEMPORARY COARSE AGGREGATE,ALDOT NUMBER 4	600	300	900	TON	\$	\$
94	665O-001	SILT FENCE REMOVAL	13728	1000	14728	LINEAR FOOT	\$	\$
95	665P-005	INLET PROTECTION, STAGE 3 OR 4	80	0	80	EACH	\$	\$
96	665Q-002	WATTLE	1500	100	1600	LINEAR FOOT	\$	\$
97	666A-001	PEST CONTROL TREATMENT	7	1	8	ACRE	\$	\$
98	674A-000	CONSTRUCTION SAFETY FENCE	1000	500	1500	LINEAR FOOT	\$	\$
99	680A-001	GEOMETRIC CONTROLS	1	0	1	LUMP SUM	\$	\$
100	701A-227	SOLID WHITE, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE)	3	1	4	MILE	\$	\$
101	701A-230	SOLID YELLOW, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE)	4	1	5	MILE	\$	\$
102	701A-244	BROKEN YELLOW, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE)	2	0	2	MILE	\$	\$
103	701B-207	DOTTED, CLASS 2, TYPE A TRAFFIC STRIPE (5" WIDE)	3356	0	3356	LINEAR FOOT	\$	\$
104	701C-003	SOLID TEMPORARY TRAFFIC STRIPE (PAINT)	13	0	13	MILE	\$	\$
105	701D-005	SOLID TRAFFIC STRIPE REMOVED	7	0	7	MILE	\$	\$
106	703A-002	TRAFFIC CONTROL MARKINGS, CLASS 2, TYPE A	8911	1391	10302	SQUARE FOOT	\$	\$
107	703B-002	TRAFFIC CONTROL LEGENDS, CLASS 2, TYPE A	292	45	337	SQUARE FOOT	\$	\$
108	703C-001	REMOVAL OF EXISTING TRAFFIC CONTROL MARKINGS OR LEGENDS (PLASTIC)	0	0	0	SQUARE FOOT	\$	\$
109	703D-002	TEMPORARY TRAFFIC CONTROL MARKINGS (PAINT)	4456	696	5152	SQUARE FOOT	\$	\$
110	705A-030	PAVEMENT MARKERS, CLASS A-H, TYPE 2-C	214	0	214	EACH	\$	\$
111	705A-031	PAVEMENT MARKERS, CLASS A-H, TYPE 1-A	40	0	40	EACH	\$	\$
112	705A-032	PAVEMENT MARKERS, CLASS A-H, TYPE 1-B	70	0	70	EACH	\$	\$



LINE NO.	ITEM NO.	DESCRIPTION	RESTORE GRANT QUANTITY	CITY PROJECT QUANTITY	TOTAL QUANTITY	UNIT	UNIT PRICE	AMOUNT BID
113	705A-037	PAVEMENT MARKERS, CLASS A-H, TYPE 2-D	188	7	195	EACH	\$	\$
114	705A-038	PAVEMENT MARKERS, CLASS A-H, TYPE 2-E	11	0	11	EACH	\$	\$
115	707F-001	FLEXIBLE DELINEATOR POST WITH BASE, YELLOW	21	3	24	EACH	\$	\$
116	707H-000	RAISED CURB CHANNELIZER, YELLOW	462	0	462	LINEAR FOOT	\$	\$
117	710A-160	CLASS 10 ALUMINUM FLAT SIGN PANELS 0.08" THICK (TYPE XI BACKGROUND)	177	0	177	SQUARE FOOT	\$	\$
118	710A-165	CLASS 10 ALUMINUM FLAT SIGN PANELS 0.08" THICK (TYPE XI BACKGROUND, FLUORESCENT)	119	0	119	SQUARE FOOT	\$	\$
119	710A-170	CLASS 4, ALUMINUM FLAT SIGN PANELS 0.08" THICK (TYPE IV BACKGROUND)	216	0	216	SQUARE FOOT	\$	\$
120	710B-021	ROADWAY SIGN POST (#3 U CHANNEL, GALVANIZED STEEL OR 2", 14 GA SQUARE TUBULAR STEEL)	1092	98	1190	LINEAR FOOT	\$	\$
121	710C-000	REMOVAL OF EXISTING ROADWAY SIGNS	1	0	1	LUMP SUM	\$	\$
122	711A-000	ROADWAY SIGN RELOCATION	1	0	1	LUMP SUM	\$	\$
123	740B-000	CONSTRUCTION SIGNS	750	500	1250	SQUARE FOOT	\$	\$
124	740D-000	CHANNELIZING DRUMS	500	250	750	EACH	\$	\$
125	740E-000	CONES (36 INCHES HIGH)	250	125	375	EACH	\$	\$
126	740F-001	BARRICADES, TYPE II	10	50	60	EACH	\$	\$
127	740F-002	BARRICADES, TYPE III	10	0	10	EACH	\$	\$
128	740I-002	WARNING LIGHTS, TYPE B	20	50	70	EACH	\$	\$
129	740M-001	BALLAST FOR CONE	250	125	375	EACH	\$	\$
130	741C-010	PORTABLE SEQUENTIAL ARROW AND CHEVRON SIGN UNIT	2	0	2	EACH	\$	\$
131	742A-001	PORTABLE CHANGEABLE MESSAGE SIGN, TYPE 2	2	0	2	EACH	\$	\$
<b>132</b>	<b>TOTAL BID AMOUNT, BASE BID</b> (ADD "AMOUNT BID" COLUMN FIGURES FROM LINES 1 THROUGH 131):							<b>\$</b>

The bidder acknowledges receipt of the following addenda covering revisions to the bid documents, and states that the costs, if any, of such revisions have been included in the base bid and other prices quoted herein:

Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_  
 Addendum No. \_\_\_\_\_ Dated: \_\_\_\_\_

Note: If no addenda have been received, write in "none".

The undersigned bidder acknowledges having inspected the site(s) and the conditions affecting and governing the accomplishment of the project, and proposes to furnish all materials and perform all labor, as specified, to complete the project.

_____	_____
Company Name	Company Representative
_____	_____
Street Address	Title
_____	_____
City, State, Zip	Phone
_____	_____
Federal Employer Id No. (if no FEIN, enter SSM)	Email
_____	_____
Alabama Contractors License No.	DUNS No.

I/we agree to furnish at the prices shown and guarantee that each offered will meet or exceed all specifications, terms and conditions, and requirements listed. This is the total price and includes all delivery or freight charges to the City of Orange Beach. Any attachment hereto is made and becomes a part of this inquiry and must be signed by bidder. I herein affirm I have not been in any agreement or collusion among bidders in restraint of freedom of competition by agreement to bid at a fixed price or to refrain from bidding or otherwise. By signing this contract, the company represents and agrees that 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.

SWORN TO AND SUBSCRIBED

BEFORE ME THIS DAY OF \_\_\_\_\_, 20\_\_\_\_

\_\_\_\_\_ Company Name

\_\_\_\_\_ Authorized Signature (INK)

\_\_\_\_\_ Mail Address

\_\_\_\_\_ Printed/Typed Authorized Name

\_\_\_\_\_ Notary Public

\_\_\_\_\_ City, State, Zip

\_\_\_\_\_ Title

\_\_\_\_\_ Commission Expires

\_\_\_\_\_ Phone Including Area Code

\_\_\_\_\_ Fax Number

# SECTION IV CONTRACT AGREEMENT

THIS AGREEMENT by and between the City of Orange Beach, Alabama (hereinafter called the City) and \_\_\_\_\_ (hereinafter called the Contractor).

WITNESSETH THAT:

The City and Contractor hereby agree as follows:

## **ARTICLE 1 – WORK**

The Contractor shall complete all work as specified in the plans, specifications and contract documents attached hereto for the Project.

## **ARTICLE 2 – PROJECT**

The Project is generally described as **CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD** and includes RESTORE Grant Project No. GNSSP20AL0006-01-00 State Expenditure Plan #22 Canal Rd Improvements E of SR-161; and City Project Access Improvements and Multi-Use Trail Connections from Callaway Dr to Wilson Blvd.

## **ARTICLE 3 – ENGINEER**

The City has retained **Thompson Engineering, Inc.** to provide the design and construction engineering services for the Project.

## **ARTICLE 4 – CONTRACT TIME**

Work will begin in accordance with the Notice to Proceed with work completed by a fixed calendar date of May 17, 2024.

It is mutually agreed between the City and the Contractor that timely performance is of the essence to this Contract, and the Contractor agrees to keep a working force on the job of the size that is adequate to perform all work in accordance with the Contractor's approved work schedule.

## **ARTICLE 5 – CONTRACT PRICE**

The City shall pay Contractor for satisfactory completion of the work in accordance with the Contract Documents, subject to additions and deductions provided for in the Contract Documents.

Contract Amount: \$ \_\_\_\_\_

## **ARTICLE 6 – PAYMENTS**

City shall make partial payments to the Contractor in accordance ALDOT Standard Specifications, Section 109, and Supplemental Specification 109-18, less any retainage or assessed liquidated damages.

In making partial payments, there will be **Retainage** made in accordance with Supplemental Specification No. 109-18. The Retainage shall be held until completion of all work, final acceptance and final estimate paid, as described in the Contract Documents.

In event the Contractor fails to successfully execute the work within the contract time, the City shall assess the Contractor **Liquidated Damages** in accordance ALDOT Standard Specifications, Section 108, and Supplemental Specification 108-18.

Upon final acceptance of the work and settlement of all claims, City shall pay the Contractor the unpaid balance of the Contract Price, subject to additions and deductions provided for in the Contract Documents.

## **ARTICLE 7 – CONTRACT DOCUMENTS**

The Contract Documents which comprise the contract between City and Contractor are attached hereto and made a part hereof and consist of the following:

1. This Agreement
2. Instructions to Bidders & General Conditions
3. Bid Form (incl. Addenda, if any)
4. Bonds
  - a. Bid Guarantee
  - b. Performance Bond
  - c. Labor and Materials Payment Bond
5. Notice of Award
6. Notice to Proceed
7. Contractor's Release
8. Plan Drawings
9. Specifications as listed in General Conditions
10. Supplemental Specifications
11. Required Attachments for RESTORE Oil Spill Impact Component Construction Contracts
12. Any modifications, including change orders, duly delivered after execution of this Agreement.

## **ARTICLE 8 – E-VERIFY**

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.

The Contractor must provide proof of enrollment with E-Verify before entering into a contract with the City.

## **ARTICLE 9 – INSURANCE**

The Contractor shall secure and maintain, until final acceptance of the work, insurance with limits not less than those specified in the General Conditions.

## **ARTICLE 10 – MISCELLANEOUS**

1. Neither City nor Contractor shall, without the prior written consent of the other, assign, sublet or delegate, in whole or in part, any of its rights or obligations under any of the Contract Documents; and, specifically not assign any monies due, or to become due, without the prior written consent of City.
2. City and Contractor each binds himself, his partners, successors, assigns and legal representatives, to the other party hereto in respect to all covenants, agreements and obligations contained in the Contract Documents.

3. The Contract Documents constitute the entire Agreement between City and Contractor and may only be altered amended or repealed by a duly executed written instrument.
4. The laws of the State of Alabama shall govern this Contract without reference to the conflict of law principles thereof.

IN WITNESS WHEREOF, the parties hereto have executed this agreement on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

(Corporate Seal)

\_\_\_\_\_ (Contractor)

By: \_\_\_\_\_

Its: \_\_\_\_\_

Attest: \_\_\_\_\_

Its: \_\_\_\_\_

(Seal)

City of Orange Beach, Alabama (City)

By: \_\_\_\_\_  
Tony Kennon, Mayor

Attest: \_\_\_\_\_  
Renee Eberly, City Clerk



**SECTION V**  
**Required Attachments for**  
**RESTORE Oil Spill Impact Component**  
**Construction Contracts**

*Non-State and State Agency – Template version 12.21.2020*

The “Required Attachments for RESTORE Oil Spill Impact Component Construction Contracts” is not intended to represent all requirements and obligations that may be applicable to contracts resulting from this solicitation. This contract is subject to the terms and conditions of the Sub-Award Agreement between the Alabama Department of Conservation and Natural Resources (“ADCNR”) and the Project Owner (“Subrecipient”), the terms and conditions of the Federal Award from the Gulf Coast Ecosystem Restoration Council (“RESTORE Council”, also “Council”), including any Special Award Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Council Financial Assistance Standard Terms and Conditions, as amended, the RESTORE Act, 33 USC § 1321(t) et seq., the U.S. Department of Treasury Regulations governing the RESTORE Act, 31 CFR § 34 et seq., all applicable terms and conditions in 2 CFR Part 200 of the Office of Management and Budget (“OMB”) Uniform Guidance for Grants and Cooperative Agreements, as amended on August 13, 2020, including Appendix II to 2 CFR Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this contract. All of these terms and conditions apply to the Subrecipient and its Contractors, as well as any covered subcontractors or vendors.

Requirements applicable to this contract, as well as any covered subcontracts or vendors include, but are not limited to:

- CERTIFICATIONS RELATED TO RESTORE ACT OIL SPILL IMPACT COMPONENT FUNDING
- RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
- ADCNR SUB-AWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES
- APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS
- PROCUREMENT OF RECOVERED MATERIALS
- PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OF EQUIPMENT
- DOMESTIC PREFERENCES FOR PROCUREMENTS
- CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
- SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS
- 41 CFR §60-1.4(b) EQUAL OPPORTUNITY CLAUSE (*for Federally Assisted Construction Contracts*)
- 41 CFR §60-4.2(d) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (Executive Order 11246)

- 41 CFR §60-4.3(a) STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (Executive Order 11246)
  
- SUBCONTRACTOR LISTING FORM (*The Lowest Responsive and Responsible Bidder MUST submit with required MBE/WBE documentation.*)



## **CERTIFICATIONS RELATED TO RESTORE ACT OIL SPILL IMPACT COMPONENT FUNDING**

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**By entering into this contract, the contractor expressly acknowledges that:**

- 1) This project is funded in whole or in part with grant funding from the RESTORE Council and the Alabama Department of Conservation and Natural Resources under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act);
- 2) Any contract awarded will be subject to the terms and conditions of said funding award, the RESTORE Council Financial Assistance Standard Terms and Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 USC 1321(t), Treasury Regulations 31 CFR § 34 et seq., including 31 CFR §§ 34, Subpart F, all applicable terms and conditions in 2 CFR Part 200 (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable.;
- 3) Any contract awarded will be subject to 31 CFR Part 19 – Governmentwide Debarment and Suspension (Nonprocurement); and,
- 4) Title VI of the Civil Rights Act of 1964 (42 USC §§ 2000d et seq.) and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance.
- 5) Any contract awarded will be subject to the laws and regulations of the United States and the State of Alabama.

**The owner will not enter into a contract with a contractor, or the contractor's principals, if the contractor or its principals appear on the federal government's Excluded Parties List. The contractor does hereby certify, by entering into this agreement, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.**

**The contractor must verify that any subcontractor (or the subcontractor's principals) does not appear on the federal government's Excluded Parties List prior to executing a subcontract with that entity. The Excluded Parties List is accessible at <http://www.sam.gov>.**

**RESTORE COUNCIL  
FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS**

**December 2015**

# **RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS**

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*Gulf Coast Ecosystem Restoration Council  
August 2015*

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## RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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THESE RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (ST&Cs) ARE INCORPORATED INTO AND MADE A PART OF THE GRANT AWARD TO WHICH THEY ARE ATTACHED.

## A. STATUTORY AND NATIONAL POLICY REQUIREMENTS

The non-Federal entity<sup>1</sup> (also referred to as “recipient” or “grantee”) and any subrecipients must, in addition to the assurances made as part of the application, comply and require each of its contractors and subcontractors employed in the completion of the project to comply with all applicable statutes, regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, terms and conditions, and approved applications. This document provides the Gulf Coast Ecosystem Restoration Council (“Council”) standard terms and conditions (ST&Cs) for all Council awards. 2 CFR § 5900.101 provides the Council’s adoption of 2 CFR Part 200, giving regulatory effect to the OMB guidance.

This award is subject to the laws and regulations of the United States. Any inconsistency or conflict in terms and conditions specified in the award will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the *Federal Register*, EOs, OMB circulars, the Council ST&Cs, and special award conditions. Special award conditions may amend or take precedence over the ST&Cs if and when so provided by the ST&Cs.

Certain of the ST&Cs contain, by reference or substance, a summary of the pertinent statutes or regulations published in the *Federal Register* or Code of Federal Regulations (C.F.R.), EOs, OMB circulars, or the assurances (Forms SF-424B and SF-424D). No such provision will be construed so as to be in derogation of, or an amendment to, any such statute, regulation, EO, OMB circular, or assurance.

## B. PROGRAMMATIC REQUIREMENTS

The recipient must use funds only for the purposes identified in the grant award agreement in accordance with the requirements in 31 C.F.R. § 34.803(d). All activities under the award must meet the eligibility requirements of the Gulf RESTORE Program as defined in 31 C.F.R. §§ 34.201, 34.202 or 34.203, according to component.

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<sup>1</sup> The OMB *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* located at 2 C.F.R. part 200 uses the term “non-Federal entity” to generally refer to an entity that carries out a Federal award as a recipient or subrecipient. Because certain of the provisions of these ST&Cs apply to recipients rather than subrecipients, or vice versa, for clarity, these ST&Cs use the terms “non-Federal entity”, “recipient”, and “subrecipient.” In addition, the OMB Uniform Guidance uses the term “pass-through entity” to refer to a non-Federal entity that makes a subaward.

“Non-Federal entity” is defined at 2 C.F.R. § 200.69 as “a State, local government, Indian tribe, institution of higher education (IHE), or nonprofit organization that carries out a Federal award as a recipient or subrecipient.”

“Recipient” is defined at 2 C.F.R. § 200.86 as “a non-Federal entity that receives a Federal award directly from a Federal awarding agency to carry out an activity under a Federal program. The term recipient does not include subrecipients.”

“Subrecipient” is defined at 2 C.F.R. § 200.93 as “a non-Federal entity that receives a subaward from a pass-through entity to carry out part of a Federal program; but does not include an individual that is a beneficiary of such program. A subrecipient may also be a recipient of other Federal awards directly from a Federal awarding agency.”

“Pass-through entity” is defined as 2 C.F.R. § 200.74 as “a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program.”

## .01 Performance (Technical) Reports

- a. Non-Federal entities must use OMB-approved governmentwide standard information collections when providing financial and performance information and, as appropriate and in accordance with such information collections, are required to relate financial data to the performance accomplishments of the Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The Non-Federal entity's performance will be measured in a way that will help the Council and other non-Federal entities to improve program outcomes, share lessons learned and spread the adoption of promising practices. Recipients will be provided with clear performance goals, indicators and milestones as described in 2 C.F.R. § 200.210 “Information contained in a Federal award.”
- b. Recipients must submit performance (technical) reports, which may be Form SF-PPR “Performance Progress Report” or any successor form, or another format as required by the Council, to the Council-designated grants officer (Grants Officer). Performance reports should be submitted electronically, unless the recipient makes an arrangement with the Grants Officer for submission in hard copy (no more than one original and two copies) in accordance with the award conditions.
- c. Performance Reports must be submitted with the same frequency as the Federal Financial Report (Form SF-425), unless otherwise authorized by the Grants Officer. If events occur between scheduled performance reporting dates that have significant impact upon the activity, project or program, the recipient must notify the Grants Officer as soon as possible.
- d. Performance (technical) reports shall contain brief information as prescribed in the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (2 C.F.R. part 200, specifically 2 C.F.R. § 200.328) incorporated into the award, unless otherwise specified in the award provisions. Specifically, in the “performance narrative” (item 10 on the SF-PPR), the recipient must provide the following information.
  1. Activities and Accomplishments:
    - i. Summarize activities undertaken during the reporting period;
    - ii. Summarize any key accomplishments, including milestones and metrics completed for the period;
    - iii. 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
    - iv. If the recipient 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.
  2. Adaptive Management:
    - i. 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
    - ii. Summarize any challenges that have impeded the recipient’s ability to accomplish the approved scope of work on schedule and on budget.

3. Findings/Events: Summarize any significant findings or events, if applicable.
4. Dissemination Activities: Describe any activities to disseminate or publicize results of the activity, project, or program, if applicable.
5. Monitoring:
  - i. Describe all efforts taken to monitor contractor and/or subrecipient performance, to include site visits, during the reporting period. For subawards, indicate whether the subrecipient submitted an audit to the recipient, and if so, whether the recipient issued a management decision on any findings; and
  - ii. Describe any other activities or relevant information not already provided.
6. Planned Activities: Summarize the activities planned for the next reporting period.
7. Attachments: List and attach any deliverables completed during the performance period or other materials to be submitted with the report.

## **.02 Reporting on Real Property**

In accordance with 2 C.F.R. § 200.329, the Federal awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. If the attached Federal interest is for a period of 15 years or longer, the Council or pass-through entity may, at its option, require the non-Federal entity to report at various multi-year frequencies as specified in the terms of the award (e.g., every two years or every three years, not to exceed a five-year reporting period; or the Council or pass-through entity may require annual reporting for the first three years of a Federal award and thereafter require reporting every five years).

## **.03 Unsatisfactory Performance**

Failure to perform the work in accordance with the terms of the award and maintain at least a satisfactory performance as determined by the Council may result in designation of the non-Federal entity as high risk and the assignment of special award conditions or other further action as provided in Section B.06, “Non-Compliance with Award Provisions” below.

## **.04 Programmatic Changes**

The non-Federal entity shall report programmatic changes to the Grants Officer in accordance with 2 C.F.R. § 200.308, and shall request prior approvals in accordance with 2 C.F.R. § 200.407.

## **.05 Other Federal Awards with Similar Programmatic Activities**

The non-Federal entity shall immediately provide written notification to the Grants Officer in the event that, subsequent to receipt of the Council award, other financial assistance is received to support or fund any portion of the scope of work incorporated into the Council award. The Council will not pay for any costs that are funded by other sources.

## **.06 Non-Compliance with Award Provisions**

Failure to comply with any or all of the provisions of the award may have a negative impact on future funding by the Council and may be considered grounds for any or all of the following actions: withholding of payments pending correction of the deficiency by the non-Federal entity and/or more severe enforcement action by the Council or pass-through entity in accordance with 2 C.F.R. § 200.338; disallowance of (that is, denial of both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance; suspension or termination of all or any portion of the award; initiation of suspension or debarment proceedings as authorized under 2 C.F.R. part 180 and any Council regulations and policies promulgated pursuant to its authority (or in the case of a pass-through entity, recommendation that such a proceeding be initiated by the Council); withholding of further awards for the project or program; or enforcement of other remedies that may be legally available. *See also* 2 C.F.R. §§ 200.339 through 200.342.

## **.07 Prohibition against Assignment by the Non-Federal Entity**

The non-Federal entity shall not transfer, pledge, hypothecate, mortgage, or otherwise assign the award, or any interest therein, or any claim arising thereunder, to any party or parties, including without limitation any bank, trust company or other financing or financial institution, without the express written approval of the Grants Officer.

## **.08 Disclaimer Provisions**

- a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons for any actions of the non-Federal entity or third persons resulting in death, bodily injury, personal or property damage, or any other damage, loss or liability in connection with or resulting in any way from the performance of this award or any subaward or subcontract under this award.
- b. Acceptance of this award by the non-Federal entity does not in any way establish or constitute an agency relationship between the United States and the non-Federal entity.

## **C. FINANCIAL REQUIREMENTS**

### **.01 Financial Reports**

- a. In accordance with 2 C.F.R. § 200.327, the recipient shall submit a “Federal Financial Report” (Form SF-425 or any successor form, or another format as required by the Council) on a semi-annual basis. Semi-annual reporting periods will be specified in the grant award for either the periods ending March 31 and September 30, or any portion thereof, or June 30 and December 31, 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 Form SF-425 shall be submitted within 90 days after the expiration of the project period.
- b. The report should be submitted to the Grants Officer electronically, unless the recipient makes an arrangement with the Grants Officer for submission in hard copy (no more than one original and two copies), in accordance with the award conditions.

- c. The recipient must report to the Council at the conclusion of the grant period, or other period specified by the Council, on the use of funds pursuant to the award in accordance with the requirements in 31 C.F.R. § 34.803(e).
- d. The recipient must forecast cash requirements/draws semi-annually, for the periods October 1 to March 31 and April 1 to September 30, throughout the life of the grant. Forecasted cash requirements must be updated with the submission of each “Federal Financial Report.”

## **.02 Financial Management**

- a. In accordance with 2 C.F.R. § 200.302(a), each State, including a state’s administrative agents and the Gulf Consortium of Florida counties, must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state’s own funds. In addition, the state’s and other non-Federal entities’ financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions – including preparation of accurate, current and complete SF-425, Performance (Technical) Report, reporting on subawards, and any additional reports required by any additional award conditions. The financial management system also must be sufficient to trace funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations – including without limitation the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), Council and Treasury RESTORE Act regulations – and the terms and conditions of the Federal award. *See also* 2 C.F.R. § 200.450 “Lobbying.”
- b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b) and maintain detailed records sufficient to account for the receipt, obligation and expenditure of grant funds in accordance with the requirements in 31 C.F.R. § 34.803(b). *See also* 2 C.F.R. §§ 200.333 “Retention requirements for records”; 200.334 “Requests for transfer of records”; 200.335 “Methods for collection, transmission and storage of information”; 200.336 “Access to records”; and 200.337 “Restrictions on public access to records.” Specifically, the financial management system must provide for:
  1. Identification and tracking of all Council awards received and expended by the Catalog of Federal Domestic Assistance (CFDA) title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any;
  2. Records that adequately identify the source and application of all funds for Federally-funded activities, including information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest, and are supported by source documentation; and
  3. 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.
- c. The recipient must establish written procedures to implement the requirements set forth in Subsection, C.03 “Award Payments,” below, 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.

### .03 Award Payments

- a. The reimbursement method of payment will be used under this award, unless otherwise specified in a special award condition. The Grants Officer will determine the appropriate method of payment. Payments are made through electronic funds transfers directly to the non-Federal entity's bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 *et. seq.*) and the Cash Management Improvement Act (31 U.S.C. § 6501 *et. seq.*).
  1. Consistent with 2 C.F.R. § 200.305(a), for States, payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31 C.F.R. Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers" and Treasury Financial Manual Volume I, 4A-2000 "Overall Disbursing Rules for All Federal Agencies."
  2. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.
- b. The Council Award Number must be included on all payment-related correspondence, information, and forms.
- c. Unless otherwise provided for in the award terms, payments under this award will be made using the Department of Treasury's Automated Standard Application for Payment ([ASAP](#))<sup>2</sup> system. Under the ASAP system, payments will be made through preauthorized electronic funds transfers in accordance with the requirements of the Debt Collection Improvement Act of 1996. Awards paid under the ASAP system will contain a special award condition, clause or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system. Recipients enrolled in the ASAP system are not required to submit a "Request for Advance or Reimbursement" (Form SF-270 or successor form), in order to receive payments relating to their award. Pre-approval prior to requesting payments may be required for recipients that are determined by the Council to be in a high risk category or noncompliant (*see* 2 C.F.R. § 200.205 "Federal awarding agency review of risk posed by applicants," and *see* section M "Remedies for Noncompliance" below).
  1. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which enables them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts.
  2. The following information will be required to make withdrawals under ASAP: (i) ASAP account number, i.e., the Federal award number found on the cover sheet of the award; (ii) Agency Location Code (ALC); and (iii) Region Code.
- d. When expressly allowed through a special award condition, advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no event shall advances exceed the amount of cash required for a 30-day period. Funds advanced but not disbursed in a timely manner and any accrued interest thereon must be promptly returned to the Council. The Grants Officer may periodically request documentation from the non-Federal entity verifying that the elapsed time between the transfer of funds and disbursement has been minimized. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize time elapsing

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<sup>2</sup> Department of Treasury's Automated Standard Application for Payment (ASAP) system - [https://www.fiscal.treasury.gov/fsservices/gov/pmt/asap/asap\\_home.htm](https://www.fiscal.treasury.gov/fsservices/gov/pmt/asap/asap_home.htm), verified on 8/18/2015.



between transfer of funds and disbursement or if the non-Federal entity otherwise fails to continue to qualify for the advance payment method, the Grants Officer may change the method of payment to reimbursement only.

- e. Where the use of an alternative system other than ASAP is provided for in the award terms, requests for payment will be submitted to the Grants Officer.
  - 1. Form SF-3881, “ACH Vendor/Miscellaneous Payment Enrollment Form,” must be completed before the first award payment can be made via the “Request for Advance or Reimbursement” (Form SF-270) request.
  - 2. When advance payment is expressly allowed for by special award condition, the non-Federal entity must submit the request no more frequently than monthly, and advances will be approved for periods to cover only expenses anticipated over the following 30 days. The non-Federal entity must complete the “ACH Vendor Miscellaneous Payment Enrollment Form” (Form SF-3881 or successor form), and Form SF-270, and submit those forms to the Grants Officer.

#### **.04 Federal and Non-Federal Sharing**

- a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the award.
- b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case the non-Federal entity must meet its cost share commitment over the life of the award. The non-Federal entity must create and maintain sufficient records sufficient to justify all non-Federal sharing requirements and to facilitate questions and audits. *See* Section I “Audits” below for audit requirements, and *see* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

#### **.05 Program Income**

- a. Non-Federal entities are encouraged to earn income to defray program costs where appropriate. Any program income shall be earned and applied consistent with the requirements of 2 C.F.R. § 200.307.
- b. The recipient must maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds including the tracking of program income. Program income must be included in the non-Federal entity’s approved budget and tracked in accordance with the requirements in 31 C.F.R. § 34.803(b).
- c. All program income must be documented in the Federal financial report submitted to the Council for the period in which the income was earned.

## .06 Budget Changes and Transfer of Funds among Categories

- a. Requests for changes to the approved budget must be made in accordance with 2 C.F.R. § 200.308 “Revision of budget and program plans” and submitted in writing to the Grants Officer who will make the final determination on such requests and notify the non-Federal entity in writing thereof.
  1. Construction Awards. For construction Federal awards, the non-Federal entity must request prior written approval promptly from the Grants Officer for budget revisions whenever one or more of the following applies:
    - i. The revision results from changes in the scope or the objective of the project or program;
    - ii. The need arises for additional Federal funds to complete the project; or
    - iii. A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in 2 C.F.R. part 200, Subpart E—“Cost Principles.”
  2. Non-Construction Awards. For non-construction Federal awards, recipients must request prior written approval promptly from the Grants Officer for budget revisions whenever one or more of the following applies:
    - i. Change in the scope or the objective of the project or program;
    - ii. Change in a key person specified in the application or the Federal award;
    - iii. The disengagement from the project for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator;
    - iv. The inclusion, unless waived by the Council, of costs that require prior approval in accordance with 2 C.F.R. part 200 Subpart E—“Cost Principles” or 45 C.F.R. Part 75 Appendix IX “Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals,” or 48 C.F.R. Part 31 “Contract Cost Principles and Procedures,” as applicable;
    - v. The transfer of funds budgeted for participant support costs as defined in 2 C.F.R. § 200.75 “Participant support costs to other categories of expense”;
    - vi. The subawarding, transferring or contracting out of any work under a Federal award unless (a) described in the application and funded in the approved Federal award, or (b) applicable to the acquisition of supplies, material, equipment or general support services only; or
    - vii. Changes in the amount of approved cost-sharing or matching provided by the non-Federal entity. No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB. *See also* 2 C.F.R. §§ 200.102 “Exceptions” and 200.407 “Prior written approval.”
  3. Both Construction and Non-Construction Activities in Award. If a single award provides support for construction and non-construction work, the recipient must request prior written approval from the Grants Officer before making any fund or budget transfers between the two types of work supported.
- b. In accordance with 2 C.F.R. § 200.308(e), transfers of funds by the recipient among direct cost categories are permitted for awards in which the Federal share of the project is the Simplified Acquisition Threshold (\$150,000 as of 12/26/2013) or less. For awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold, the recipient must request prior written approval from the Grants Officer for transfers of funds among direct cost categories when the



cumulative amount of such direct cost transfers exceeds ten percent of the total budget<sup>3</sup> as last approved by the Grants Officer. The 10% threshold applies to the total Federal funds authorized by the Grants Officer at the time of the transfer request. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without the prior written approval of the Grants Officer. No transfer that enables any Federal appropriation, or part thereof, to be used for an unauthorized purpose will be permitted. The foregoing provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.

- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa without the prior written approval of the Grants Officer.

### **.07 Indirect (Facilities and Administrative [F&A]) Costs**

- a. Indirect (facilities and administrative [F&A]) costs will not be allowable charges against an award unless permitted under the award, specifically included as a line item in the award's approved budget and consistent with 2 C.F.R. §§ 200.414 "Indirect (F&A) costs" and Subpart E "Cost Principles."
- b. Indirect costs of recipients are subject to the three percent (3%) cap on administrative expenses stated in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204. The three percent cap on administrative expenses applies only to recipients and does not flow down to subrecipients.
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. Indirect costs charged must be consistent with the indirect cost rate agreement negotiated between the non-Federal entity 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. § 200.19) and must be included in the recipient's budget. The Council will accept approved indirect cost rates unless otherwise authorized by a Federal statute or regulation, or requirements at 2 C.F.R. § 200.414(c) are met.
  1. If indirect costs are permitted and the non-Federal entity wishes to include indirect costs in its budget, but the non-Federal entity has not previously established an indirect cost rate with a Federal agency, the requirements for determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III – VII to 2 C.F.R. Part 200 as follows:
    - Appendix III to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
    - Appendix IV to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
    - Appendix V to 2 C.F.R. Part 200 – State/Local Governmentwide Central Service Cost Allocation Plans;

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<sup>3</sup> The cumulative amount of direct cost transfers is calculated by summing the negative variances between the approved and proposed budgets. Variance is calculated by subtracting the proposed budget amount for each cost category from the approved budget amount for the category. Only variances less than zero are totaled. The cumulative negative variance is then divided by the total grant award budget to determine the percentage transferred, i.e., cumulative % of transfer(s) =  $\{[\sum (\text{negative variances})] / \text{total award budget}\} \times 100$ .

- Appendix VI to 2 C.F.R. Part 200 – Public Assistance Cost Allocation Plans; and
- Appendix VII to 2 C.F.R. Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

The cognizant agency for governmental units or agencies not specifically identified by OMB will be determined based on the Federal agency providing the largest amount of Federal funds. *See* 2 C.F.R. §200.416 “Cost allocation plans and indirect cost proposals.” When the Council is not the oversight or cognizant Federal agency, the non-Federal entity shall provide the Grants Officer with a copy of a negotiated rate agreement or a copy of the transmittal letter submitted to the cognizant or oversight Federal agency requesting a negotiated rate agreement.

2. For those organizations for which the Council is cognizant or has oversight, the Council or its designee will either negotiate a fixed rate with carry-forward provisions for the non-Federal entity or, in some instances, will limit its review to evaluating the procedures described in the non-Federal entity’s cost allocation plan. Indirect cost rates and cost allocation methodology reviews are subject to future audits to determine actual indirect costs.
3. Within 90 days after the award start date, the non-Federal entity shall submit to the address listed below documentation (indirect cost proposal, cost allocation plan, etc.) necessary to perform the review. The non-Federal entity shall provide the Grants Officer with a copy of the transmittal letter.

Gulf Coast Ecosystem Restoration Council Office  
 Attn: Senior Grants Management Officer  
 500 Poydras Street, Suite 1117  
 New Orleans, LA 70130

If the non-Federal entity fails to submit the required documentation to the Council within 90 days of the award start date, the Grants Officer may amend the award to preclude the recovery of any indirect costs under the award. If the Council, oversight or cognizant Federal agency determines there is a finding of good and sufficient cause to excuse the non-Federal entity’s delay in submitting the documentation, an extension of the 90-day due date may be approved by the Grants Officer.

4. The non-Federal entity may use the fixed rate proposed in the indirect cost plan until such time as the Council provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating the following year’s rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients’ fiscal years.
- e. The maximum dollar amount of allocable indirect costs for which the Council will reimburse the non-Federal entity shall be the lesser of:
1. The line item amount for the Federal share of indirect costs contained in the approved award budget, including all budget revisions approved in writing by the Grants Officer; or
  2. The Federal share of the total indirect costs allocable to the award based on the indirect cost rate approved by a cognizant or oversight Federal Agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved in writing on or before

the award end date, subject to the three percent (3%) cap on administrative expenses provided in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204.

- f. In addition, a non-Federal entity that is a State, local government, Indian tribe, institution of higher education, or nonprofit organization and has never received a negotiated indirect cost rate may elect to charge a *de minimis* rate of 10% of modified total direct costs. *See also* 2 C.F.R. § 200.414(f).

### **.08 Incurring Costs or Obligating Federal Funds Outside of the Period of Performance**

- a. The non-Federal entity shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance, i.e., the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal award. *See* 2 C.F.R. §§ 200.77 and 200.309.
  - 1. The Council or pass-through entity must include start and end dates of the period of performance in the Federal award.
  - 2. All activities supported through an award must occur and be completed during the approved period of performance, whether funded directly or through a subaward or subcontract, and all obligated costs must be liquidated within 90 days following the end date of the period of performance.
  - 3. The only costs which may be authorized for a period of not to exceed 90 days following the end of the project period are those solely associated with close-out activities. Close-out activities are limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-day closeout period upon a request by the non-Federal entity as provided in 2 C.F.R. § 200.343.
- b. Unless otherwise authorized in 2 C.F.R. § 200.343 or a special award condition, any extension of the project period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the project period.
- c. Pre-Award Costs. Pre-award costs are those incurred prior to the effective date of the Federal award directly pursuant to the negotiation and in anticipation of the Federal award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal award and only with the written approval of the Grants Officer. The recipient must use funds obligated and disbursed under the award only during the period of performance specified in the award document. *See* 2 C.F.R. § 200.458.
- d. The Council has no obligation to provide any additional prospective funding. Any amendment of the award to increase funding and to extend the project period is at the sole discretion of the Council.

### **.09 Tax Refunds**

Refunds of Federal Insurance Contributions Act (FICA) (26 U.S.C. §§ 3101-3128) or Federal Unemployment Tax Act (FUTA) (26 U.S.C. §§ 3301-3311) taxes received by the non-Federal entity

during or after the period of performance must be refunded or credited to the Council whenever the benefits were financed with Federal funds under the award. The non-Federal entity shall contact the Grants Officer immediately upon receipt of these refunds. The non-Federal entity shall in addition refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the period of performance ends.

## D. INTERNAL CONTROLS

Consistent with 2 C.F.R. § 200.303, each non-Federal entity:

- a. Must establish and maintain effective internal control over the Federal award that provides reasonable assurance that the non-Federal entity is managing the Federal award in compliance with Federal statutes, regulations, and the terms and conditions of the Federal award. These internal controls must be in compliance with guidance in “[Standards for Internal Control in the Federal Government](#)”<sup>4</sup> issued by the Comptroller General of the United States or the “[Internal Control Integrated Framework](#),”<sup>5</sup> issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).
- b. Must comply with Federal statutes, regulations, and the terms and conditions of the Federal award.
- c. Must evaluate and monitor the non-Federal entity’s compliance with statute, regulations and the terms and conditions of Federal award.
- d. Must take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
- e. Must take reasonable measures to safeguard protected personally identifiable information and other information the Council or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

## E. PROPERTY STANDARDS

### .01 Standards

The non-Federal entity must comply with the property standards as stipulated in 2 C.F.R. §§ 200.310 to 200.316.

### .02 Insurance coverage

Recipients must provide insurance coverage for real property and equipment acquired or improved with Federal funds equivalent to that provided for property owned by the non-Federal entity. Federally-owned

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<sup>4</sup> “Standards for Internal Control in the Federal Government” issued by the Comptroller General of the United States - <http://www.gao.gov/assets/80/76455.pdf>, verified on 8/18/2015.

<sup>5</sup> “Internal Control Integrated Framework,” issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO), Executive Summary - <http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>, verified on 8/18/2015.

property need not be insured unless required by the terms and conditions of the Federal award. *See* 2 C.F.R. § 200.310.

### **.03 Real Property**

- a. Real property or an interest in real property may not be acquired under an award without prior written approval of the Grants Officer.
- b. Title of real property. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal award will vest upon acquisition in the non-Federal entity.
- c. Use. Except as otherwise provided by Federal statutes or by the Council, real property must be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or any other interest therein.
- d. Willing Sellers. Land or interest in land may only be acquired by purchase, exchange or donation from a willing seller in accordance with the requirements in 31 C.F.R. § 34.803(f).
- e. Federal Acquisitions. Funds may not be used to acquire land in fee title by the Federal Government unless the exceptions in 31 C.F.R. § 34.803(g) are met.
- f. Disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Council or pass-through entity. The instructions will provide that the non-Federal entity do one of the following:
  1. Retain title after compensating the Council. The amount paid to Council will be computed by applying the Council's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, if the non-Federal entity is disposing of real property acquired or improved with a Federal award and acquiring replacement real property under the same Federal award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
  2. Sell the property and compensate the Council. The amount due to the Council will be calculated by applying the Council's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, it must utilize sales procedures that provide for competition to the extent practicable and result in the highest possible return.
  3. Transfer title to the Council or to a third party designated or approved by the Council. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.
- g. The Grants Officer may require the non-Federal entity to submit the Tangible Personal Property Report (Form SF-428 or successor form), and/or Real Property Status Report (Form SF-429 or successor form), including applicable attachments to each form, in connection with the reporting of tangible personal property or of real property acquired or improved, in whole or in part, under a Council financial assistance award. The Grants Officer may also require the non-Federal entity to

submit Form SF-428 and/or Form SF-429, or successor forms, in connection with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to tangible personal property or to real property acquired or improved, in whole or in part, under a Council financial assistance award.

#### **.04 Federally-owned and Exempt Federally-owned Property**

- a. Title to Federally-owned property<sup>6</sup> remains vested in the Federal government. The non-Federal entity must submit annually an inventory listing of Federally-owned property in its custody to the Grants Officer. Upon completion of the Federal award or when the property is no longer needed, the non-Federal entity must report the property to the Grants Officer for further Council utilization. If the Council has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Council has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. § 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, "Educational Technology: Ensuring Opportunity for All Children in the Next Century."). The Council will issue appropriate instructions to the non-Federal entity. The Council may exercise this option when statutory authority exists.
- b. Absent statutory authority and specific terms and conditions of the Federal award, title to exempt Federally-owned property acquired under the Federal award remains with the Federal government.
- c. The Grants Officer may require the non-Federal entity to submit the Tangible Personal Property Report (Form SF-428 or successor form), and/or Real Property Status Report (Form SF-429 or successor form), including applicable attachments to each form, in connection with the reporting of Federally-owned property that is in the non-Federal entity's custody pursuant to a Council financial assistance award or with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to Federally-owned property.

#### **.05 Equipment**

- a. Recipients must comply with the equipment standards provided in 2 C.F.R. §§ 200.313 "Equipment" and 200.439 "Equipment and other capital expenditures."
- b. American-Made Equipment and Products. Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this award.
- c. Use, management, and disposition of equipment acquired.
  1. For recipients that are States: The recipient must use, manage and dispose of equipment acquired under this award in accordance with state laws and procedures.
  2. For recipients that are not States: Equipment must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program

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<sup>6</sup> Federally-owned property as defined in 2 C.F.R. § 200.312 means property acquired under a Federal award where the title vests with the Federal government. Exempt Federally-owned property means property acquired under a Federal award where the Federal awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal award.



continues to be supported by the Federal award. Before disposing of equipment during the period of performance, the recipient must seek disposition instructions from the Grants Officer for equipment acquired under this award if the current fair market value of the equipment is greater than \$5,000 per unit. Disposition instructions must be requested by submitting a completed “Tangible Personal Property Report” (SF-428 or any successor form) and the “Disposition Request/Report” (SF-428-C or any successor form). In addition, not later than 60 days after the end of the period of performance, the recipient must submit to the Grants Officer a completed SF-428 and “Final Report Form” (SF-428-B or any successor form) if the recipient retains any equipment with a current fair market value greater than \$5,000 per unit.

## **.06 Supplies**

- a. Title to supplies vests in the non-Federal entity upon acquisition. If residual inventory of unused supplies exceeds \$5,000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other Federal award, then the non-Federal entity may retain the supplies for use on other activities or sell them, but must, in either case, compensate the Federal government for its share. The amount of compensation must be computed in the same manner as for equipment as prescribed in 2 C.F.R. § 200.313 “Equipment”; *see* 200.313(e)(2) for the calculation methodology. *See also* 2 C.F.R. § 200.453 “Materials and supplies costs, including costs of computing devices.” The recipient must report the value and the retention or sale of such supplies by submitting to the Grants Officer a completed “Tangible Personal Property Report” (SF-428 or any successor form) and “Final Report Form” (SF-428-B or any successor form) no later than 60 days after the end of the period of performance.
- b. As long as the Federal government retains an interest in the supplies, the non-Federal entity must not use supplies acquired under a Federal award to provide services to other organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute.

## **.07 Intangible Property**

- a. Title to intangible<sup>7</sup> property acquired under a Federal award vests upon acquisition in the non-Federal entity.
- b. The non-Federal entity must use intangible property for the originally-authorized purpose, and must not encumber the property without the prior written approval of the Council. When no longer needed for the originally authorized purpose, disposition of the intangible property must occur in accordance with the provisions in 2 C.F.R. § 200.313(e).
- c. The non-Federal entity may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under a Federal award. The Council reserves a royalty-free, perpetual, nonexclusive and irrevocable license to reproduce, publish, distribute, exhibit, and/or otherwise use and exploit the work throughout the world in all media now known or hereafter devised, and to authorize others to do so for Federal purposes.

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<sup>7</sup> Intangible property as defined by 2 C.F.R. § 200.59 means property having no physical existence, such as trademarks, copyrights, patents and patent applications and property, such as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership (whether the property is tangible or intangible).

- d. The non-Federal entity is subject to applicable regulations governing patents and inventions, including governmentwide regulations issued by the Department of Commerce at 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Awards, Contracts and Cooperative Agreements.”
- e. The Federal government has the right, perpetually throughout the world in all media now known or hereafter devised, to:
  1. Obtain, reproduce, publish, distribute, exhibit, and/or otherwise use and exploit the data produced under a Federal award; and
  2. Authorize others to do so for Federal purposes.
- f. Freedom of Information Act (FOIA). Pursuant to 2 C.F.R. § 200.315(e), in response to a FOIA request for research data relating to published research findings<sup>8</sup> produced under a Federal award that were used by the Federal government in developing an agency action that has the force and effect of law, the Council will request, and the non-Federal entity must provide, within a reasonable time, the research data<sup>9</sup> so that such data can be made available to the public through the procedures established under the FOIA. If the Council obtains the research data solely in response to a FOIA request, the Council may charge the requester a reasonable fee equal to the full incremental cost of obtaining the research data that reflects the costs incurred by the Council and the non-Federal entity. Pursuant to 5 U.S.C. § 552(a)(4)(A), this fee is in addition to any fees the Council may assess under the FOIA.

## **.08 Property Trust Relationship**

Real property, equipment and intangible property acquired or improved with a Federal award must be held in trust by the non-Federal entity as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Council may require the non-Federal entity to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

## **F. PROCUREMENT STANDARDS**

Pursuant to 2 C.F.R. § 200.317, when procuring property and services under this Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The

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<sup>8</sup> Published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) means findings are published in a peer-reviewed scientific or technical journal; or a Federal agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law. Used by the Federal government in developing an “agency action that has the force and effect of law” is defined as when an agency publicly and officially cites the research findings in support of an agency action that has the force and effect of law.

<sup>9</sup> As defined by 2 C.F.R. § 200.315(e)(3), research data means the recorded factual material commonly accepted in the scientific community as necessary to validate research findings, but not any of the following: preliminary analyses, drafts of scientific papers, plans for future research, peer reviews, or communications with colleagues. This “recorded” material excludes physical objects (e.g., laboratory samples). Research data also do not include: trade secrets, commercial information, materials necessary to be held confidential by a researcher until they are published, or similar information which is protected under law; and personnel and medical information and similar information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, such as information that could be used to identify a particular person in a research study.



State will comply with 2 C.F.R. § 200.322 “Procurement of recovered materials,” and the State must ensure that every purchase order or other contract includes any clauses required by section 2 C.F.R. § 200.326 “Contract provisions.” All other non-Federal entities, including subrecipients of a State, will follow the requirements of 2 C.F.R. §§ 200.318 “General procurement standards” through 200.326 “Contract provisions.”

- a. For recipients that are States: When executing procurement actions under the award, the recipient must follow the same policies and procedures it uses for procurements from its non-Federal funds. The recipient must ensure that every purchase order or other contract contains any clauses required by federal statutes and EOs and their implementing regulations, including all of the provisions listed in Appendix II to 2 C.F.R. Part 200 “Contract Provisions for Non-Federal Entity Contracts under Federal Awards,” as well as any other provisions required by law or regulations.
- b. For recipients that are not States: The recipient must follow all procurement requirements set forth in 2 C.F.R. §§ 200.318, 200.319, 200.320, 200.321, 200.323, 200.324, and 200.325. In addition, all contracts executed by the recipient to accomplish the approved scope of work must contain any clauses required by federal statutes and EOs and their implementing regulations, including all of the provisions listed in Appendix II to 2 C.F.R. Part 200 “Contract Provisions for Non-Federal Entity Contracts under Federal Awards.”

## **G. 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 non-Federal entity shall comply with the non-discrimination requirements below:

### **.01 Statutory Provisions**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and any Council regulations and policies promulgated pursuant to its authority prohibit 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. The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 *et seq.*) 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;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.
- e. Revised ADA Standards for Accessible Design for Construction Awards revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286) which adopted new enforceable accessibility standards called the “2010 ADA

Standards for Accessible Design” (2010 Standards). All new construction and alteration projects shall comply with the 2010 Standards.

- f. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance;
- g. Any other applicable non-discrimination law(s).

## **.02 Other Provisions**

- a. Parts II and III of EO 11246, “Equal Employment Opportunity,” (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and EO 12086 (43 FR 46501, 1978), requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO 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,” requiring 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.
- c. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. The following provision implements that law:

In accordance with 41 U.S.C. § 4712, an employee of a non-Federal entity or contractor under a Federal award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal award, subaward, or a contract under a Federal award or subaward, a gross waste of Federal funds, an abuse of authority relating to a Federal award or subaward or contract under a Federal award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal award, subaward, or contract under a Federal award or subaward. These persons or bodies include:

1. A Member of Congress or a representative of a committee of Congress.
2. An Inspector General.
3. The Government Accountability Office.
4. A Federal employee responsible for contract or grant oversight or management at the relevant agency.
5. An authorized official of the Department of Justice or other law enforcement agency.
6. A court or grand jury.
7. A management official or other employee of the contractor, subcontractor, or grantee who has the responsibility to investigate, discover, or address misconduct.

Non-Federal entities shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce.

### **.03 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.

## **H. RECORDS RETENTION**

- a. The recipient must retain all records pertinent to this award for a period of no less than three years, beginning on a date as described in 2 C.F.R. § 200.333. 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:
  1. 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 (if applicable), all conflict of interest and other procurement rules governing a particular contract, and any bid protests;
  2. Copies of all subawards, including 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 (if applicable);
  3. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients (if applicable);
  4. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of Administrative Costs charged to this award;
  5. All supporting documentation for the performance outcome and other information reported on the recipient's Financial Reports and Performance (Technical) Reports; and
  6. Any reports, publications, and data sets from any research conducted under this award.
- b. 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, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

## I. AUDITS

- a. Under the Government Accounting Office’s authorities (5 U.S.C. § 701 et seq.) and the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*, an audit of the award may be conducted at any time. The Treasury Office of Inspector General (OIG), Government Accounting Office (GAO) and the Council are authorized to audit Council awards. *See* Section 1608 of the RESTORE Act; and *see* 31 C.F.R. §§ 34.205, 34.406, 34.508 and 34.805.
- b. The Treasury OIG (as specified in the RESTORE Act), or any of his or her duly authorized representatives, the GAO and the Council shall have timely and unrestricted access to any pertinent books, documents, papers, and records of the non-Federal entity, whether written, printed, recorded, produced, or reproduced by any electronic, mechanical, magnetic, or other process or medium, in order to make audits, inspections, excerpts, transcripts, or other examinations as authorized by law.
- c. If the Treasury OIG requires a program audit on a Council award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with the Council, or any other Federal, state, or local audit entity.
- d. The Treasury OIG, the GAO, and the Council 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.

### .01 Organization-Wide, Program-Specific, and Project Audits

- a. Organization-wide or program-specific audits must be performed in accordance with the Single Audit Act Amendments of 1996, as implemented by 2 C.F.R. part 200, Subpart F, “Audit Requirements.” Recipients that are subject to the provisions of 2 C.F.R. part 200, Subpart F and that expend \$750,000 or more in a year in Federal awards must have an audit conducted for that year in accordance with the requirements contained in 2 C.F.R. part 200, Subpart F. A copy of the audit shall be submitted to the Bureau of the Census, which has been designated by OMB as a central clearinghouse, by electronic submission to the Federal Audit Clearinghouse [website](#).<sup>10</sup> If it is necessary to submit by paper, the address for submission is:

Federal Audit Clearinghouse  
Bureau of the Census  
1201 E. 10th Street  
Jeffersonville, IN 47132

- b. Except for the provisions for biennial audits provided in paragraphs (1) and (2) of this section, audits required must be performed annually. Any biennial audit must cover both years within the biennial period.
  1. A State, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.

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<sup>10</sup> Federal Audit Clearinghouse website - <http://harvester.census.gov/sac/>, verified on 6/5/2015.

2. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.
- c. Council programs may have specific audit guidelines that will be incorporated into the award. When the Council does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507. The non-Federal entity may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at [OIGCounsel@oig.treas.gov](mailto:OIGCounsel@oig.treas.gov) or if e-mail is unavailable, submission to the OIG can be made at the following address:

Treasury Office of Inspector General  
1500 Pennsylvania Ave. NW  
Washington, DC 20220

## **.02 Audit Resolution Process**

- a. An audit of the award may result in the disallowance of costs incurred by the non-Federal entity and the establishment of a debt (account receivable) due the Council. For this reason, the non-Federal entity should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting evidence whenever audit results are disputed.
- b. A non-Federal entity whose award is audited has the following opportunities to dispute the proposed disallowance of costs and the establishment of a debt:
  1. Unless the Inspector General determines otherwise, the non-Federal entity has 30 days after the date of the transmittal of the draft audit report to submit written comments and documentary evidence.
  2. The non-Federal entity has 30 days after the date of the transmittal of the final audit report to submit written comments and documentary evidence. There will be no extension of this deadline.
  3. The Council will review the documentary evidence submitted by the non-Federal entity and notify the non-Federal entity of the results in an *Audit Resolution Determination Letter*. The non-Federal entity has 30 days after the date of receipt of the *Audit Resolution Determination Letter* to submit a written appeal. There will be no extension of this deadline. The appeal is the last opportunity for the non-Federal entity to submit written comments and documentary evidence that dispute the validity of the audit resolution determination.
  4. An appeal of the Audit Resolution Determination does not prevent the establishment of the audit-related debt nor does it prevent the accrual of interest on the debt. If the Audit Resolution Determination is overruled or modified on appeal, appropriate corrective action will be taken retroactively. An appeal will stay the offset of funds owed by the auditee against funds due to the auditee.
  5. The Council will review the non-Federal entity's appeal and notify the non-Federal entity of the results in an *Appeal Determination Letter*. After the opportunity to appeal has expired or after the appeal determination has been rendered, the Council will not accept any further documentary evidence from the non-Federal entity. No other administrative appeals to the Council are available.

## J. DEBTS

### .01 Payment of Debts Owed the Federal Government

- a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Council debt collection procedures are set out in 2 C.F.R. part 200, Subpart D. In accordance with 2 C.F.R. § 200.345, delinquent debt includes any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award, constituting a debt to the Federal government (this includes a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 2 C.F.R. § 200.345, failure to pay a debt by the due date, or if there is no due date, within 90 calendar days after demand, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. parts 900 through 999. The Council will transfer any debt that is more than 180 days delinquent to the Bureau of the Fiscal Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and any Council regulations and policies promulgated pursuant to its authority, and may result in the Council taking further action as specified in Section B.06 “Non-Compliance With Award Provisions” Above. Funds for payment of a debt shall 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).
- b. If a non-Federal entity fails to repay a debt within 90 calendar days after the demand, the Council may reduce the debt by: (1) Making an administrative offset against other requests for reimbursements; (2) Withholding advance payments otherwise due to the non-Federal entity; or (3) Other action permitted by Federal statute. *See* 2 C.F.R. § 200.345(a).

### .02 Late Payment Charges

- a. Interest shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the [Department of the Treasury’s Current Value of Funds Rate \(CVFR\)](#).<sup>11</sup> The CVFR is published by the Department of the Treasury in the [Federal Register](#)<sup>12</sup> and in the [Treasury Financial Manual Bulletin](#).<sup>13</sup> The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent (6%) per year or such higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, are determined by the Council.

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<sup>11</sup> Department of the Treasury’s Current Value of Funds Rate (CVFR) webpage - [https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm), verified 8/18/2015.

<sup>12</sup> Federal Register website - <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> and <http://www.federalregister.gov/>, verified 8/18/2015.

<sup>13</sup> Treasury Financial Manual Bulletin website - <http://fm.fiscal.treasury.gov/v1/bull.html>, verified 8/18/2015.



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

Pursuant to 28 U.S.C. § 3201(e), unless waived by the Council 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.

## **K. GOVERNMENTWIDE DEBARMENT AND SUSPENSION**

The non-Federal entity shall comply with the provisions of 2 C.F.R. Part 180, "OMB Guidelines To Agencies on Governmentwide Debarment and Suspension (Nonprocurement)," which generally prohibit entities, and their principals, that have been debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors.

## **L. LOBBYING RESTRICTIONS**

### **.01 Statutory Provisions**

The non-Federal entity shall comply with 2 C.F.R. § 200.450 ("Lobbying"), which incorporates the provisions of 31 U.S.C. § 1352, the "New Restrictions on Lobbying" published at 55 FR 6736 (February 26, 1990), and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with any Council regulations and policies promulgated pursuant to its authority. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the award, and require the disclosure of the use of non-Federal funds for lobbying. Executive lobbying costs, i.e., costs incurred in attempting to improperly influence<sup>14</sup> either directly or indirectly an employee or officer of the executive branch of the Federal government to give consideration or to act regarding a Federal award or a regulatory matter, are unallowable costs. *See* 2 C.F.R. § 200.450(b) and (c).

### **.02 Disclosure of Lobbying Activities**

The non-Federal entity receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL or any successor form, "Disclosure of Lobbying Activities," regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 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. The non-Federal entity must submit any required Forms SF-LLL, including those received from subrecipients, contractors, and subcontractors, to the Grants Officer. *See* 31 U.S.C. § 1352.

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<sup>14</sup> To improperly influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal award or regulatory matter on any basis other than the merits of the matter.

## M. REMEDIES FOR NONCOMPLIANCE

- a. If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal award, the Council or pass-through entity may impose additional conditions, as described in 2 C.F.R. § 200.207 “Specific conditions” (e.g., requiring additional reporting or more frequent submission of the Financial or Performance (Technical) Reports; requiring additional activity, project, or program monitoring; requiring the recipient or one or more of its subrecipients to obtain technical or management assistance; or establishing additional actions that require prior approval). If the Council or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, pursuant to 2 C.F.R. § 200.338, the Council or pass-through entity may take one or more of the following actions, as appropriate in the circumstances:
  1. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Council or pass-through entity.
  2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
  3. Wholly or partly suspend or terminate the Federal award.
  4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. part 180 and Council regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by the Council).
  5. Withhold further Federal awards for the project or program.
  6. Take other remedies that may be legally available.

The Council will notify the recipient in writing of the Council’s proposed determination that an instance of non-compliance has occurred, provide details regarding the instance of noncompliance, and indicate the remedy that the Council proposes to pursue. The recipient will then have 30 calendar days to respond and provide information and documentation contesting the Council’s proposed determination or suggesting an alternative remedy. The Council will consider information provided by the recipient and issue a final determination in writing, which will state the Council’s final findings regarding noncompliance and the remedy to be imposed.

- b. RESTORE Act-Specific Remedy for Non-compliance
  1. If the Council determines that the recipient has expended funds to cover the cost of any ineligible activities, in addition to the remedies available in this section, the Council, in coordination with the U.S. Department of Treasury (“Treasury”), will make no additional payments to the recipient from the RESTORE Trust Fund, including no payments from the RESTORE Trust Fund for activities, projects, or programs under any other RESTORE Act Component until the recipient has either (a) deposited an amount equal to the amount expended for the ineligible activities in the RESTORE Trust Fund, or (b) the Council, in coordination with 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. *See* 33 U.S.C. § 1321(t)(1)(G) and (H), and *see* 31 C.F.R. § 34.804 “Noncompliance.”



2. If the Council determines that the recipient has materially violated the terms of the award, the Council, in coordination with Treasury, will make no additional funds available to the recipient from any part of the RESTORE Trust Fund until the recipient corrects the violation.
- c. In extraordinary circumstances, the Council 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 the Council's determination or suggest an alternative remedy in writing to the Council, and the Council will issue a final determination.
  - d. Instead of, or in addition to, the remedies listed above, the Council may refer the noncompliance to the Treasury OIG for investigation or audit, pursuant to 31 C.F.R. § 34.805 "Treasury Inspector General." The Council will refer all allegations of fraud, waste, or abuse to the Treasury OIG.
  - e. Termination. In accordance with 2 C.F.R. § 200.339, when a Federal award is terminated or partially terminated, both the Council or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 2 C.F.R. §§ 200.343 "Closeout" and 200.344 "Post-closeout adjustments and continuing responsibilities."
1. The Federal award may be terminated in whole or in part as follows:
    - i. By the Council or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
    - ii. By the Council or pass-through entity for cause;
    - iii. By the Council or pass-through entity with the consent of the non-Federal entity, in which case the two parties will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
    - iv. By the non-Federal entity upon sending to the Council or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Council or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal award or subaward will not accomplish the purposes for which the Federal award was made, the Council or pass-through entity may terminate the Federal award in its entirety.
  2. The Council or pass-through entity is required to provide a notice of termination to the non-federal entity, pursuant to 2 C.F.R. § 200.340:
    - i. If the Federal award is terminated for the non-Federal entity's failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.
    - ii. Upon termination of a Federal award, the Council will provide the information required under FFATA to the Federal Web site established to fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. § 417b and 31 U.S.C. § 3321 and implementing guidance at 2 C.F.R. part 77. See also 2 C.F.R. part 180 for the requirements for Suspension and Debarment.

## N. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

### .01 Code of Conduct for Recipients

- a. The non-Federal entity must immediately report any indication of fraud, waste, abuse or potential criminal activity pertaining to grant funds to the Council, Treasury and the Treasury Inspector General in accordance with the requirements in 31 C.F.R. § 34.803(a).
- b. Pursuant to the certification in Form SF-424B, paragraph 3, or equivalent, the non-Federal entity must maintain written standards of conduct to establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain in the administration of this award.
- c. Non-Federal entities must comply with the requirements of 2 C.F.R. § 200.318 “General procurement standards,” including maintaining written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer or agent shall participate in the selection, award or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to or planning to employ any of the foregoing parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees and agents of the non-Federal entity must neither solicit nor accept any gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set written standards of conduct for circumstances in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Such standards must provide for disciplinary actions to be taken for violations of the standards of conduct by officers, employees or agents of the non-Federal entity.

### .02 Applicability of Award Provisions to Subrecipients

- a. The non-Federal entity shall require all subrecipients, including lower tier subrecipients, under the award to comply with the provisions of the award, including applicable cost principles, administrative provisions, audit requirements, and all associated terms and conditions. *See* 2 C.F.R. part 200, Subpart D, “Subrecipient Monitoring and Management” *and see* 2 C.F.R. § 200.101(b)(1). Additionally, the non-Federal entity must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200, including evaluating and documenting a subrecipient’s risk of noncompliance; providing training and technical assistance necessary to complete the subaward activities; monitoring the performance of the subrecipient; and taking any necessary enforcement actions against a noncompliant subrecipient. *See* 2 C.F.R. § 200.331 “Requirements for pass through entities.”
- b. Prior to dispersing funds to a subrecipient, the recipient must execute a legally-binding written agreement with the entity receiving the subaward in accordance with the requirements in 31 C.F.R. § 34.803(c). The written agreement shall extend all applicable program requirements to the subrecipient. The written agreement must include a requirement that the contractor or subrecipient retain all records in compliance with 2 C.F.R. § 200.333.
- c. A non-Federal entity is responsible for subrecipient monitoring, including the following:

1. Federal Award Identification. The non-Federal entity must ensure that each subaward includes the following information and applicable compliance requirements at the time of the subaward. If any of these data elements change, the pass through entity must include the changes in a subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal award and subaward.
  - i. Subrecipient name (which must match the registered name in DUNS);
  - ii. Subrecipient’s DUNS number (*see* 2 C.F.R. § 200.32 “Data Universal Numbering System (DUNS) number”);
  - iii. Federal Award Identification Number (FAIN);
  - iv. Federal Award Date (*see* 2 C.F.R. § 200.39 “Federal award date”);
  - v. Subaward Period of Performance Start and End Date;
  - vi. Amount of Federal Funds Obligated by this action;
  - vii. Total Amount of Federal Funds Obligated to the subrecipient;
  - viii. Total Amount of the Federal Award;
  - ix. Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
  - x. Name of Federal awarding agency, pass-through entity and contact information for awarding official;
  - xi. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;
  - xii. Identification of whether the award is for research and development (R&D); and
  - xiii. Indirect cost rate for the Federal award (including whether the *de minimis* rate is charged per 2 C.F.R. § 200.414 “Indirect (F&A) costs”).
  
2. Award Monitoring. The non-Federal entity is responsible for oversight of the operations of the Federal award supported activities. The non-Federal entity must monitor its activities under Federal awards to assure that compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. *See* 2 C.F.R. §§ 200.328 “Monitoring and reporting program performance,” and 200.331 “Requirements for pass-through entities.” The non-Federal entity shall monitor activities of the subrecipient through reporting, site visits, regular contact, or other means, as necessary to ensure that the subaward is used solely for authorized purposes, in compliance with Federal statutes, regulations and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the subrecipient must include:
  - i. Reviewing financial and programmatic reports required by the pass-through entity.
  - ii. Following-up and ensuring that the subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
  - iii. Issuing a management decision for audit findings pertaining to the Federal award provided to the subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 “Management decision.”
  
3. Subrecipient Audits. The non-Federal entity is responsible for ensuring that subrecipients expending \$750,000 or more in Federal awards during the subrecipient’s fiscal year have met the audit requirements of 2 C.F.R. part 200, Subpart F, “Audit Requirements,” and that the required audits are completed within nine (9) months after the end of the subrecipient’s audit period. In addition, the non-Federal entity is required to issue a management decision on audit findings within six (6) months after receipt of the subrecipient’s audit report, and to ensure that the

subrecipient takes timely and appropriate corrective action on all audit findings. Pursuant to 2 C.F.R. § 200.505, in cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in 2 C.F.R. § 200.338 “Remedies for noncompliance.”

### **.03 Competition and Codes of Conduct for Subawards**

- a. Unless otherwise approved in writing in advance by the Grants Officer, all subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition in accordance with the requirements of 2 C.F.R. §§ 200.317 through 200.326 “Procurement Standards.” The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among subrecipients that may restrict or eliminate competition. In order to ensure objective subrecipient performance and eliminate unfair competitive advantage, subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent must participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to or planning to employ any of the foregoing parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards of conduct for circumstances in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Such standards must provide for disciplinary actions to be taken for violations of the standards of conduct by officers, employees or agents of the non-Federal entity.
- c. If the non-Federal entity has a parent, affiliate or subsidiary organization that is not a State, local government or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest, wherein relationships with a parent company, affiliate or subsidiary organization cause the non-Federal entity to be or appear to be unable to be impartial in conducting a procurement action involving such related organization.
- d. 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. An appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It may also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

### **.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts**

- a. The non-Federal entity shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:

*Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a Council official) are subject to 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).” 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).*

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. Pursuant to 2 C.F.R. Appendix II to part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards,” and 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:
  1. Contracts for more than the Simplified Acquisition Threshold (\$150,000 as of 12-26-2013), 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.
  2. 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.
  3. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “Federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with EO 11246, “Equal Employment Opportunity” (30 F.R. 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
  4. Davis-Bacon Act. 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 C.F.R. 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 Council. 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 C.F.R. 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 Council.

5. 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 C.F.R. 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.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 non-Federal entity or subrecipient must comply with the requirements of 37 C.F.R. 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.
7. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
8. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (*see* 2 C.F.R. § 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in [SAM](#)<sup>15</sup> 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.
9. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification, a “Disclosure of Lobbying Activities” (Form SF-LLL or successor form). 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

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<sup>15</sup> System for Award Management (SAM) website - <https://www.sam.gov>, verified 8/18/2015.

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 Federal award recipient. The Form SF-LLL must be submitted within 15 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. The non-Federal entity must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

10. Procurement of recovered materials (section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act). A state agency or agency of a political subdivision of a State and its contractors must comply with requirements of Section 6002 including 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.
  11. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. Non-Federal entities and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce. *See* section G.02 (c) of this document.
- c. The recipient must include in its legal agreement or contract with the subrecipient a requirement that the subrecipient make available to the Council, the Treasury OIG, and the GAO 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.
  - d. The recipient and any subrecipients, contractors, or subcontractors must comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), as applicable, which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
  - e. When contracting, the non-Federal entity must take all necessary affirmative steps, as prescribed in 2 C.F.R. § 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

## **.05 Subaward and/or Contract to a Federal Agency**

- a. The non-Federal entity, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of the Council and/or other

Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.

- b. Requests for approval of such action must be submitted in writing to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing of the final determination.

## **O. AMENDMENTS AND CLOSEOUT**

- a. Amendments to an award must be requested in writing and require the written approval of the Grants Officer. The recipient must provide an explanation for the reason an amendment is requested. The Council reserves the right to amend the terms of the award when required by law or regulation.
- b. The non-Federal entity must comply with the closeout requirements as stipulated in 2 C.F.R. § 200.343. Closeout of the award does not affect any of the post-closeout adjustments and continuing responsibilities under 2 C.F.R. § 200.344.

## **P. ENVIRONMENTAL COMPLIANCE**

Environmental impacts must be considered by Federal decision-makers in deciding whether or not to approve: (1) a proposal for Federal assistance; (2) such proposal with mitigation; or (3) a different proposal having less adverse environmental impacts. Federal environmental laws require that the funding agency initiate an early planning process that considers potential impacts that projects funded with Federal assistance may have on the environment. Non-Federal entities must comply with all applicable environmental laws, regulations and policies. Additionally, recipients may be required to assist the Council in complying with laws, regulations and policies applicable to Council actions. Laws, regulations, and policies potentially applicable to Council actions and/or recipients may include but are not limited to the statutes and EOs listed below. The Council does not make independent determinations of compliance with laws such as the Clean Water Act. Rather, the Council may require a recipient to provide information to the Council to demonstrate that the recipient has complied with or will comply with all such requirements. In some cases, if additional information is required after an application is selected, funds may be withheld by the Grants Officer under a special award condition requiring the recipient to submit additional information sufficient to enable the Council to make an assessment regarding compliance with applicable environmental laws, regulations and policies.

If a recipient is permitted to make any subawards, the recipient must include all of the environmental statutes, regulations and EOs 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.

### **.01 The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*)**

Council approval of financial assistance awards may be subject to the environmental review requirements of the National Environmental Policy Act (NEPA). In such cases, recipients of financial assistance awards may be required to assist the Council in complying with NEPA. For example, applicants may be required to assist the Council by providing information on a proposal's potential environmental impacts, or drafting or supplementing an environmental assessment or environmental impact statement if the Council determines such documentation is required. Independent of the Council's responsibility to comply with



NEPA, where appropriate, projects or programs funded by the Council may trigger Federal agency NEPA compliance duties involving a separate Federal action, such as the issuance of a Federal permit.

## **.02 The Endangered Species Act (16 U.S.C. § 1531 *et seq.*)**

Council approval of financial assistance for project implementation is subject to compliance with section 7 of the Endangered Species Act (ESA). Recipients must identify any impact or activities that may involve a Federally-listed threatened or endangered species, or their designated critical habitat. Section 7 of the ESA requires every Federal agency to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Federal agencies have the responsibility for ensuring that a protected species or habitat does not incur adverse effects from actions taken under Federal assistance awards, and for conducting the required consultations with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service under the Endangered Species Act, as applicable.

## **.03 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)**

Recipients of financial assistance awards must identify to the Council any effects the award may have on essential fish habitat (EFH). Federal agencies which fund, permit, or carry out activities that may adversely impact EFH are required to consult with NMFS regarding the potential effects of their actions, and respond in writing to NMFS recommendations. These recommendations may include measures to avoid, minimize, mitigate, or otherwise offset adverse effects on EFH. In addition, NMFS is required to comment on any state agency activities that would impact EFH. Provided the specifications outlined in the regulations are met, EFH consultations will be incorporated into interagency procedures previously established under NEPA, the Endangered Species Act, Clean Water Act, Fish and Wildlife Coordination Act, or other applicable statutes.

## **.04 Clean Water Act Section 404 (33 U.S.C. § 1344 *et seq.*)**

Clean Water Act (CWA) Section 404 regulates the discharge of dredged or fill material into waters of the United States, including wetlands. Activities in waters of the United States regulated under this program include fill for development, water resource projects (such as levees and some coastal restoration activities), and infrastructure development (such as highways and airports). CWA Section 404 requires a permit from the U.S. Army Corps of Engineers before dredged or fill material may be discharged into waters of the United States, unless the activity is exempt from Section 404 regulation (e.g., certain farming and forestry activities).

## **.05 The Migratory Bird Treaty Act (16 U.S.C. §§ 703-712), Bald and Golden Eagle Protection Act (16 U.S.C. § 668 *et seq.*), and Executive Order No. 13186, Responsibilities of Federal Agencies to Protect Migratory Birds**

A number of prohibitions and limitations apply to projects that adversely impact migratory birds and bald and golden eagles. Executive Order 13186 directs Federal agencies to enter a Memorandum of Understanding with the U.S. Fish and Wildlife Service to promote conservation of migratory bird populations when a Federal action will have a measurable negative impact on migratory birds.

## **.06 National Historic Preservation Act (16 U.S.C. § 470 *et seq.*)**

Council approval of financial assistance awards may be subject to Section 106 of the National Historic Preservation Act (NHPA). In such cases, recipients of financial assistance awards may be requested to assist the Council in identifying any adverse effects the award may have on properties included on or eligible for inclusion on the National Register of Historic Places. Pursuant to 36 C.F.R. § 800.2(c)(4), applicants and recipients may also be requested to assist the Council in initiating consultation with State or Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian Organizations or other applicable interested parties as necessary to the Council’s responsibilities to identify historic properties, assess adverse effects to them, and determine ways to avoid, minimize or mitigate adverse effects on historic properties.

Pursuant to guidelines issued by the National Park Service under the Abandoned Shipwreck Act (43 U.S.C. §§ 2101-2106), state and Federal agencies whose activities may disturb, alter, damage, or destroy State-owned shipwrecks must take into account the effect of the proposed activity on any state-owned shipwreck and afford the state agencies assigned management responsibility for state-owned shipwrecks a reasonable opportunity to comment on the proposed activity.

## **.07 Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (33 U.S.C. § 1251 *et seq.*) (Clean Water Act), and Executive Order 11738 (“Providing for administration of the Clean Air Act and the Federal Water Pollution Control Act with respect to Federal contracts, grants or loans”)**

Recipients must comply with the provisions of the Clean Air Act (42 U.S.C. §§ 7401 *et seq.*), Clean Water Act (33 U.S.C. §§ 1251 *et seq.*), and Executive Order 11738. Recipients shall not use a facility that the Environmental Protection Agency (EPA) has placed on EPA’s List of Violating Facilities (this list is incorporated into the Excluded Parties List System which is part of SAM) in performing any award that is nonexempt under subpart J of 2 C.F.R. part 1532.

## **.08 The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*)**

Flood insurance, when available, is required for Federally-assisted construction or acquisition in areas having special flood hazards and flood-prone areas. When required, recipients will ensure that flood insurance is secured for their project(s).

## **.09 Executive Order 11988 (“Floodplain Management”), Executive Order 13690 (“Establishing a Federal Flood Risk Management Standard and a Process for Further Soliciting and Considering Stakeholder Input”), and Executive Order 11990 (“Protection of Wetlands”)**

Recipients must identify proposed actions located in a floodplain and/or wetlands to enable the Council to determine whether there is an alternative to minimize any potential harm. Floodplains are identified through a climate-informed science approach, adding 2-3 feet of elevation to the 100-year floodplain, or using the 500-year floodplain.

## **.10 Executive Order 13112 (“Invasive Species”)**

Federal agencies must identify actions that may affect the status of invasive species and use relevant programs and authorities to: (i) prevent the introduction of invasive species; (ii) detect and respond rapidly to and control populations of such species in a cost-effective and environmentally sound manner; (iii) monitor invasive species populations accurately and reliably; (iv) provide for restoration of native species and habitat conditions in ecosystems that have been invaded; (v) conduct research on invasive species and develop technologies to prevent introduction and provide for environmentally sound control of invasive species; and (vi) promote public education on invasive species and the means to address them. In addition, an agency may not authorize, fund, or carry out actions that it believes are likely to cause or promote the introduction or spread of invasive species in the United States or elsewhere.

## **.11 The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*)**

Federally funded projects must be consistent with a coastal state’s approved management program for the coastal zone.

## **.12 The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*)**

Only in certain circumstances may Federal funding be provided for actions within a Coastal Barrier System. The Coastal Barriers Resources Act generally prohibits new Federal expenditures, including Federal grants, within specific units of the Coastal Barrier Resources System (CBRS). Although the Act restricts Federal expenditures for coastal barrier development, Section 6(a)(6)(A) contains an exemption for projects relating to the study, management, protection, or enhancement of fish and wildlife resources and habitats, including recreational projects. Section 6(a)(6)(G) also exempts nonstructural projects for shoreline stabilization that are designed to mimic, enhance or restore natural stabilization systems. However, care must be taken when interpreting any exemptions described, as they are limited to projects that are consistent with the purpose of this Act as interpreted by the lead agency, Department of Interior. Applicants should work with the U.S. Fish and Wildlife Service, which reviews proposals to determine whether a project falls within a protected unit and if so, whether an exception applies. Maps of the CBRS are available through the interactive U.S. Fish and Wildlife Service [Coastal Barrier Resources System Mapper](#).<sup>16</sup>

## **.13 The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*)**

This Act applies to awards that may affect existing or proposed components of the National Wild and Scenic Rivers system. Funded projects in the National Wild and Scenic Rivers system must be consistent with Wild and Scenic Rivers Act requirements.

## **.14 The Safe Drinking Water Act (42 U.S.C. § 300 *et seq.*)**

The Sole Source Aquifer program under this statute precludes Federal financial assistance for any project that the EPA determines may contaminate a designated sole source aquifer through a recharge zone so as to create a significant hazard to public health.

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<sup>16</sup> U.S. Fish and Wildlife Service Interactive Coastal Barrier Resources System Mapper - <http://www.fws.gov/cbra/Maps/Mapper.html>, verified 8/18/2015.

**.15 The Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.)**

This act regulates the generation, transportation, treatment, and disposal of hazardous wastes, and also provides that recipients of Federal funds that are state agencies or political subdivisions of states give preference in their procurement programs to the purchase of recycled products pursuant to EPA guidelines.

**.16 The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.)**

The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.), as amended by the Community Environmental Response Facilitation Act, provides the President with broad, discretionary response authorities to address actual and threatened releases of hazardous substances, as well as pollutants and contaminants where there is an imminent and substantial danger to public health and the environment. Section 103 of this Act contains specific reporting requirements and responsibilities and section 117 of the Act contains specific provisions designed to ensure meaningful public participation in the response process.

**.17 Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”)**

This Order identifies and addresses adverse human health or environmental effects of programs, policies and activities on low income and minority populations. Consistent with EO 12898, recipients may be requested to help identify and address, as appropriate, disproportionate impacts to low income and minority populations which could result from their project.

**.18 Rivers and Harbors Act (33 U.S.C. 407)**

A permit may be required from the U.S. Army Corps of Engineers if the proposed activity involves any work in, over or under navigable waters of the United States. Recipients must identify any work (including structures) that will occur in, over or under navigable waters of the United States and obtain the appropriate permit, if applicable.

**.19 Marine Protection, Research and Sanctuaries Act (Pub. L. 92-532, as amended), National Marine Sanctuaries Act (16 U.S.C. 1431 et seq.), and Executive Order 13089 (“Coral Reef Protection”)**

The Marine Protection, Research and Sanctuaries Act prohibits dumping of material into ocean waters beyond the territorial limit without a permit. Recipients must identify any potential ocean dumping of materials, obtain the appropriate permit, if applicable, and notify the Council. Under the National Marine Sanctuaries Act, Federal agencies are required to protect National Marine Sanctuary resources. Recipients must identify actions that are in or may affect a National Marine Sanctuary and notify the Council. EO 13089 requires that any actions authorized or funded by Federal agencies not degrade the condition of coral reef ecosystems. Recipients must identify any action that might affect a coral reef ecosystem and notify the Council.

## **.20 Executive Order 13653 (“Preparing the United States for the Impacts of Climate Change”)**

This EO requires Federal agencies to identify and support smarter, more climate-resilient investments by States, local communities and tribes, including by providing incentives through agency guidance and grants. Recipients must identify and describe any project elements that promote climate resilience.

## **.21 Farmland Protection Policy Act (7 U.S.C. 4201 et seq.)**

This act requires agency programs, to the extent possible, be compatible with state, local and private programs and policies to protect farmland from irreversible conversion to nonagricultural uses. Recipients must identify any irreversible conversion of farmland to nonagricultural uses as a result of their project.

## **.22 Fish and Wildlife Coordination Act (16 U.S.C. 661 et seq.)**

During the planning of water resource development projects, agencies are required to give fish and wildlife resources equal consideration with other values. Additionally, the Fish and Wildlife Service and fish and wildlife agencies of States must be consulted whenever waters of any stream or other body of water are “proposed or authorized, permitted or licensed to be impounded, diverted... or otherwise controlled or modified” by any agency under a Federal permit or license.

## **Q. MISCELLANEOUS REQUIREMENTS**

### **.01 Criminal and Prohibited Activities**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), 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. The False Claims Amendments Act and the False Statements Act (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious or fraudulent statement, representation or claim against 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 by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), 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.

### **.02 Political Activities**

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

### .03 Drug-Free Workplace

The non-Federal entity shall comply with the provisions of the Drug-Free Workplace Act of 1988 (Pub. L. No. 100-690, Title V, Sec. 5153, as amended by Pub. L. No. 105-85, Div. A, Title VIII, Sec. 809, as codified at 41 U.S.C. § 8102) and any Council regulations and policies promulgated pursuant to its authority, which require that the non-Federal entity take steps to provide a drug-free workplace.

### .04 Foreign Travel

- a. The non-Federal entity may not use funds from this award for travel outside of the United States unless the Grants Officer provides prior written approval. The non-Federal entity shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.
- b. 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.
- c. 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 Federally-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](#).<sup>17</sup> 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](#).<sup>18</sup>
- d. If a foreign air carrier is anticipated to be used for any portion of travel under a Council financial assistance award the non-Federal entity must obtain prior written approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer 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 non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the non-Federal entity in writing. Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which the non-Federal entity improperly used a foreign air carrier.

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<sup>17</sup> GSA Fly America Act website - <http://www.gsa.gov/portal/content/103191>, verified 8/18/2015.

<sup>18</sup> Department of State Open Skies Agreements website - <http://www.state.gov/e/eb/tra/ata/index.htm>, verified 8/18/2015.



## **.05 Increasing Seat Belt Use in the United States**

Pursuant to EO 13043, recipients should encourage employees and contractors to enforce on-the-job seat belt policies and programs when operating company-owned, rented or personally owned vehicles.

## **.06 Research Involving Human Subjects**

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27 “Protection of Human Subjects.” No research involving human subjects is permitted under this award unless expressly authorized by special award condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. Department of Commerce regulations at 15 C.F.R. part 27, applying to all Federal departments and agencies, require that recipients 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 non-Federal entity shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate Council officials. This documentation may include:
  1. 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 (*see also* 15 C.F.R. § 27.103);
  2. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b);
  3. Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
  4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken or conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

## **.07 Federal Employee Expenses**

Federal agencies are generally barred from accepting funds from a non-Federal entity to pay transportation, travel or other expenses for any Federal employee. Use of award funds (Federal or non-Federal) or the non-Federal entity’s provision of in-kind goods or services, for the purposes of transportation, travel or any other expenses for any Federal employee may raise appropriation augmentation issues. In addition, Council policy prohibits the acceptance of gifts, including travel payments for Federal employees, from recipients or applicants, regardless of the source.

## **.08 Minority Serving Institutions Initiative**

Pursuant to EOs 13555 (“White House Initiative on Educational Excellence for Hispanics”), 13270 (“Tribal Colleges and Universities”), and 13532 (“Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities”), the Council is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. The Council’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. The Council encourages all recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

## **.09 Research Misconduct**

The Council adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). 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. Non-Federal entities that conduct extramural research funded by the Council must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities 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. Federal 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/or suspension or debarment. The Council requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the Treasury OIG of such allegation. Once the non-Federal entity has investigated the allegation, it shall submit its findings to the Grants Officer. The Council may accept the non-Federal entity’s findings or proceed with its own investigation. The Grants Officer will inform the non-Federal entity of the Council’s final determination.

## **.10 Publications, Videos, Signage and Acknowledgment of Sponsorship**

- a. Publication of results or findings in appropriate professional journals and production of video or other media is encouraged as an important method of recording, reporting and otherwise disseminating information and expanding public access to Federally-funded projects (*e.g.*, scientific research).
- b. Recipients are required to submit a copy of any publication materials, including but not limited to print, recorded or Internet materials, to the Council.
- c. When releasing information related to a funded project, recipients must include a statement that the project or effort undertaken was or is sponsored by the Council.
- d. Any signage produced with funds from the award or informing the public about the activities funded in whole or in part by the award, must first be approved in writing by the Grants Officer.
- e. Recipients are responsible for assuring that every publication of material based on, developed under, or otherwise produced under a Council financial assistance award, except scientific articles or papers



appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer approved in writing by the Grants Officer:

*This [report/video/etc.] was prepared by [non-Federal entity name] using Federal funds under award [number] from the RESTORE Council. The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the RESTORE Council.*

## **.11 Care and Use of Live Vertebrate Animals**

Recipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 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 (16 U.S.C. § 1531 *et seq.*); Marine Mammal Protection Act (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 (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. No research involving vertebrate animals is permitted under any Council financial assistance award without the prior written approval of the Grants Officer.

## **.12 Homeland Security Presidential Directive 12**

If the performance of a grant award requires non-Federal entity personnel to have routine access to Federally-controlled facilities and/or Federally-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, the Council 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 that 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 a financial assistance award shall comply with the Council 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, and OMB Memorandum M-05-24. The non-Federal entity shall ensure that its subrecipients and contractors (at all tiers) performing work under this award comply with the requirements contained in this term. The Grants Officer may delay final payment under an award if the subrecipient or contractor fails to comply with the requirements provided below. The non-Federal entity shall insert the following term in all subawards and contracts when the subaward non-Federal entity or contractor is required to have routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system:

- a. *The subrecipient or contractor shall comply with the Council 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) Number 201, 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 shall 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 shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Council: (1) When*

*no longer needed for subaward or contract performance; (2) Upon completion of the subrecipient or contractor employee's employment; or (3) Upon subaward or contract completion or termination.*

### **.13 Compliance with Department of Commerce Bureau of Industry and Security Export Administration Regulations**

- a. This clause applies to the extent that this financial assistance award involves access to export-controlled items.
- b. In performing this financial assistance award, the non-Federal entity may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The non-Federal entity shall establish and maintain effective export compliance procedures at Council and non-Council facilities throughout performance of the financial assistance 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
  1. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the Department of Commerce's Bureau of Industry and Security. These are generally known as "dual-use" items, items with both a military and commercial application.
  2. Deemed Export/Reexport. 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 U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses may be required for deemed exports or reexports.
- d. The non-Federal entity shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, EOs, and/or regulations, including the EAR.
- e. As applicable, non-Federal entity personnel and associates at Council sites shall be informed of any procedures to identify and protect export-controlled items.
- f. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.
- g. Nothing in the terms of this financial assistance award is intended to change, supersede, or waive the requirements of applicable Federal laws, EOs or regulations.
- h. Compliance with the foregoing will not satisfy any legal obligations the non-Federal entity 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.

- i. The non-Federal entity shall include this Subsection .13, including this Subparagraph i, in all lower tier transactions (subawards, contracts, and subcontracts) under this financial assistance award that may involve access to export-controlled items.

#### **.14 The Trafficking Victims Protection Act of 2000 (22 U.S.C. 7104(g)), as amended, 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, without penalty to the Federal Government, if the non-Federal entity engages in certain activities related to trafficking in persons. The Council incorporates the following award term required by [2 C.F.R. § 175.15\(b\)](#).<sup>19</sup>

Award Term from 2 C.F.R. § 175.15(b):

##### I. Trafficking in persons.

- a. Provisions applicable to a non-Federal entity that is a private entity.
  1. You as the non-Federal entity, your employees, subrecipients under this award, and subrecipients' employees may not—
    - i. Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
    - ii. Procure a commercial sex act during the period of time that the award is in effect; or
    - iii. Use forced labor in the performance of the award or subawards under the award.
  2. We as the Federal awarding agency may unilaterally terminate this award, without penalty, if you or a subrecipient that is a private entity —
    - i. Is determined to have violated a prohibition in paragraph a.1 of this award term; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the award to have violated a prohibition in paragraph a.1 of this award term through conduct that is either— (A) Associated with performance under this award; or (B) 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 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- b. Provision applicable to a non-Federal entity 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—
  1. Is determined to have violated an applicable prohibition in paragraph a.1 of this award term; or
  2. Has an employee who is determined by the agency official authorized to terminate the award to have violated an applicable prohibition in paragraph a.1 of this award term through conduct that is either—
    - i. Associated with performance under this award; or

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<sup>19</sup> See 2 C.F.R. § 175.15(b) - <http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1-sec175-15.pdf>, verified 8/18/2015.

- ii. 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 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- c. Provisions applicable to any non-Federal entity.
  - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
  - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
  - 1. Employee means either:
    - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    - ii. 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.
  - 2. 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 subsection to involuntary servitude, peonage, debt bondage, or slavery.
  - 3. Private entity:
    - i. 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;
    - ii. Includes: (A) 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); and (B) A for-profit organization.
  - 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

**.15 The Federal Funding Accountability and Transparency Act of 2006 (“Transparency Act” or FFATA)—Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. 6101)**

- a. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at the [USA Spending website](http://USA.Spending.gov).<sup>20</sup> Recipients and subrecipients must include the following required data elements in their application:

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<sup>20</sup> USA.Spending.gov website - [www.USA.Spending.gov](http://www.USA.Spending.gov), verified 8/18/2015.

- Name of entity receiving award;
  - Award amount;
  - Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive award title;
  - Location of entity, primary location of performance (City/State/Congressional District/Country); and
  - Unique identifier of entity.
- b. Reporting Subawards and Executive Compensation. Prime grant recipients awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime non-Federal entity is required to file a FFATA subaward report by the end of the month following the month in which the prime non-Federal entity awards any sub-grant greater than or equal to \$25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of [2 C.F.R. Part 170](#).<sup>21</sup>

Award Term from Appendix A of 2 C.F.R. Part 170:

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 obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (*see* definitions in paragraph e. of this award term).
  2. Where and when to report.
    - i. You must report each obligating action described in paragraph a.1 of this award term to the FFATA Subaward Reporting System ([FSRS](#)).<sup>22</sup>
    - 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 the [FSRS](#) website specify.
- b. Reporting Total Compensation of Non-Federal Entity Executives.
  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 award is \$25,000 or more;
    - 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 C.F.R. 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 C.F.R. 170.320 (and subawards); and

<sup>21</sup> 2 C.F.R. § 170.320 on GPO website - <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>, verified 8/18/2015.

<sup>22</sup> Federal Funding Accountability and Transparency Act Subaward Reporting System - <http://www.fsrs.gov>, verified 8/18/2015.

- 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.<sup>23</sup>)
- 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 in the System for Award Management ([SAM](#)),<sup>24</sup> and
  - 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 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 C.F.R. 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 non-Federal entity.
    - 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. Entity means all of the following, as defined in 2 C.F.R. 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;
    - iv. A domestic or foreign for-profit organization;

<sup>23</sup> U.S. Security and Exchange Commission Executive Compensation “Fast Facts” - <http://www.sec.gov/answers/execomp.htm>, verified on 8/18/2015.

<sup>24</sup> System for Award Management (SAM) - <https://www.sam.gov>, verified on 8/18/2015.



- v. A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
  - 2. Executive means officers, managing partners, or any other employees in management positions.
  - 3. 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 non-Federal entity 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 C.F.R. § 200.330).
    - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
  - 4. Subrecipient means an entity that:
    - i. Receives a subaward from you (the non-Federal entity) under this award; and
    - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
  - 5. Total compensation means the cash and noncash dollar value earned by the executive during the non-Federal entity's or subrecipient's preceding fiscal year and includes the following (for more information *see* 17 C.F.R. 229.402(c)(2)):
    - i. Salary and bonus.
    - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
    - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
    - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
    - v. Above-market earnings on deferred compensation which is not tax-qualified.
    - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.
- c. System for Award Management (SAM) and Universal Identifier requirements.
- 1. Requirement for SAM. Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this 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 award term.
  - 2. Requirement for unique entity identifier. If you are authorized to make subawards under this award, you:
    - i. Must notify potential subrecipients that no entity (see definition in paragraph C of this award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
    - ii. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.

3. Definitions for purposes of this award term:

- i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management [Internet site](#).<sup>25</sup>
- ii. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
- iii. Entity, as it is used in this award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
  - (A) A Governmental organization, which is a State, local government, or Indian Tribe;
  - (B) A foreign public entity;
  - (C) A domestic or foreign nonprofit organization;
  - (D) A domestic or foreign for-profit organization; and
  - (E) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- iv. Subaward:
  - (A) 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 non-Federal entity award to an eligible subrecipient.
  - (B) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* 2 C.F.R. § 200.330).
  - (C) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.
- v. Subrecipient means an entity that:
  - (A) Receives a subaward from you under this award; and
  - (B) Is accountable to you for the use of the Federal funds provided by the subaward.

## **.16 Federal Financial Assistance Planning During a Funding Hiatus or Government Shutdown**

This term sets forth initial guidance that will be implemented for Federal assistance awards in the event of a lapse in appropriations, or a government shutdown. The Grants Officer may issue further guidance prior to an anticipated shutdown.

- a. Unless there is an actual rescission of funds for specific grant obligations, recipients of Federal financial assistance awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction or clearance during the period of a possible government shutdown, the Program Officer or

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<sup>25</sup> System for Award Management (SAM) - <https://www.sam.gov>, verified on 8/18/2015.



Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior agency approval, which in general are recipients that have been designated high risk, recipients of construction awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down award funds is restricted may decide to suspend work until the government reopens.

- c. The ASAP system may remain operational during a government shutdown. As applicable, recipients that do not require Council approval to draw down advance funds from their ASAP accounts may be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will apply notwithstanding a government shutdown and advanced funds held for more than 30 days shall be returned with interest.

## **R. CERTIFICATIONS**

At a minimum, the non-Federal entity must comply with the certifications and requirements in 31 C.F.R. § 34.802, assurances (Forms SF-424B and SF-424D, or equivalent, as applicable), and any required Council-specific certifications. Other certifications may be required by 2 C.F.R. part 200. Certifications must be signed by an authorized senior official of the entity receiving grant funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question.

**ADCNR SUB-AWARD TERMS AND CONDITIONS  
FOR CONTRACTED PARTIES**



KAY IVEY  
GOVERNOR

STATE OF ALABAMA  
**DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES**  
64 NORTH UNION STREET  
MONTGOMERY, ALABAMA 36130

July 2, 2020

CHRISTOPHER M. BLANKENSHIP  
COMMISSIONER

EDWARD F. POOLOS  
DEPUTY COMMISSIONER

LEGAL SECTION

CHARLANNA W. SKAGGS  
GENERAL COUNSEL

JENNIFER WEBER  
DEPUTY GENERAL  
COUNSEL


JULIANA T. DEAN  
DEPUTY GENERAL  
COUNSEL

RYAN CORLEY  
ASSOCIATE COUNSEL

PHONE: 334/242-3165  
FAX: 334/242-3167

**MEMORANDUM**

**TO:** Dr. Amy Hunter  
Deepwater Horizon Restoration Coordinator

**FROM:** Juliana Dean   
Deputy General Counsel

**RE:** Fully Executed  
Subaward Grant Agreement #S1P22-CRIE  
Canal Road Improvements E. of SR-161  
City of Orange Beach

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Please find attached an original of the above referenced document which has been fully executed. We have retained a copy for our files and forwarded a copy to the Accounting Section.

JD/dp

Attachments

Accounting Section

The Department of Conservation and Natural Resources does not discriminate on the basis of race, color, religion, age, sex, pregnancy, national origin, genetic information, veteran status, or disability in its hiring or employment practices nor in admission to, access to, or operations of its programs, services, or activities.

**RESOLUTION NO. 20-111**

**A RESOLUTION AUTHORIZING THE EXECUTION OF A  
SUBAWARD GRANT AGREEMENT WITH THE  
ALABAMA DEPARTMENT OF CONSERVATION AND NATURAL RESOURCES FOR  
THE RESTORE ACT STATE EXPENDITURE PLAN FUNDED  
CANAL ROAD IMPROVEMENTS EAST OF STATE HIGHWAY 161 PROJECT**

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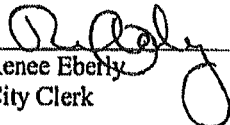
**FINDINGS:**

1. The purpose of this Agreement is for Alabama Department of Conservation and Natural Resources (ADCNR) to provide funding under the Resources and Ecosystem Sustainability, Tourism Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act) State Expenditure Plan to the City of Orange Beach for the widening of Canal Road from State Highway 161 to Wilson Boulevard.
2. The purpose of the project is to improve traffic capacity along the roadway in this congested area.
3. ADCNR will disperse \$1,813,065 to the City to offset the cost of the project.
4. After having reviewed said agreement, the City Council has determined that the provisions are in the best interest of the City of Orange Beach, Alabama.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF ORANGE BEACH, ALABAMA, AS FOLLOWS:**

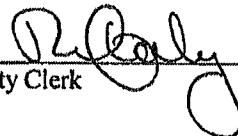
1. That the Mayor is hereby authorized to execute a grant agreement in substantially the form and of substantially the content now before the Council between the City of Orange Beach and the Alabama Department of Conservation and Natural Resources (ADCNR) as an act for and on behalf of the City of Orange Beach subject to final approval by the City Attorney; and
2. That this Resolution shall become effective immediately upon its adoption.

**ADOPTED THIS 19<sup>th</sup> DAY OF MAY, 2020.**

  
\_\_\_\_\_  
Renee Eberly  
City Clerk

**CERTIFICATE**

I, Renee Eberly, City Clerk of the City of Orange Beach, Alabama, do hereby certify that the foregoing is a true and correct copy of Resolution No. 20-111, which was duly and legally adopted at a regular meeting of the City Council on May 19, 2020.

  
\_\_\_\_\_  
City Clerk

STATE OF ALABAMA

ADCNR Grant #: S1P22-CRIE

MONTGOMERY COUNTY

### SUBAWARD GRANT AGREEMENT

THIS SUBAWARD GRANT AGREEMENT, ("Agreement") is made and entered into by and between the State of Alabama Department of Conservation and Natural Resources (hereinafter "ADCNR") and the City of Orange Beach (hereinafter "Subrecipient"). Pursuant to this Agreement, ADCNR and Subrecipient (collectively hereinafter "Parties") agree as follows:

1. **PROJECT PURPOSE AND IDENTITY:** The purpose of this Agreement is to provide funding under the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (hereinafter "RESTORE Act") to Subrecipient for implementation of the RESTORE Act Spill Impact project titled "State Expenditure Plan #22: Canal Road Improvements E. of SR-161" hereinafter "Project"). The purpose of this project is to construct the planned traffic safety and capacity improvements on Canal Road between SR-161 and Wilson Boulevard, thereby encouraging economic growth and development benefitting the local economy, further described in the Federal Award GNSSP20AL000601-00. This Agreement between the Parties will be identified by the "ADCNR Grant Number" set forth above in the upper right corner of this Agreement. All invoices and other correspondence submitted to ADCNR in connection with this Agreement must be identified by said Grant Number.
2. **FEDERAL AWARD INFORMATION:** The Project's Financial Assistance Award (hereinafter "Federal Award") in its entirety is hereby incorporated into this Agreement by reference. Information as to the Federal Award associated with the Project includes the following:
  - a. Federal Award Identification Number (FAIN): GNSSP20AL0006
  - b. Federal Award Period of Performance: 10/01/2019-04/30/2022
  - c. Total Amount of Federal Funds Obligated to Subrecipient: \$1,813,065
  - d. Subrecipient DUNS#: 791793961
  - e. Total Amount of Federal Award: \$1,903,668
  - f. Name of Federal Awarding Agency: Gulf Coast Ecosystem Restoration Council (hereinafter "RESTORE Council")
  - g. Pass-Through Entity & Awarding Official Contact Information:  
Alabama Department of Conservation and Natural Resources  
Commissioner Christopher M. Blankenship  
64 N. Union Street; Suite 468  
Montgomery, AL 36130
  - h. CFDA Number & Name: CFDA# 87.052 "Spill Impact Component Project Grants"
  - i. Indirect Cost Rate of Subrecipient: 0%
3. **AGREEMENT FUNDING AMOUNT:** ADCNR's funding commitment under this Agreement shall be within the budgetary limits as described herein and pursuant to the Federal Award and shall not exceed a total of one million eight hundred thirteen thousand sixty-five and xx/100 dollars (\$1,813,065).
4. **PROJECT PERIOD:** The period allowed for Project completion by the Subrecipient (hereinafter "Project Period") shall commence on the April 16, 2020 and end on April 30, 2022.

5. AGREEMENT TERM: The term of this Agreement shall commence on April 16, 2020 and end on April 30, 2022 (hereinafter "Agreement Term").
6. APPLICABLE LAWS: Subrecipient shall perform and/or procure all Agreement Services in accordance with all applicable federal, state and local laws, codes, regulations, and ordinances, including, but not limited to all executive orders (EO), Office of Management and Budget (OMB) requirements, and RESTORE Regulations. In addition, Subrecipient shall procure all applicable federal, state, and local permits and pay all said fees. Subrecipient further agrees and acknowledges it is responsible for ensuring of all lower tier compliance as to all such requirements. Subrecipient shall at all times maintain effective internal control providing reasonable assurance as to compliance with all requirements.
7. AGREEMENT SERVICES: Subrecipient hereby agrees, in proper sequence and in the time herein specified, to perform all tasks and to provide all the necessary labor, materials, equipment, services and facilities necessary to achieve Project completion and fulfill all terms of this Agreement in accordance with all requirements of the Federal Award, including, but not limited to, any RESTORE Council specific Special Award Conditions and Supplemental Construction Terms contained therein, and all applicable laws (hereinafter "Agreement Services"). Research and Development are not services funded under this subaward.
8. RELIANCE UPON SUBRECIPIENT: Subrecipient acknowledges and hereby accepts responsibility to stay current as to necessary compliance measures. ADCNR is relying upon the Subrecipient to maintain compliance with all requirements associated with performance under this Agreement and all exhibits hereto, including, but not limited to, the Grant Award Document, its Special Award Conditions, RESTORE Council policies and Supplemental Construction Terms, required certifications, and all applicable laws. Subrecipient's responsibility specifically includes safeguarding the property that is held in trust by Subrecipient for the full duration of its designated "estimated useful life" of twenty (20) years from the date of construction completion. Subrecipient specifically acknowledges and agrees to comply with *Special Award Condition No. 4. - Estimated useful life and federal interest in project property.*
9. FUNDING AVAILABILITY/SOURCES: Subrecipient acknowledges and agrees the commencement and continuation of this Agreement, as well as any funding to be disbursed pursuant to this Agreement, is contingent on the availability of and actual receipt by ADCNR of the Federal Award funding designated for this Project.
10. ALLOWABLE COSTS:
  - a. Costs allowed under this Agreement shall be determined in accordance with provisions of all applicable federal, state and local laws, regulations, and other requirements including, but not limited to, the following:
    - i. Federal Award;
    - ii. Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award;
    - iii. 2 C.F.R. Part 200; and
    - iv. 31 C.F.R. Part 34.
  - b. Subrecipient agrees that any expenditure related to any type of lower tier contract or subaward support prior to both receipt of written approval from ADCNR and execution of a written agreement pursuant to Paragraph 23 of this Agreement may be disallowed at the sole discretion of ADCNR.
  - c. Subrecipient shall immediately notify ADCNR in writing in the event, subsequent to execution of this Agreement, it receives other financial assistance to support or fund any activity related to

Agreement Services. Subrecipient further agrees that no costs funded by such other sources constitute Allowable Costs.

- d. Subrecipient acknowledges that no pre-award costs or other costs incurred prior to the Effective Date of this Agreement are eligible for reimbursement pursuant to this Agreement, unless specifically authorized in writing by ADCNR.
- e. Subrecipient specifically agrees that Non-Federal Share funds, in the amount and as described in the Federal Award, will be used as leverage to complete the Project as described in the approved Scope of Work.

11. REIMBURSEMENT PAYMENTS: Invoices, with required supporting documentation detailing the Allowable Costs to be reimbursed in accordance with the Federal Award Subrecipient budget categories, shall be submitted to the following:

Dr. Amy Hunter  
Deepwater Horizon Restoration Coordinator  
Alabama Department of Conservation and Natural Resources  
31115 Five Rivers Boulevard  
Spanish Fort, AL 36527  
Email: amy.hunter@dcnr.alabama.gov

The Subrecipient may invoice no more frequently than monthly for reimbursement of Allowable Costs. Subrecipient's final request for reimbursement of Allowable Costs under this Agreement must be received by ADCNR no later than fifteen (15) days after the expiration of the Project Period. Subrecipient acknowledges that due to annual State of Alabama fiscal year closeout procedures, ADCNR is not able to process payments in the month of September. Accordingly, requests for payment not submitted to ADCNR on or before August 15 will not be processed prior to commencement of the closeout period. In addition, only Allowable Costs incurred during an active fiscal year performance period are eligible for reimbursement. Requests for payment not received by deadlines set by ADCNR will not be eligible for reimbursement. While funding under this Agreement shall be on a reimbursement-only basis for Allowable Costs, if at any time any funds disbursed by ADCNR are for any reason not expended (or, for example, are returned/credited to Subrecipient subsequent to payment of an invoice), Subrecipient shall immediately notify ADCNR and return such funds in such timeframe and manner as specified by ADCNR. Prior to the submittal of any cost documentation, the sub-recipient shall redact, in accordance with 2 CFR 200.82, all personal information except for Personally Identifiable Information (PII) that is required by law to be disclosed. See also 2 CFR 200.79.

ADCNR reserves the right to refuse to pay all or any part of requested funding for any of the following reasons: 1) at ADCNR's discretion, the costs are not determined to be reasonable or necessary for completion of the scope of work; (2) at ADCNR's discretion, the costs are determined to be ineligible for reimbursement; (3) the Subrecipient has failed to comply with any term or conditions of this agreement; (4) the Subrecipient has otherwise failed to perform the scope of work in accordance with this agreement; or (5) ADCNR has determined that the Subrecipient has otherwise failed to comply with applicable state, federal, or local laws and regulations.

Notwithstanding any other provision of this agreement, and notwithstanding the submission of any reimbursement request by the Subrecipient, ADCNR shall not pay more than 95% of the sub-award amount until such time as the Subrecipient has completed the work, submitted final reporting, and submitted a written certification to ADCNR that the scope of work was completed in accordance with the terms and conditions of this agreement, that no additional amounts are owed, and that no additional reimbursement requests will be submitted.

12. FINAL PAYMENT: Notwithstanding any other provision of this Agreement, and notwithstanding the submission of any Reimbursement Request by Subrecipient, ADCNR shall withhold an amount equal to five-percent (5%) of the Funds until such time as Subrecipient has completed the Work, submitted the Final Report,

as defined below, required pursuant to this section, and received ADCNR's written approval of such Final Report. Within forty-five (45) days after ADCNR's written approval of such Final Report, ADCNR shall disburse to Subrecipient all or such portion of the five-percent (5%) holdback as is properly payable to Subrecipient for Work performed under this Agreement. However, if ADCNR is satisfied that the Project is proceeding on schedule and on budget, ADCNR (acting in its sole discretion) may reduce the holdback from five-percent (5%) and disburse Funds to Recipient to pay for the costs of Work in advance of completion of the Work and submission of Final Report.

When Subrecipient has performed all the Work, sub-recipient shall transmit to ADCNR a comprehensive report on the Work, along with the corresponding results (the "Final Report"). As appropriate, the Final Report should include copies of any publications, press releases, and other documents, materials, and products developed as part of the Project, including, without limitation, photographs, video footage, and other electronic representations of the Project and Work. The Final Report shall be provided by Subrecipient to ADCNR within forty-five (45) days of Project completion. Upon approval of Final Reports, ADCNR will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement, or as a termination settlement under this Agreement, the Subrecipient shall execute and deliver to ADCNR a release of all claims, on a form provided by ADCNR, against ADCNR arising under, or by virtue of, this Agreement. Unless otherwise provided in the Agreement, by state law, or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of ADCNR's claims against the sub-recipient or its sureties under this Agreement.

13. SUBMISSION OF REPORTS/INFORMATION: Subrecipient understands and acknowledges that ADCNR must meet several requirements set forth in the Federal Award and Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award related to reporting. Furthermore, Subrecipient acknowledges that ADCNR is specifically relying upon Subrecipient to be familiar with these requirements and any subsequent updates or revisions to these requirements. Subrecipient shall provide accurate and timely information to ADCNR, as necessary, for ADCNR to remain in compliance with all said requirements of the Federal Award and applicable laws and regulations. Accordingly, Subrecipient agrees to provide the following information, and any additional information as may be deemed necessary by ADCNR:

a. Reporting:

(1) The Subrecipient shall provide required progress reports as determined by ADCNR. The form and format shall be prescribed by ADCNR.

(2) The final report must provide ADCNR with a summary financial and performance report related to the Project expenditures and confirmation of Project completion including, but not limited to, supporting documentation detailing the Allowable Costs for the expenditures and other documents needed to be maintained by ADCNR for purposes of recordkeeping and potential audit compliance.

b. Submission: All reports shall be sent to the e-mail address listed below:

[City of Orange Beach- Canal Road Improv.Subrecipient Submissions@docs.e-builder.net](mailto:City of Orange Beach- Canal Road Improv.Subrecipient Submissions@docs.e-builder.net)

c. Format: Subrecipient shall provide reports generated or compiled within the scope of this Agreement specified herein in digital format or other format as may be specified by ADCNR.



14. RECORDS RETENTION/ACCESS/AUDITS: Subrecipient shall maintain detailed records sufficient to account for the receipt, obligation, and expenditure of grant funds (including, if applicable and allowed, records related to tracking program income). Accordingly, Subrecipient agrees as follows:

- a. Record Retention: Subrecipient shall maintain (and require all subrecipients and contractors to maintain) records and accounts associated with this Agreement, including, but not limited to, property, personnel and financial records, in accordance with ADCNR's records retention policy and 2 C.F.R. §200.333, as well as all other applicable federal, state and local requirements, the Federal Award and Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award. Such records will be made available to all entities listed below in Paragraph 14(b) and shall be retained for a minimum of three (3) years after expiration of this Agreement, unless ADCNR grants permission in writing to destroy. However, Subrecipient agrees that it is responsible for being familiar with all such retention requirements and maintaining records for periods longer than this 3-year minimum, as applicable.
- b. Access: The RESTORE Council, ADCNR, the Alabama Examiners of Public Accounts, or any of their duly authorized representatives shall have timely and unrestricted access during normal business hours to any pertinent books, documents, papers, and records (including electronic records) of the Subrecipient and its agents, subrecipients and contractors in order to make audits, inspections, financial reviews, excerpts, transcripts and other examinations as directed by law (and to make copies of such). In addition, such rights to access shall include timely and reasonable access to Subrecipient's personnel for the purpose of interview and discussion related to such records.
- c. Audit Requirements: Subrecipient shall follow all audit requirements under the Federal Award and this Agreement and applicable federal, state, and local laws. Subrecipient shall also ensure applicable lower tier compliance.
- d. Survival: The provisions of this Paragraph 14 survive the Agreement Term and remain a continuing obligation of Subrecipient.

15. POLITICAL ACTIVITY: Subrecipient shall comply with all provisions of the Hatch Act (5 U.S.C. §1501 et seq.), as applicable, which limits political activities of employees whose principal employment activities are funded in whole or in part with federal funds. Subrecipient further agrees that it is responsible for ensuring such compliance of lower tier subrecipients and contractors, as applicable.

16. LOBBYING ACTIVITY:

- a. Compliance: Subrecipient shall comply with all applicable federal, state, and local laws related to lobbying activities including, but not limited to, the Byrd Anti-Lobbying Amendment (31 U.S.C. §1352). Subrecipient further acknowledges and agrees it is responsible for ensuring compliance as to lower tier subrecipients and contractors.
- b. Certification: Subrecipient hereby certifies, by execution of this Agreement, that no federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

- c. Lower Tier Certification: Subrecipient further agrees to include the certification required pursuant to Paragraph 16(b) in all applicable lower tier agreements.
  - d. Notification: If subsequent to execution of this Agreement, Subrecipient becomes aware of any information indicating any certification potentially is no longer accurate or indicating any potential non-compliance issue, it shall immediately notify ADCNR in writing. Subrecipient shall also immediately suspend any related expenditures/activities until the potential issue has been resolved to ADCNR's satisfaction and Subrecipient receives written approval from ADCNR to resume such expenditures/activities
17. FRAUD/WASTE/ABUSE: Subrecipient shall immediately report to ADCNR as well as the RESTORE Council Inspector General in accordance with 31 C.F.R. §34.803(a), any indication of fraud, waste, abuse, or potential criminal activity associated with any activity or expenditure of funds related to this Agreement.
18. CONFLICTS OF INTEREST: Subrecipient by his/her/its signature, certifies to the best of his/her/its knowledge and belief, no conflict of interest (or appearance of conflict), either personal or organizational, in any manner existed or now exists which has, has had, or may have any effect on this Agreement or any activity/expenditure associated with this Agreement. By execution of this Agreement, Subrecipient certifies that a conflicts of interest policy consistent with 2 C.F.R. § 200.318 covering each activity associated with or funded pursuant to this Agreement is currently in effect and at all times will remain in effect during the Agreement Term. In the event Subrecipient subsequently cannot maintain this certification during the Agreement Term, Subrecipient shall immediately notify ADCNR in writing. Subrecipient shall also immediately suspend any related expenditures/activities until the potential issue has been resolved to ADCNR's satisfaction and Subrecipient receives written approval from ADCNR to resume such expenditures/activities.
19. ENVIRONMENTAL COMPLIANCE: Subrecipient shall comply with all applicable federal, state and local environmental laws, regulations and policies including, but not limited to, all requirements set forth below and more fully described within the Federal Award and Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award. Subrecipient further agrees that it is responsible for including all environment requirements set forth below pursuant to the Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award in all lower tier agreements and for ensuring lower tier compliance. If Subrecipient becomes aware of any potential impact on the environment not approved pursuant to the Federal Award, Subrecipient shall immediately notify ADCNR and suspend activities related to such potential impact until Subrecipient receives written approval from ADCNR to resume such activities.
- a. 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.)
  - b. The National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.)
  - c. 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.
  - d. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 et seq.)
  - e. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)
  - f. The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)
  - g. The Coastal Barriers Resources Act, as amended, (16 U.S.C. § 3501 et seq.)
  - h. The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 et seq.)
  - i. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f-j)
  - j. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 et seq.)
  - k. 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)
  - l. Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. § 1801)

- m. Marine Mammal Protection Act, as amended (16 U.S.C § 31)
- n. Migratory Bird Treaty Act, as amended (16 U.S.C. §§ 703-712)
- o. Responsibilities of Federal Agencies to Protect Migratory Birds, EO 13186
- p. Bald and Golden Eagle Protection Act, as amended (16 U.S.C. § 668-668d)
- q. Marine Protection, Research and Sanctuaries Act (33 U.S.C. §§ 1401-1445 and 16 U.S.C. §§ 1431—1445)
- r. National Marine Sanctuaries Act, as amended (16 U.S.C. § 1431 et seq.)
- s. Rivers and Harbors Act of 1899 (33 U.S.C § 407)
- t. Environmental Justice in Minority Populations and Low Income Populations, EO 12898, as amended
- u. Floodplain Management, EO 11988, as amended by EO 13690 and, Protection of Wetlands, EO 11990, May 24, 1977, as amended by EO 12608
- v. Farmland Protection Policy Act, as amended (7 U.S.C. § 4201 et. seq.)
- w. Coral Reef Protection, EO 13089 Invasive Species, EO 13112
- x. Invasive Species, EP 13112
- y. Laboratory Animal Welfare Act of 1966 (Public Law 89-544), as amended, (7 U.S.C. § 2131 et seq.)
- z. Nonindigenous Aquatic Nuisance Prevention Act, as amended (16 U.S.C. § 4701 et seq.)

20. **FEDERAL PROVISIONS:** This Agreement relies on Federal funds; therefore, the following terms and conditions apply, in addition to others provided in this Agreement.

- a. **Equal Employment Opportunity:** Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR Chapter 60). The foregoing is applicable, except as otherwise provided under 41 CFR Part 60, to any grant, contract, loan, insurance, or guarantee involving Federal assisted construction.
- b. **Davis-Bacon Act:** The Davis Bacon Act, 40 U.S.C. 3141-3148, as supplemented by Department of Labor regulations at 29 CFR Part 5, applies to grants awarded by RESTORE Council 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. Under this Act, contractors and subcontractors performing work on federally-funded or assisted contracts in excess of \$2,000.00 for construction, alteration, or repair or public works must pay their laborers and mechanics employed under the Contract no less than the locally prevailing wages and fringe benefits of corresponding work on similar projects in the area.
- c. **Copeland "Anti-kickback" Act:** The Copeland "Anti-kickback" Act, 40 U.S.C. 3141-3148, as supplemented by Department of Labor regulations (29 CFR Part 5). This Act is applicable to contracts awarded by a non-Federal entity in excess of \$100,000.00 that involve employment of mechanics or laborers. Under this Act, contractors and subrecipients are 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.
- d. **Contract Work Hours and Safety Standard Act Section 103 and 107 of the Agreement Work Hours and Safety Standard Act (40 U.S.C. 327-330)** as supplemented by Department of Labor regulation (29 CFR part 5). Applicable to construction contracts awarded by Contracts and subcontractors in excess of \$2,000.00, and in excess of \$2,500.00 for other contracts which involve the employment of mechanics or laborers. Under this Act, contractors and subcontractors must compute wages of mechanics and laborers (workers) on the basis of standard forty (40) hour work week; provide

workers no less than time and a half for hours worked in excess of the forty (40) hour work week; and not require workers to work in surroundings or work conditions that are unsanitary, hazardous, or dangerous.

- e. Rights to Inventions Made Under a Contract or Agreement 37 CFR Part 401. If the Federal award meets the definition of "funding agreement" under 37 CFR 401.2(a) and the recipient and 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 the "funding agreement," the recipient or Subrecipient must comply with the requirements of 37 CFR 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.
  - f. Compliance with Office of Management and Budget Circulars. As applicable, Contractors shall comply with the following Office of Management and Budget (OMB) Uniform Guidance (2 CFR 200).
  - g. If the Subrecipient, with the funds authorized by this Agreement, seeks to procure goods or services, in compliance with 2 CFR 200.321, the Subrecipient shall take affirmative steps to assure that minority business enterprises, women's business enterprises, and labor surplus area firms are used when possible.
21. OTHER COMPLIANCE: Subrecipient shall comply, and ensure lower tier compliance, with all applicable federal, state and local laws, regulations and policies including, but not limited to, all requirements set forth below and more fully described within the Federal Award and Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award. In addition, Subrecipient shall assist ADCNR as to compliance with all such requirements.
- a. Foreign Travel: Subrecipient agrees that no travel outside the United States shall be permitted pursuant to this Agreement.
  - b. Seat Belts: Pursuant to EO 130443, Subrecipient agrees to encourage employees and any contractors to enforce on-the-job seat belt policies and programs when operating any vehicles in connection with performance of activities associated with this Agreement.
  - c. Research Involving Human Species: Subrecipient agrees that no research involving human subjects shall be permitted pursuant to this Agreement.
  - d. Federal Employee Expenses: Subrecipient agrees that no funding pursuant to this Agreement shall be used to pay transportation, travel or other expenses for any employee of the federal government without prior written approval from ADCNR.
  - e. Minority Serving Institutions: Subrecipient acknowledges the RESTORE's goal of meaningful participation of minority serving institutions ("MSIs") in its financial assistance programs and agrees to include such meaningful participation of MSIs as to Project activities when possible.
  - f. Research Misconduct: Subrecipient agrees, to the extent at any time applicable, to abide by all provisions of the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260).
  - g. Care and Use of Live Vertebrate Animals: Subrecipient agrees that no research involving vertebrate animals shall be permitted pursuant to this Agreement.

- h. Homeland Security Presidential Directive 12: Subrecipient acknowledges and agrees that its performance under this Agreement does not require or involve routine physical access to a federally controlled facility or routine access to a federally controlled information system.
  - i. Export-Controlled Items: Subrecipient acknowledges and agrees that its performance under this Agreement does not require or involve access to export-controlled items.
  - j. Trafficking of Victims Protection Act Of 2000: Subrecipient agrees the award term set forth in 2 C.F.R. § 175.15(b) implementing provisions of the Trafficking Victims Protection Act of 2000 (22 U.S.C. §7104(g)), to extent applicable, is hereby incorporated into this Agreement.
  - k. Federal Funding Accountability and Transparency Act Of 2006 (FFATA): Subrecipient shall comply and assist ADCNR as to compliance with all applicable requirements of FFATA, as amended (Pub. L. No 109-282, 31 U.S.C. §6101) associated with this Agreement.
  - l. Certifications: Subrecipient shall execute, as applicable, and comply (and assist ADCNR as to compliance) with all certifications associated with this Agreement including, but not limited to, all certifications and requirements set forth in 31 C.F.R. §34.802, assurances (Forms SF-424B and SF- 424D, or equivalent, as applicable), and any required RESTORE Council - specific certifications and/or other certifications as required by 2 C.F.R. Part 200.
  - m. Construction Activities: Subrecipient acknowledges and agrees that its performance under this Agreement does require or involve construction related activities.
  - n. To the extent equipment and products are authorized to be purchased pursuant to this Agreement, the Subrecipient is encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided pursuant to this Agreement
22. PROCUREMENT: Subrecipient shall conduct all procurement actions consistent with the Federal Award, Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award, and all applicable federal, state, and local requirements including, but not limited to, provisions of 2 C.F.R. Part 200. Furthermore, Subrecipient specifically agrees to ensure that applicable clauses set forth pursuant to 2 C.F.R. Part 200 will be included in all purchase orders, contracts, and agreements.
23. DEBARMENT AND SUSPENSION:
- a. Compliance: Subrecipient shall comply with provisions of 2 C.F.R. Part 180 "OMB Guides To Agencies on Governmentwide Debarment and Suspension (Non-procurement)," which generally prohibit entities, and their principals, that have been debarred, suspended, or voluntarily excluded from participating in Federal non-procurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including subrecipients and contractors. Subrecipient further acknowledges and agrees it is responsible for ensuring compliance as to lower tier subrecipients and contractors. Pursuant to 31 C.F.R. Part 19, Subrecipient shall verify that its contractors (for contracts expected to equal or exceed \$25,000), subcontractors (for subcontracts expected to equal or exceed \$25,000), or principals that the subrecipient engages to accomplish the scope of work, if applicable, do not appear on the federal government's Excluded Parties List. Subrecipient 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.
  - b. Certification: Subrecipient hereby certifies, by execution of this Agreement, that neither it nor its principals are presently debarred, suspended, proposed for disbarment, declared ineligible, or

voluntarily excluded from participation in Project implementation or any aspect of the Agreement by any Federal department or agency.

- c. Lower Tier Covered Transactions: The Subrecipient must include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts described in 31 CFR Part 19, Subpart B) that the award is subject to 31 C.F.R Part 19 and require a certification of compliance in covered lower tier transactions as may be required by the RESTORE Council.
  - d. Notification: If subsequent to execution of this Agreement, Subrecipient becomes aware of any information indicating any certification potentially is no longer accurate or indicating any potential non-compliance issue, it shall immediately notify ADCNR in writing. Subrecipient shall also immediately suspend any related expenditures/activities until the potential issue has been resolved to ADCNR's satisfaction and Subrecipient receives written approval from ADCNR to resume such expenditures/activities.
24. LOWER TIER SUBAWARDS/CONTRACTS: Subrecipient shall not enter into a lower tier subaward or contractual agreement associated with its performance under this Agreement without the prior written consent of ADCNR. Further, Subrecipient agrees and acknowledges that, unless otherwise approved in writing by the applicable RESTORE Council Grants Officer, all lower tier engagements shall be made in a manner to provide, to the maximum extent practicable, open and free competition in accordance with 2 C.F.R. §200.317-26, in addition to all other applicable federal, state, and local requirements. No expenditure of funds associated with this Agreement shall be made prior to full execution of a written, legally binding agreement extending to the approved subrecipient/contractor all applicable requirements associated with this Agreement. As to all lower tier awards and activities, Subrecipient agrees that it is responsible for ensuring compliance under all applicable federal, state, and local laws including, but not limited to, all requirements of 2 C.F.R 200, the Federal Award, and Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award.
25. MINORITY/WOMEN BUSINESSES: As applicable, when contracting, Subrecipient must take all necessary affirmative steps, as set forth in 2 C.F.R. § 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. This provision applies to all lower-tier transactions.
26. LOWER TIER SUBAWARD/CONTRACT NOTICE: In the event ADCNR approves Subrecipient engaging a lower tier subrecipient and/or contractor pursuant to Paragraph 23, Subrecipient shall include the following notice in each request for applications or bids for a subaward, contract, or subcontract, as applicable:
- "Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a RESTORE Council 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)."*
27. LOWER TIER AGREEMENT PROVISIONS: In the event ADCNR approves Subrecipient engaging a lower tier subrecipient and/or contractor pursuant to Paragraph 23, all resulting subawards and contracts made by the Subrecipient must contain, as applicable, provisions required pursuant to 2 C.F.R. Appendix II to part 200, "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards," the Federal Award, the Special

Award Conditions and Supplemental Construction Terms incorporated within the Federal Award, and all other federal, state, or local laws.

28. DRUG FREE WORKPLACE: Subrecipient shall comply with all 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. § 8102), and RESTORE Council implementing regulations at 31 C.F.R. Part 20, which require that the recipient take steps to provide a drug-free workplace.
29. PROPERTY RIGHTS AND STANDARDS: The provisions of Section 200.310-200.316, OMB Uniform Guidance (2 CFR 200) apply to Federal property rights and the acquisition of real property, equipment, supplies and intangible property to the extent authorized by this Agreement.
30. PRESS/EVENTS: Subrecipient shall notify ADCNR of the location, date, and time of any press conferences, press releases, media events, etc., related to this Project at least five (5) working days prior to the scheduled event or release.
31. PUBLICATIONS/VIDEOS/SIGNAGE/ACKNOWLEDGMENT: Subrecipient agrees to the following:
  - a. Subrecipient shall submit copies of all publication materials including, but not limited to, print, recorded, or Internet materials to ADCNR.
  - b. When releasing information related to the Project, Subrecipient shall include a statement that the project or effort undertaken has been sponsored by the "The RESTORE Council in cooperation with the State of Alabama Department of Conservation and Natural Resources."
  - c. Any signage to be produced pursuant to this Agreement must have prior written approval of ADCNR and shall contain language required by the Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award and ADCNR.
  - d. Unless otherwise approved by ADCNR in writing, every publication of material based on, developed under, or otherwise produced pursuant to this Agreement (except scientific articles or papers appearing in scientific, technical, or professional journals) shall contain the following disclaimer:

"This project was paid for [in part] with federal funding from the RESTORE Council under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act)." Publications (except scientific articles or papers appearing in scientific, technical, or professional journals) produced with funds from this Award must display the following additional language: "The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the RESTORE Council or ADCNR."
32. INDEMNIFICATION:
  - a. To the extent legally enforceable, the Subrecipient (hereinafter at times referenced in this paragraph as "the Indemnitor") agrees to protect, defend, indemnify, save, and hold harmless the State of Alabama, all State Agencies, Boards and Commissions, along with the respective officers, agents, servants employees, and volunteers of each (hereinafter at times referenced in this paragraph collectively as "the Indemnitees"), from and against any and all claims, demands, expense and liability arising out of injury or death to any person, or the damage, loss or destruction of any property, which may occur or in any way grow out of, any act or omission of the Indemnitees, the Subrecipient, and the Subrecipient's agents, servants, employees, and subcontractors. Indemnitor's obligation and duty to protect, defend, indemnify, save and hold harmless the Indemnitees shall include and extend to any and all costs, expenses, attorney fees, judgements, awards, and

settlements incurred by Indemnites and/or Indemnitor as a result of any claims, demands, and/or causes of action arising out of the performance of the obligations or objectives set forth herein. Indemnitor agrees to investigate, handle, respond to, provide defense for and defend any such claims, demand, or suit at its sole expense and agrees to bear all other costs and expenses related thereto, even if the claims are groundless, false or fraudulent.

- b. Subrecipient further agrees it releases from liability and waives its right to sue Indemnites regarding any and all claims resulting in any physical injury, economic loss, or other damage or loss as a result of or related in any way to the Agreement.
- c. The provisions of this Paragraph 32 shall survive the Agreement Term and remain a continuing obligation of Subrecipient.

33. TERMINATION OF AGREEMENT: This Agreement may be terminated as follows:

- a. If, in the determination of ADCNR, Subrecipient fails to fulfill in timely and proper manner its obligations under this Agreement or violates any of the covenants, agreements, or stipulations of this Agreement, ADCNR, in addition to all other available remedies, shall thereupon have the right to terminate this Agreement by giving written notice, sent certified mail (return receipt requested), or overnight courier (signature required), to Subrecipient of such termination and specifying the effective date thereof, at least fifteen (15) days before the effective date of termination. In that event, at the option of ADCNR, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by Subrecipient under this Agreement shall become the property of ADCNR.
- b. ADCNR may terminate this Agreement at any time without cause by giving written notice to Subgrantee by certified mail (return receipt requested) or overnight courier (signature required) of such termination and specifying the effective date thereof, at least thirty (30) days before the effective date. In that event, at the option of ADCNR, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports or other material prepared by Subrecipient under this Agreement shall become the property of ADCNR.
- c. If the Agreement is terminated by ADCNR, as provided herein, Subrecipient shall promptly submit a statement detailing the actual services performed and associated Allowable Costs to date of termination. The Subrecipient shall immediately return any remaining funds to ADCNR in such manner as specified by ADCNR.

34. NOTICE: Contact information of Parties for purposes of providing notice pursuant to the terms of this Agreement are set forth below. In the event the designation of new contact information is necessary, such shall not require a formal amendment to this Agreement.

To ADCNR:

Alabama Department of Conservation and Natural Resources  
Attn: Christopher M. Blankenship, Commissioner  
64 N. Union St., Suite 468  
Montgomery, Alabama 36130

With a copy to:

Dr. Amy Hunter  
Deepwater Horizon Restoration Coordinator  
Alabama Department of Conservation and Natural Resources



31115 Five Rivers Boulevard  
Spanish Fort, Alabama 36527  
Email: amy.hunter@dcnr.alabama.gov

To Subrecipient:

City of Orange Beach  
Attn: Tony Kennon, Mayor  
4099 Orange Beach Blvd.  
Orange Beach, AL 36561

Kit Alexander, Director of Community Development  
City of Orange Beach  
P.O. Box 2432  
4101 Orange Beach Blvd.  
Orange Beach, AL 36561  
[kalexander@orangebeachal.gov](mailto:kalexander@orangebeachal.gov)

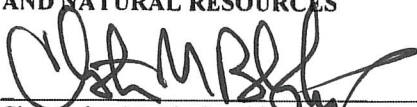
35. **NONDISCRIMINATION:** Subrecipient shall not discriminate on the basis of race, color, religion, age, gender, pregnancy, national origin, genetic information, veteran status, or disability in its hiring or employment practices nor in relation to admission to, access to, or operations of its programs, services, or activities. Further, Subrecipient shall comply with all RESTORE Council regulations and policies prohibiting discrimination as well as all other applicable federal, state, and local nondiscrimination laws including, but not limited to, the following: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Americans with Disabilities Act of 1990; Section 504 of the Rehabilitation Act of 1973; Revised ADA Standards for Accessible Design for Construction Awards; and Age Discrimination Act of 1975; Public Health Service Act of 1912 and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; and any other applicable non-discrimination law(s).
36. **PROTECTIONS FOR WHISTLEBLOWERS:** In accordance with 41 U.S.C. § 4712, neither the Subrecipient or any of its 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:
- a. A Member of Congress or a representative of a committee of Congress;
  - b. An Inspector General;
  - c. The Government Accountability Office;
  - d. A RESTORE Council 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.
37. **ASSIGNABILITY:** Subrecipient shall not assign or otherwise transfer any interest in this Agreement without the prior written consent of ADCNR.
38. **AMENDMENT:** Any amendment to this Agreement must be in writing and approved by all signatory/authorities prior to becoming effective. The Parties agree to renegotiate this Agreement if Federal, State and/or local revisions of any applicable laws or regulations make changes in the Agreement necessary.

39. **SUCCESSORS AND ASSIGNS:** This Agreement shall be binding upon the successors and assigns of the respective parties hereto.
40. **ENFORCEMENT OF RIGHTS AND OBLIGATIONS:** Failure of ADCNR to strictly or promptly enforce the rights and obligations herein shall not operate as a waiver thereof.
41. **NO AGENCY RELATIONSHIP:** By entering into this Agreement, Subrecipient is not an agent of ADCNR, its officers, employees, agents, or assigns. Nothing in this agreement creates an agency relationship between the Parties.
42. **ALTERNATIVE DISPUTE RESOLUTION:** In the event of any dispute between the parties, senior officials of both parties shall meet and engage in a good faith attempt to resolve the dispute. Should that effort fail and the dispute involves the payment of money, a party's sole remedy is the filing of a claim with the Board of Adjustment of the State of Alabama. For any and all other disputes arising under the terms of this contract which are not resolved by negotiation, the parties agree to utilize appropriate forms of non-binding alternative dispute resolution including, but not limited to, mediation. Such dispute resolution shall occur in Montgomery, Alabama, utilizing where appropriate, mediators selected from the roster of mediators maintained by the Center For Dispute Resolution of the Alabama State Bar.
43. **NOT A DEBT OF THE STATE:** It is agreed that the terms and commitments contained herein shall not be constituted as a debt of the State of Alabama in violation of Article 11, Section 213 of the Constitution of Alabama, 1901, as amended by Amendment Number 26. It is further agreed that if any provision of this contract shall contravene any statute or constitutional provision or amendment, either now in effect or which may, during the course of this Contract, be enacted, then that conflicting provision in the Contract shall be deemed null and void.
44. **NOT ENTITLED TO MERIT SYSTEM:** The subrecipient understands and agrees that neither it nor any employees or agents thereof are entitled to any benefits of the Alabama State Merit System.
45. **BOYCOTT:** In compliance with Act 2016-312, the Subrecipient hereby certifies that it is not currently engaged in, and will not engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which the State can enjoy open trade.
46. **PRORATION:** In the event of the proration of the fund from which payment under this contract is to be made, the contract will be subject to termination.
47. **CLAIMS FOR LIENS:** Subrecipient shall be solely liable for and shall hold the State of Alabama, all State Agencies, Boards and Commissions, along with the respective officers, agents, servants, employees, and volunteers of each, harmless from any and all claims or liens for labor, services or material furnished to Subrecipient in connection with the performance of its obligations under this Agreement.
48. **TAX RESPONSIBILITY:** Subrecipient hereby agrees that the responsibility for payment of any taxes from the funds received under this Agreement shall be the Subrecipient's obligation and shall be identified under the appropriate Tax Identification Number. In the event any tax refund is received by Subrecipient, it shall immediately notify ADCNR in writing and comply with all RESTORE Council requirements associated therewith.
49. **VENUE:** Subgrantee agrees that the laws of the State of Alabama shall govern and be controlling and binding over the provisions of the rights herein granted, and that, notwithstanding any provision to the contrary, the venue of any legal action brought in connection herewith shall be the circuit court of Montgomery County, Alabama.

50. SEVERABILITY: In the event any one or more of the provisions contained in this Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, the invalidity, illegality, or unenforceability shall not affect any other provision and this Agreement shall be construed as if the invalid, illegal, or unenforceable provision had never been contained in it.
51. IMMIGRATION COMPLIANCE: By signing this Agreement, Subrecipient affirms, for the duration of the Agreement, that it 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, if found to be in violation of this provision, Subrecipient shall be deemed in breach of the Agreement and shall be responsible for all damages resulting therefrom.
52. PARTIES REPRESENT THAT THIS AGREEMENT SUPERSEDES ALL PROPOSALS, ORAL AND WRITTEN, ALL PREVIOUS CONTRACTS, AGREEMENTS, NEGOTIATIONS AND ALL OTHER COMMUNICATIONS BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF.
53. DOCUMENTS: The documents which comprise this Agreement between ADCNR and the Subrecipient are:
1. This Subaward Agreement; and
  2. Federal Award including any RESTORE Council Special Award Conditions and Supplemental Construction Terms incorporated within the Federal Award

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized as of the date entered below.


**STATE OF ALABAMA  
DEPARTMENT OF CONSERVATION  
AND NATURAL RESOURCES**

  
\_\_\_\_\_  
Christopher M. Blankenship, Commissioner

Date: 7-2-2020

APPROVED LEGAL  


**CITY OF ORANGE BEACH**

  
\_\_\_\_\_  
Tony Kennon, Mayor

Date: 5-26-2020

Reviewed By Accounting

  
\_\_\_\_\_  
ADCNR Accounting Director

AL-04/16/2020

Subrecipient Name: City of Orange Beach, DUNS #791793961

Title of Grant Project: State Expenditure Plan #22: Canal Road Improvements E. of SR-161

**Attachment**  
Federal Award Identification

The entity identified in this agreement is a subrecipient of a subaward, in accordance with 2 CFR 200.331. Be advised, the following information describes the Federal award and subaward:

<b>(1) Federal Award Identification</b>	
(i.) Subrecipient name	City of Orange Beach
(ii.) Subrecipient's unique entity identifier	DUNS # 791793961
(iii.) Federal Award Identification Number (FAIN);	GNSSP20AL0006
(iv.) Federal Award Date (see §200.39 Federal award date) of award to the recipient by the Federal agency;	AL-04/16/2020
(v.) Subaward Period of Performance Start and End Date;	April 16, 2020 - April 30, 2022
(vi.) Amount of Federal Funds Obligated by this action by the pass-through entity to the subrecipient;	\$ 1,813,065.00
(vii.) Total Amount of Federal Funds Obligated to the subrecipient by the pass-through entity including the current obligation;	\$ 1,813,065.00
(viii.) Total Amount of the Federal Award committed to the subrecipient by the pass-through entity;	\$ 1,813,065.00
(ix.) Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);	The purpose of this project is to construct the planned traffic safety and capacity improvements on Canal Road between SR-161 and Wilson Boulevard, thereby encouraging economic growth and development benefitting the local economy.
(x.) Name of Federal awarding agency, Name of pass-through entity, and contact information for awarding official of the pass-through entity.	Gulf Coast Ecosystem Restoration Council, Alabama Department of Conservation and Natural Resources, Christopher M. Blankenship Chris.blankenship@dcnr.alabama.gov
(xi.) CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal award and the CFDA number at time of disbursement;	<u>CFDA # 87.052 "Spill Impact Component Project Grants"</u> - total Federal Award issued to ADCNR, which is registered in SAM with the DUNS number <u>929933406</u> , is <u>\$1,903,668.00</u> .
(xii.) Identification of whether the award is R&D; and	This is not a R&D award.
(xiii.) Indirect cost rate for the Federal award (including if the de minimis rate if charged per §200.414 Indirect (F&A) costs).	The indirect cost rate for the Federal award is 24.09%.

## Subrecipient Information and Pre-Award Risk Assessment Questionnaire

How to Use: This questionnaire is used to help determine a potential subrecipient's financial and management strength, which helps assess risk and dictates the monitoring plan for subrecipients. This questionnaire should be filled out for any agreements to which DCNR has determined this entity to be a subrecipient and not a contractor.

This questionnaire must be completed prior to entering into a subaward agreement. DCNR may follow up with the potential subrecipient regarding the responses to this questionnaire.

### 1. DCNR Contact Information

Name of DCNR Representative: Kelly Swindle

Project Name: Lower Perdido Bay/Perdido Pass Navigation Project Hydrological Modeling and Sediment Budget Study

Grant Number:

### 2. Subrecipient Contact Information

Full Legal Organization/Business Name: City of Orange Beach

Address: PO Box 458, Orange Beach, AL 36561

Telephone number: 251-981-1295

Fax number: 251-981-2551

Name of person completing this form: Ford Handley, Finance Director

E-mail address: fhandley@orangebeachal.gov

Website: <https://www.orangebeachal.gov/>

Incorporated in: 1984                      Incorporated Date: August 6, 1984

Number of employees: 304

DUNS number: 791793961

EIN (Employee ID Number): 63-0888669

Fiscal Year (Month/Year): 12/2019

### 3. Subrecipient Type of Organization (select one):

Government                       Nonprofit corporation                       Other corporation                       Individual

### 4. Subrecipient Organization Classification (select all that apply):

Large Business

Small Business

Historically Black College/University

Small Disadvantaged Business

Historically Underutilized Business Zone

Woman-Owned Business

<input type="checkbox"/> Minority Institution/Owned	<input type="checkbox"/> Tribal
<input type="checkbox"/> Veteran Owned	X Other: local government
<b>5. Subrecipient Personnel Contact Information</b>	
Project Director for Subaward	
Name:	Phillip West
Title:	Coastal Resources Director
Telephone Number:	251-747-6166
E-mail Address:	pwest@orangebeachal.gov
Additional Contact for Subaward	
Name:	Nicole Woerner
Title:	Grants Manager
Telephone Number:	251-981-1180
E-mail Address:	nwoerner@orangebeachal.gov
<b>6. Subrecipient Indirect Costs</b>	
Fiscal Year (Month/Year):	
Negotiated Federal Indirect Cost Rate? <input type="checkbox"/> Yes      x No <input type="checkbox"/> 10% De Minimis Rate (if yes, please attach a copy of your current rate agreement)	
Name of Designated Federal Cognizant Agency (if applicable):	
<b>7. Has Subrecipient received an award or subaward to conduct programs similar to those covered under this proposed subaward agreement in the last two (2) fiscal years? If yes, provide a list of all such awards or subawards. (If no, consider whether subrecipient should be requested to attend grant training based on any other relevant grant experience.)</b>	
<input type="checkbox"/> Yes	X No
<b>8. Was Subrecipient required to comply with the Single Audit requirements of the Uniform Guidance in the last two (2) fiscal years? (Compliance with 2 C.F.R. Part 200, Subpart F required if Subrecipient expends \$750,000 or more in federal awards in a fiscal year).</b>	
<input type="checkbox"/> Yes	X No
Auditor Contact Name and Title:	
<b>9. Have Subrecipient's annual financial statements been audited by an independent audit firm? If yes, provide a copy of the statements for the last two (2) fiscal years.</b>	

<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<p>10. If the answers to Questions 8 or 9 is yes, were there any findings or questioned costs in the last two (2) fiscal years? If yes, please explain any findings or questioned costs with respect to an award or subaward to conduct programs similar to those covered by this proposed subaward agreement.</p>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Explanation (if applicable):	
<p>11. Does Subrecipient have a financial management system that provides records that can identify the source and application of funds for award-supported activities?</p>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<p>12. Does Subrecipient's financial system provide for the effective control over and accountability for all funds, property, and other assets (including but not limited to: (1) comparison of expenditures with budget amounts for each award; and (2) recording of each grant/contract by the budget cost categories shown in the approved budget)?</p>	
<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
<p>13. Other than financial statements, has any aspect of Subrecipient's activities been subject to an audit, examination, or monitoring within the last two (2) years by a governmental agency (e.g., Inspector General, state or local government auditors, etc.)? If yes, please explain any audit or monitoring findings or deficiencies with respect to an award or subaward to conduct programs similar to those covered by the proposed subaward agreement.</p>	
<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Explanation (if applicable):	
<p>14. Are all disbursements properly documented with evidence of receipt of goods or</p>	

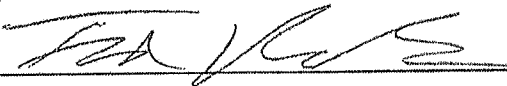
<b>performance of services?</b>		
X Yes		<input type="checkbox"/> No
<b>15. Are all bank accounts reconciled monthly?</b>		
X Yes		<input type="checkbox"/> No
<b>16. Does Subrecipient's accounting system include budgetary controls to preclude obligations in excess of:</b>		
the total funds available for a grant?	X Yes	<input type="checkbox"/> No
the total funds available for a budget cost category (e.g., Personnel, Travel)?	X Yes	<input type="checkbox"/> No
<b>17. Does Subrecipient have a cash forecasting process which will minimize the time elapsed between the drawing down of funds and the disbursement of those funds?</b>		
X Yes		<input type="checkbox"/> No
<b>18. Does Subrecipient have a system in place to determine that it has met its cost sharing goals, if applicable?</b>		
X Yes		<input type="checkbox"/> No
<b>19. In the last 12 months, has Subrecipient hired new senior management personnel (e.g., Executive Director/CEO, Finance Director/CFO) and/or program personnel who would be working on this proposed subaward? If yes, please explain.</b>		
<input type="checkbox"/> Yes		X No
Explanation (if applicable):		
<b>20. In the last 12 months, has Subrecipient implemented new or substantially changed systems related to its federal grant management? If yes, please explain.</b>		
<input type="checkbox"/> Yes		X No
Explanation (if applicable):		



<b>21. Does Subrecipient have policies that address the following?</b>			
Pay Rates and Benefits	X Yes	<input type="checkbox"/> No	
Leave	X Yes	<input type="checkbox"/> No	
Conflicts of Interest	X Yes	<input type="checkbox"/> No	
Purchasing/Procurement	X Yes	<input type="checkbox"/> No	
Capitalization/depreciation	X Yes	<input type="checkbox"/> No	
<b>22. Describe the method Subrecipient uses to support labor and benefit charges.</b>			
Explanation: Timesheets and tracking in our finance software system.			
<b>23. Does Subrecipient have an effective system of authorizing and approval capital equipment expenditures?</b>			
X Yes		<input type="checkbox"/> No	
<b>24. Does Subrecipient keep detailed records of individual capital assets and periodically reconcile such records with the general ledger accounts?</b>			
X Yes		<input type="checkbox"/> No	
<b>25. Does Subrecipient have effective procedures for authorizing and accounting for the disposal of property and equipment?</b>			
X Yes		<input type="checkbox"/> No	
<b>26. Does Subrecipient periodically check its detailed property records against physical inventory?</b>			
X Yes		<input type="checkbox"/> No	
<b>27. Attachments: Please attach the following or check N/A if not applicable.</b>			
	<u>Document</u>	<u>Attached</u>	<u>N/A</u>
a.	Articles of Incorporation	X	<input type="checkbox"/>

b.	Bylaws	<input type="checkbox"/>	X
c.	IRS Determination Letter (granting income tax exemption under IRC § 501(c)(3))	<input type="checkbox"/>	X
d.	Form 990 or 990-EZ from the last two (2) years, including Form 990-T and all supporting schedules and attachments	<input type="checkbox"/>	X
e.	Copies of audit reports and management letters received during the last two (2) fiscal years from Subrecipient's independent auditors (including all reports associated with a Single Audit pursuant to 2 C.F.R. Part 200, Subpart F)	X	<input type="checkbox"/>
f.	Copies of results from audits, examinations, or monitoring procedures performed during the last two (2) fiscal years on any direct federal award received by Subrecipient	<input type="checkbox"/>	X
g.	Indirect cost rate agreement	<input type="checkbox"/>	X
h.	List of all subawards to Subrecipient from DCNR during the last two (2) years	X	<input type="checkbox"/>
i.	List of all subawards to conduct programs similar to those covered under this proposed subaward agreement to Subrecipient from any funder during the last two (2) years	<input type="checkbox"/>	X

By its authorized signatory below, Subrecipient hereby certifies and attests to the accuracy of the above responses and all corresponding information attached.

Signature: 

Printed Name: Ford Handley

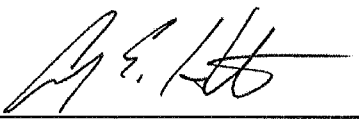
Title: Finance Director

Date: 4.14.20

To be completed by DCNR Upon Completion of Site Visit

Date of Risk Assessment: April 23, 2020
Comments Re: Review of Risk Assessment Questionnaire: See attached Q&A from remote site visit.
Description of Site Visit (staff present for DCNR and subrecipient, items discussed, policies reviewed, etc.) Remote site visit attendees: Nicole Woerner (OB Grants Manager); Ford Handley (OB Finance Director); Amy Hunter (ADCNR); Jennifer Robinson (ADCNR); Robyn Cohron (ADCNR)
Additional Comments:
CONCLUSION: X Low <input type="checkbox"/> Moderate <input type="checkbox"/> High
Is the amount of identified risk acceptable: X Yes <input type="checkbox"/> No
Additional Monitoring required: Yearly Updates Required

By its authorized signatory below, DCNR hereby certifies and attests to the accuracy of the above.

Signature: 

Printed Name: Amy Hunter, Ph.D.

Title: Deepwater Horizon Restoration Coordinator

Date: April 23, 2020

## Remote Site Visit for Orange Beach Risk Assessment – April 23, 2020

Attendees: Nicole Woerner (OB Grants Manager); Ford Handley (OB Finance Director); Amy Hunter (ADCNR); Jennifer Robinson (ADCNR) and Robyn Cohron (ADCNR)

### Questions

8.) When do you anticipate having the final report for the most recent audit?

Answer - Nicole – Per email on 4-21-20 - We do not have the 2019 financial statements yet.

Robyn - 2019 Final Audit Report – Will receive this as FY documentation in 2021 update. Due to updates being conducted in January this will be the most current report available at that time.

12.) Want to verify that expenditures in the GL are recorded in the same categories as the budget categories in the approved budget.

Amy - How you will keep the restore funding distinct from all your other information?

Answer - Ford – We use Harris Smart Fusion software and track all of the revenue and expenses and for the RESTORE Act grants I have set up new bank accounts and it will have its own revenue expense directly associated with each project. We have a time clock system and anyone working on these projects will do timesheets that will go into a folder directly tied to each project. From an accounting line item, each will have its own account and not mixed in with our general fund.

Amy – If you have two sources of federal funding coming into the same project, can track them separately?

Answer – Ford - Yes. Depending on the sources, I would have another account to show Federal 1 Federal 2, for example, so it is all tracked separately.

Amy – Similarly, you will instruct your contractors to bill by task? Most difficult think is tracking each bill to each task. You have your tasks separated for your contractors?

Answer - Ford - When our contractors send us an invoice we speak with the contractor and spell out what we need and before we reimburse them, we track it internally and it is tracked to the respective task.

Nicole – All of the invoices will come across my desk first and I will make sure the invoice tracks the project and I track it with the codes Ford gives me. We reconcile before we do any reimbursement.

**Alabama Department of Conservation and Natural Resources  
Federal Funding Accountability and Transparency Act ("Transparency Act" or "FFATA") Disclosure  
Statement**

Effective Date of Agreement: 04/16/2020

Award Description/Title: Canal Road Improvements East of SR-161

Entity Completing Form: City of Orange Beach

Entity's DUNS Number: 791793961 <http://fedgov.dnb.com/webform>

Address: PO Box 458

City, State, Zip+4: Orange Beach, AL 36561-0458

In your business or organization's preceding completed fiscal year, did your business or organization (the legal entity to which this DUNS number belongs) receive (1) 80 percent or more of your annual gross revenues in U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements; and (2) \$25,000,000 or more in annual gross revenues from U.S. federal contracts, subcontracts, loans, grants, subgrants, and/or cooperative agreements?

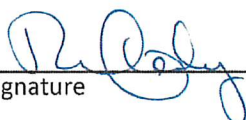
YES  NO  If yes, answer next question. If no, stop here and sign form and return to DCNR

Does the public have access to information about the compensation of the executives in your business or organization (the legal entity to which this DUNS number belongs) 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?

YES  NO  If no, complete the following. If yes, stop here and sign form and return to DCNR

Provide the following information for the five (5) most highly compensated executives in your business or organization (the legal entity to which this DUNS number, belongs):

Name	Position Title	Total Compensation Amount for the Entity's last complete fiscal year

  
Signature

City Clerk  
Title

6.30.2020  
Date

Renee Eberly  
Typed Name of Signature

DCNR-07-2018



# Alabama Department of Conservation & Natural Resources

## DUNS Number Documentation & Verification

Name of Organization: City of Orange Beach

DUNS Number: 791793961

**If your Organization doesn't have a DUNS number, please read the info below and check the box if you intend on obtaining one.**

### Information about your DUNS number and Instructions to Obtain your DUNS number:

The Federal Funding Accountability and Transparency Act (FFATA) requires all applicants seeking Federal sub-grants and/or sub-contracts to have a DUNS number. Please refer to Title 2 of the Code of Federal Regulations Part 25.100 (2 CFR Part 25.100). The Federal government uses DUNS numbers to better identify related organizations receiving funding under grants and cooperative agreements and to provide consistent name and address data for electronic grant application systems.

**Obtain a DUNS number** – A DUNS or Data Universal Numbering System number is a unique, nonindicative 9-digit identifier issued and maintained by D&B that verifies the existence of a business entity globally. After you receive a DUNS number, your business will be listed in D&B's database.

1. **If you have already registered or are unsure**, log onto <https://www.dnb.com/duns-number/lookup.html> and enter your Business name and State and click **SEARCH**. The site will display the results of your search and provide an option to send your DUNS number via email if you are registered.
2. **To obtain a DUNS number**, we strongly suggest you register via the web (not by telephone) by logging into <http://fedgov.dnb.com/webform/>. (If you visit a site that attempts to charge you for obtaining a DUNS number, you're at the wrong site because registering for a DUNS number is completely free and is usually created within one (1) business day.)

### FOR DCNR USE ONLY

DUNS Number Verified: YES  NO

Date: 06-30-2020

Performed by: Robyn Cohron

Position Title: Coastal Restoration Account Specialist

DCNR Division: State Lands - Coastal

Contract/Grant Number: S1P22-CRIE

Federal Award Number: GNSSP20AL0006

**SAM Search Results**  
**List of records matching your search for :**

**Record Status: Active**  
**DUNS Number: 791793961**

ENTITY	ORANGE BEACH, CITY OF	Status: Active
DUNS: 791793961	+4:	CAGE Code: 8A7Y4 DoDAAC:
Expiration Date: 11/24/2020	Has Active Exclusion?: No	Debt Subject to Offset?: No
Address: 4099 ORANGE BEACH BLVD		
City: ORANGE BEACH	State/Province: ALABAMA	
ZIP Code: 36561-3495	Country: UNITED STATES	



1. DATE ISSUED MM/DD/YYYY 04/16/2020		1a. SUPERSEDES AWARD NOTICE dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 87.052 - Spill Impact Component Project Grants			
3. ASSISTANCE TYPE Project Grant			
4. GRANT NO. GNSSP20AL0006-01-00 Formerly		5. TYPE OF AWARD Other	
4a. FAIN GNSSP20AL0006		5a. ACTION TYPE New	
6. PROJECT PERIOD MM/DD/YYYY From 10/01/2019		Through 04/30/2022	
7. BUDGET PERIOD MM/DD/YYYY From 10/01/2019		Through 04/30/2022	

**The Gulf Coast Ecosystem Restoration Council  
RESTORE Council**

500 Poydras Street  
Suite 1117  
New Orleans, LA 70130

**NOTICE OF AWARD**

AUTHORIZATION (Legislation/Regulations)  
RESTORE Act, 33 U.S.C. 1321(t)(3) and 40 CFR Part 1800 - Spill  
Impact Component

8. TITLE OF PROJECT (OR PROGRAM)  
State Expenditure Plan #22: Canal Road Improvements E. of SR-161

9a. GRANTEE NAME AND ADDRESS  
CONSERVATION & NATURAL RESOURCES, ALABAMA DEPT OF  
64 N Union St Rm 458  
Montgomery, AL 36130-3020

9b. GRANTEE PROJECT DIRECTOR  
Amy Hunter  
64 N Union St Rm 458  
Montgomery, AL 36130-3020  
Phone: 251-621-1216

10a. GRANTEE AUTHORIZING OFFICIAL  
Mr. Chris Blankenship  
118 N. Royal Street  
Suite 603  
Mobile, AL 36602  
Electronically Signed 04/16/2020

10b. FEDERAL PROJECT OFFICER  
Barbara Shumar  
500 Poydras St  
Gulf Coast Ecosystem Restoration Council  
New Orleans, LA 70130-3319  
Phone: 504-235-4985

**ALL AMOUNTS ARE SHOWN IN USD**

11. APPROVED BUDGET (Excludes Direct Assistance)	
I Financial Assistance from the Federal Awarding Agency Only	
II Total project costs including grant funds and all other financial participation	
a. Salaries and WageS	20,687.00
b. Fringe Benefits	8,160.00
c. Total Personnel Costs	28,847.00
d. Equipment	0.00
e. Supplies	101.00
f. Travel	438.00
g. Construction	0.00
h. Other	0.00
i. Contractual	3,154,162.00
j. TOTAL DIRECT COSTS	3,183,548.00
k. INDIRECT COSTS	7,055.00
l. TOTAL APPROVED BUDGET	3,190,603.00
m. Federal Share	1,903,668.00
n. Non-Federal Share	1,286,935.00

12. AWARD COMPUTATION	
a. Amount of Federal Financial Assistance (from item 11m)	1,903,668.00
b. Less Unobligated Balance From Prior Budget Periods	0.00
c. Less Cumulative Prior Award(s) This Budget Period	0.00
d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION	1,903,668.00
13. Total Federal Funds Awarded to Date for Project Period	1,903,668.00

14. RECOMMENDED FUTURE SUPPORT (Subject to the availability of funds and satisfactory progress of the project):			
YEAR	TOTAL DIRECT COSTS	YEAR	TOTAL DIRECT COSTS
a. 2		d. 5	
b. 3		e. 6	
c. 4		f. 7	

15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:

<ul style="list-style-type: none"> <li>a. DEDUCTION</li> <li>b. ADDITIONAL COSTS</li> <li>c. MATCHING</li> <li>d. OTHER RESEARCH (Add / Deduct Option)</li> <li>e. OTHER (See REMARKS)</li> </ul>	a
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16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:

- a. The grant program legislation
- b. The grant program regulations.
- c. This award notice including terms and conditions, if any, noted below under REMARKS.
- d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.

In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.

REMARKS (Other Terms and Conditions Attached -  Yes  No)

AUTHORIZING OFFICIAL:  
Frederick Sutter, Deputy Executive Director  
500 Poydras St Ste 1117  
New Orleans, LA 70130-7305  
Phone: 504-444-3511

Electronically Signed 04/16/2020

17.OBJ CLASS	41.0006	18a. VENDOR CODE	929933406	18b. EIN	636000619	19. DUNS	929933406	20. CONG. DIST.	03
FY-ACCOUNT NO.		DOCUMENT NO.		ADMINISTRATIVE CODE		AMT ACTION FIN ASST		APPROPRIATION	
21. a.	SEP	b.	GNSSP20AL0006	c.	SEP	d.	\$1,903,668.00	e.	
22. a.		b.		c.		d.		e.	
23. a.		b.		c.	CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD				

# AWARD ATTACHMENTS

Alabama Department of Conservation & Natural Resources

GNSSP20AL0006-01-00

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1. Terms and Conditions

## AWARD NOTES

The following documents are incorporated in this award by reference:

- GULF COAST ECOSYSTEM RESTORATION COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS (AUGUST 2015), available at [www.restorethegulf.gov](http://www.restorethegulf.gov)
- 2 CFR PART 200, UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS, AS ADOPTED PURSUANT TO 2 CFR § 5900.101
- FAPIIS CERTIFICATION, 2 CFR PART 200 APPENDIX XII
- OBSERVATIONAL DATA PLAN SUBMITTED 03/11/2020
- PRELIMINARY DATA MANAGEMENT PLAN SUBMITTED 03/06/2020
- OTHER:

## 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

The recipient must submit project performance outcome reports through the Council's grants management platform (i.e., PIPER) or any successor system on an annual basis. The performance outcome report is due on April 30th of each year, which is 30 calendar days after the end of the reporting period. Performance outcome 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.01.c of the RESTORE Council Financial Assistance ST&CS dated August 2015, which states that performance reports are due with the same frequency as financial reports.

### 3. Non-Federal Share Requirement

The budget under this award includes \$1,286,935 in project-related costs committed by the recipient, referred to as the non-Federal share. The non-Federal share is not a statutory requirement of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast Act of 2012 (33 U.S.C. 1321(t) and note) (RESTORE Act), but it is required to complete the project and has been voluntarily committed by the recipient under this award and therefore meets the definition of cost share or matching in 2 CFR §200.29. Therefore, non-Federal share funding must meet the criteria of §200.306(b). The non-Federal share will be used to cover a portion of construction costs. The Federal share must be paid out proportionally under the subrecipient agreement using a predetermined ratio of 75% Federal funds and 25% funds provided by the City of Orange Beach until all Federal funds for construction costs have been expended. City of Orange Beach funds will be utilized to pay 100% of costs remaining after Federal funds for construction costs have been fully expended. In

addition, the recipient will report on non-Federal share expenditures throughout the entire period of performance required to achieve the scope of work described in this award.

#### **4. Estimated Useful Life and Federal Interest in Project Property**

Property that is acquired or improved, in whole or in part, with Federal assistance is held in trust by the recipient or subrecipient, as specified in the award, for the purpose(s) for which the award was made, for the estimated useful life. The estimated useful life of the project is defined as the period of years that constitutes the expected useful lifespan of the project, as estimated by the recipient and agreed to by the Council, during which the Council anticipates obtaining the benefits of the project pursuant to award purposes authorized by the RESTORE Act.

For this award, the recipient has proposed an estimated useful life of 20 years from the date of construction completion. The Council's issuance of this award represents its concurrence with the recipient's estimated useful life. During the estimated useful life, the recipient or subrecipient shall not:

- A. Sell, lease, transfer, assign, convey, hypothecate, mortgage, dispose of, or otherwise convey or encumber any interest in the property without the prior written approval of the Council's Grants Officer;
- B. Use project property for purposes other than award purposes without the prior written approval of the Grants Officer; or
- C. Fail to comply with the terms and conditions of this award or any of the federal laws and regulations, Council policies, Executive Orders, and OMB Circulars that are incorporated into the terms and conditions of this Award

The recipient and subrecipient, as applicable, must administer, operate, and maintain the project in the same manner in which it operates and maintains similar infrastructure, facilities and equipment owned by it, and in accordance with state and local standards, laws, and regulations.

During the estimated useful life of the program or a specific project, the Council retains an undivided equitable interest in project property, which is sometimes referred to as the "Federal interest". See 2 CFR § 200.41. When the estimated useful life of the project is over, the Federal interest is extinguished and the Federal Government will have no further interest in project property.

#### **5. Pre-Construction Requirements**

Federal funds for construction costs in the amount of \$1,813,065 shall not be released by the Council until the following information and documentation is received and accepted in writing by the Grants Office:

- A. *Title to real property improved under this award.* In accordance with 2 CFR § 200.311, title to real property improved under this Award will vest with the recipient or subrecipient, as specified in the award, and must be used only for authorized award purposes. All work will be performed on existing public right-of way or easements currently owned by the City of Orange Beach (subrecipient). Before solicitation of bids for construction of a given project, the recipient shall review the type of ownership, including but not limited to fee-simple, long-term leasehold, easements and rights-of-way, for each tract of property needed for completion and maintenance of the Project. The recipient shall certify in writing to the Council Grants Office that that the recipient and/or subrecipient, if applicable, holds clear title to or otherwise has legal control of all project real property and that neither the recipient nor subrecipient are aware of any material

restrictions or encumbrances that could interfere with any award purpose. The Council will rely upon the recipient's due diligence in protecting title to all property needed for award purposes.

- B. *Engineering and design plans.* The recipient must provide to the Council Grants Office the cover sheet and such pages as are necessary to demonstrate that 100% design and engineering plans and specifications for all construction activities funded under this award stamped/signed by a professional engineer currently licensed in accordance with State requirements.

The Council's review is to ensure compliance with the terms and conditions of the award; the Council will not be responsible for the accuracy or completeness of design, dimensions, details, proper selection of materials, or compliance with required codes or ordinances. As between the Council and the recipient, these responsibilities rest solely with the recipient. For clarity, nothing in the foregoing is intended to limit or otherwise affect any of the recipient's rights or remedies in connection with any non-federal third party, including any of the recipient's subrecipients or contractors.

- C. *Permitting requirements.* The recipient must furnish evidence, satisfactory to the Council, that the recipient or subrecipient has received all Federal, state, and local permits and has complied with all applicable environmental laws necessary for construction, completion and operation of the Project.
- D. *Floodplain requirements.* If the property is located within the 100-year floodplain or other flooding risks have been identified, the recipient must furnish evidence, satisfactory to the Council, that all applicable floodplain requirements have been met. As appropriate to the project, this may include the following:
- i. 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 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 the Council's satisfaction.
  - ii. Floodplain Protection. Written confirmation from the State/local Floodplain Manager that the proposed project and any associated design and engineering plans are in accordance with all applicable floodplain ordinances/regulations.
  - iii. Flood Insurance. In accordance with the Flood Disaster Protection Act (42 U.S.C. § 4002 et seq), that the community is participating in the National Flood Insurance Program, and that as required, the recipient has or will purchase and maintain, or as appropriate, will cause the subrecipient to have or purchase and maintain, flood insurance.
- E. *Updated construction schedules and cost estimates.* The recipient must furnish updated construction schedules and cost estimates based upon the completed engineering and design plans and/or other information that has become available since the last update.

## **6. Inspection and Final Acceptance**

The final five percent (5%) of the contract amount for project construction costs will not be drawn down by the recipient until final approval of construction. The recipient and subrecipient, if applicable, will schedule a final inspection when construction has been completed, the architect/engineer has conducted their inspection, and any deficiencies have been corrected. Representatives of the recipient, the subrecipient, if applicable, the architect/engineer, the contractor(s), and the Council Staff, if they so desire, will make the final inspection. The Council Programs Officer must be given ten (10) calendar days advance notice of the final inspection so that a Council representative may participate. The recipient will not draw down the final five percent (5%) of construction funds until the Notice of Final Acceptance, fully executed by the recipient or subrecipient, as applicable, and the applicable architect/engineer, is submitted to and accepted in writing by the Council Grants Office. Certified as-built drawings will be submitted to the Council Grants Office within 90 days of project completion.

## **7. 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 Plans, the recipient will make any corresponding updates to metrics details in the grants 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 closeout of the award.

## **8. Updates 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 version of 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 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 Data Management Closeout Report must be submitted and approved prior to closeout of the award.

## **9. 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 extensions 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 information 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.

### **Supplemental Construction Terms**

#### **SC-1. Acquisition of real property**

Unless specifically described in the award scope of work, the acquisition of real property is not an allowable expense. In the event that acquisition of real property or an interest in real property is identified as necessary to achieve the objectives of the award, the recipient shall contact the Council Grants Office for instructions prior to expending any funds related to the acquisition of real property.

#### **SC-2. Insurance**

In accordance with 2 CFR § 200.310, the recipient or subrecipient, as applicable, must, at a minimum, provide equivalent insurance coverage for real property and equipment acquired or improved with Federal funds as provided to property owned by that entity for the useful life of said property.

#### **SC-3. Bonding**

For construction or facility improvement contracts or subcontracts exceeding the simplified acquisition threshold, the minimum bonding requirements 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.

#### **SC-4. Goals for Women and Minorities in Construction**

Department of Labor regulations set forth in 41 CFR § 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 and subrecipient, as applicable, must comply with these regulations and must obtain compliance with 41 CFR § 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 CFR § 60-4. The goal for participation of women in each trade area must be as follows:

- A. 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 CFR § 60-4.6, or any successor regulations, must hereafter be incorporated by reference into these award terms;
- 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 CFR 60-6.



**FUNDING AUTHORIZATION**

Amount of Financial Assistance	Amount of Funding Restriction	Amount of Funding Added to Award	Amount Authorized for ASAP Account	Notes
\$1,903,668.00	\$1,813,065		\$90,603	Construction funding will not be released until requirements of SAC #5 are met.

**REPORTING SCHEDULE**

Reporting Task	Task Due Date
Financial Report	10/30/2020
Financial Report	4/30/2021
Performance Report	4/30/2021
Financial Report	10/30/2021
Final Report	7/28/2022

## DESCRIPTION OF WORK TO BE PERFORMED

**PROJECT TITLE:** State Expenditure Plan #22: Canal Road Improvements E. of SR-161

**EGID:** 115

**ANTICIPATED START DATE:** 5/1/2020

**FUNDING REQUESTED:** \$1,903,668.00

**PROPOSED END DATE:** 4/30/2022

### PROJECT DESCRIPTION:

#### Project Narrative

#### Project Title – State Expenditure Plan #22: Canal Road Improvements E. of SR-161

- The purpose of this project is to construct the planned traffic safety and capacity improvements on Canal Road between SR-161 and Wilson Boulevard, thereby encouraging economic growth and development benefitting the local economy.

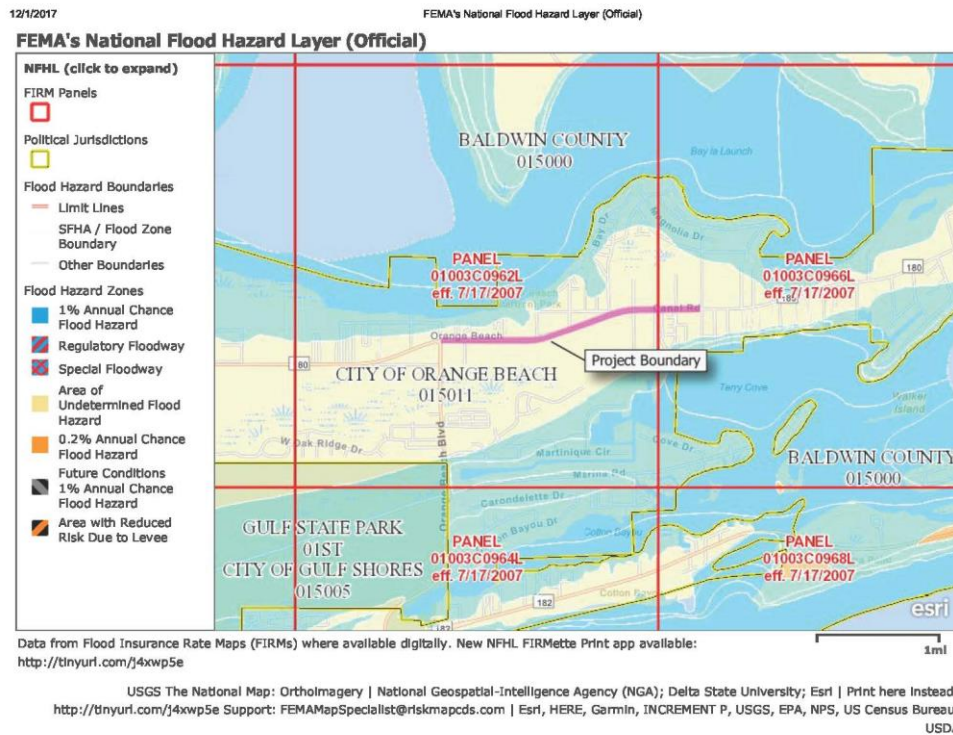
#### Methodology / Approach

- Provide access management features on Canal Road between SR-161 and Nancy Lane, a roundabout on Canal Road near Nancy Lane, and a dedicated center turn lane between Nancy Lane and Wilson Boulevard (ALDOT Access Management Manual, 2014).
- Increase traffic capacity and efficiency on Canal Road between SR-161 and Wilson Boulevard by providing safer and more efficient turning movements to and from Canal Road from adjacent businesses, residences and public amenities (ALDOT Access Management Manual, 2014).
- Sustain and create short-term jobs and revenue for local companies needed to construct the project.
- The City of Orange Beach will competitively procure a qualified contractor to construct the project according to the contract documents and specifications prepared for this project. The contractor will be required to complete all the work according to the contract documents and specifications. The City, with assistance provided by an engineering consultant already tasked with many of these services, will perform construction engineering and inspection services to ensure acceptable construction of the project. A final inspection will ensure the construction materials and methods are in accordance with the contract documents and specifications.
- The City of Orange Beach will procure a contractor to construct the project according to the contract documents and specifications for this project. The project consists of approximately 7,000 feet, or 1.33 miles, of linear infrastructure improvements along Canal Road. Between Alabama Highway 161 and Nancy Lane, the existing two-lane road will be widened to provide additional lanes, turn lanes, access management, a roundabout, and improved pedestrian and bicycle path connectivity. Between Nancy Lane and Wilson Boulevard, the existing two-lane road will be widened to provide a two-way left center turn lane.
- The infrastructure improvements shall consist of asphalt pavement widening, concrete curb and gutter, concrete sidewalk, pavement striping and markings, roadside signs, drainage improvements, earthwork, and soil stabilization including grass cover over all disturbed soil areas.

Roles and Responsibilities Table

Organization / Agency / Company	Role	Duties
Alabama Department of Conservation & Natural Resources	Grant recipient – project implementation	Grant application preparation, grant management, performance and financial monitoring and reporting, subrecipient agreement development, procurement reviews, fiscal reviews
City of Orange Beach	ADCNR Subrecipient	Owner, construction oversight, permitting
(Unknown)	Contractor to construct project	Construction

- Location – The infrastructure that will be constructed for this project will be physically located on Canal Road between SR-161 and Wilson Blvd. within the City of Orange Beach. The project is located in Alabama’s coastal zone which borders the Gulf of Mexico.



- The project timeline is anticipated to be Award plus 24 months.
- Supporting Information (Best Available Science) – The project was designed in accordance with best available science guidance for public road improvement strategies, and applicable City, State and Federal guidance for roadway improvement projects of this type (ALDOT Special and Standard Highway Drawings, 2019; ALDOT Standard Specifications, 2018; AASHTO Policy on Geometric Design, 2011). The data used to develop the design of this project was provided by licensed professionals and included topographic survey, underground utility location, geotechnical testing and design, and roadway design and plans preparation. The use of the proposed access management features, roundabout, and

dedicated center turn lane are widely accepted in local and national road infrastructure improvement projects and have been documented to improve traffic capacities and efficiencies in similar situations across the country. The plans were prepared by experienced and licensed professionals with local knowledge of the project and all work was reviewed and approved by City staff.

- Approach - The project shall consist of constructing infrastructure improvements that include asphalt pavement widening, concrete curb and gutter, concrete sidewalk, pavement striping and markings, roadside signs, drainage improvements, earthwork, and soil stabilization including grass cover over all disturbed soil areas. **Engineering and design of the project has already been completed. Permitting is in process and will be completed prior to bidding out work.** One prime contractor will be contracted by the applicant to construct the project.

#### Preaward – Grant Development

The Alabama Gulf Coast Recovery Council (AGCRC) Executive Director for the is responsible for coordinating and implementing all activities undertaken for project submission, selection, and funding awards for Spill Impact Component RESTORE Act funding. The Executive Director began working with the RESTORE Project Manager on September 9, 2019, after approval of the SEP, to develop the grant application for submission into RAAMS.

#### Task 1 – Grant Administration

ADCNR, as Administrative Agent for the Alabama Gulf Coast Recovery Council, will serve as Grant Administrator for the project, monitoring subrecipient procurement, grant compliance, and programmatic activities. ADCNR will conduct periodic onsite visits and will submit all semi-annual and final reports. Volkert, Inc., as ADCNR’s Program Manager, may assist with some of the activities listed above on an as-needed, task order basis. Once substantial completion has been reached by the Subrecipient, and upon favorable review by ADCNR, ADCNR will initiate and submit all required documentation to begin and conclude the grant closeout process in compliance with 2 CFR Part 200 and applicable regulations. Final drawdown and federal financial report will be completed upon instruction by the RESTORE Council.

#### Task 2- Construction

- The project will be constructed in 4 phases:
  - Phase 1 Construction – Construct widening on one side of the roadway for the full length of the project including excavation, base and asphalt paving, drainage improvements, concrete curb and gutter, concrete sidewalk and soil stabilization will be installed in accordance with approved plans and specifications.
  - Phase 2 Construction – Construct widening on the remaining side of the roadway for the full length of the project including excavation, base and asphalt paving, drainage improvements, concrete curb and gutter, concrete sidewalk and soil stabilization will be installed in accordance with approved plans and specifications.
  - Phase 3 Construction – Construct the remaining portions of the median and roundabout improvements including concrete curb and gutter, concrete islands, soil backfill and stabilization in accordance with approved plans and specifications.
  - Phase 4 Construction – Complete asphalt paving for the full length of the project (1.33 miles) and place final traffic signing and striping, soil stabilization, and grass cover to be installed in accordance with approved plans and specifications.
- The estimated useful life for the improvements is approximately 20 years based on industry standards.

## Project Timeline

- Award Date
  - Milestone #1 – Project Management (Award + 24 months)
  - Milestone #2 – Construction (Award + 24 months)
- Project Completion – Award + 24 Months

## Risks and Uncertainties

- There have been countless road building projects in the past with some currently ongoing within and around the City. Some of these projects have increased traffic capacity and efficiencies and others have induced demand. The City is experiencing significant growth and development and this project is intended to address current levels of traffic congestion and unsafe turning movements while also accommodating additional economic growth and community resilience by providing for additional growth and development. Although providing an immediate benefit to traffic in the City of Orange Beach, it's possible that future growth and development in and around this project could meet or exceed the capacity and desired efficiencies along this project and future improvements may still be needed.
- The possibility of significant weather events or other environmental conditions that could lead to excessive pollutant or sediment discharges due to stormwater runoff to State waters during the land disturbing construction activities required by this project. In order to mitigate this risk, the project will be required to obtain NPDES permit coverage and will require the implementation and maintenance of effective erosion and sediment controls in accordance with a Construction Best Management Practices Plan (CBMPP) prepared and certified by a Qualified Credential Professional (QCP). A QCP or Qualified Credential Inspector (QCI) will conduct regular inspections of regulated construction activities to ensure effective erosion and sediment controls are being maintained (ADEM NPDES Permit, 2016; Alabama Handbook for Erosion Control, Vols 1 & 2, 2018; Field Guide for Erosion and Sediment Control, 2018).

## Co-Funding

- The engineer's estimate for the construction component of this project is \$3,100,000. The City of Orange Beach expects to provide \$1,286,935 in co-funding using General Fund monies. Total project costs are estimated to be \$3,190,603.

## Metrics

- RES005 - Recreational improvements - # improvements to recreational infrastructure

## Environmental Compliance

- See attached RESTORE Act Environmental Compliance Checklist

Effective April 1, 2011, the Alabama Department of Environmental Management (ADEM) established General NPDES Permit No. ALR100000 for discharges associated with regulated construction activity that will result in land disturbance equal to or greater than one acre (ADEM NPDES Permit, 2016). The project will require NPDES permit coverage, but not because it results in discharge to navigable waters. It requires NPDES permit coverage because the total land disturbance from construction activities exceeds the limit of one acre. A Notice of Intent for National Pollutant Discharge Elimination System (NPDES) permit coverage is required to be filed with ADEM for this project. The NOI for NPDES

permit coverage has not been filed with ADEM yet but will need to be filed before this project is to be advertised for bid. The City consulted with Vittor & Associates on this project who determined that there are no wetlands in the vicinity of the construction. In addition, there is no stormwater discharge directly into tidally influenced waters. It has been determined that Clean Water Act Section 404 authorization is not required due to the lack of wetlands impacts and direct stormwater discharge into tidally influenced waters.

In addition, the City confirmed that the Coastal Zone Management Act does not apply to this project due to the lack of wetlands in the vicinity of the roadway construction. There are no wetlands impacts caused by the roadway construction.

#### References:

Alabama Department of Environmental Management. National Pollutant Discharge Elimination System Permit General Permit No. ALR100000. March 29, 2016.

Alabama Department of Transportation. Access Management Manual. February 2014.

Alabama Department of Transportation. Special & Standard Highway Drawings (U.S. Customary Units of Measurement), 2019.

Alabama Department of Transportation. Standard Specifications for Highway Construction, 2018 Edition.

Alabama Soil and Water Conservation Committee. Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas. Volume 1, Developing Plans and Designing Best Management Practices. 2018.

Alabama Soil and Water Conservation Committee. Alabama Handbook for Erosion Control, Sediment Control and Stormwater Management on Construction Sites and Urban Areas. Volume 2, Installation, Maintenance, and Inspection of Best Management Practices. 2018.

Alabama Soil and Water Conservation Committee and Partners. Field Guide for Erosion and Sediment Control on Construction Sites in Alabama, Third Edition. December 2018.

American Association of State Highway and Transportation Officials. A Policy on Geometric Design of Highways and Streets, 6<sup>th</sup> Edition. 2011.

**BUDGET NARRATIVE**

**PROJECT TITLE - State Expenditure Plan #22: Canal Road Improvements E. of SR-161**

**1.0 SUMMARY AND JUSTIFICATION**

Funding in the amount of \$1,903,668 is being requested. The amount is an estimate based on previous projects with similar scopes of work. The engineer’s estimate for the construction component of this project is \$3,100,000. The City of Orange Beach expects to provide \$1,286,935 in co-funding using General Fund monies. Total project costs are estimated to be \$3,190,603.

<b>TOTAL PROJECT OR PROGRAM FUNDS REQUESTED</b>	<b>\$ 1,903,668</b>
<b>Total Pre-Award Funds Requested</b>	<b>\$5,136</b>
<b>Total Direct Costs Requested</b>	<b>\$1,891,477</b>
<b>Total Allowable Indirect Costs Requested</b>	<b>\$7,055</b>
<b>Total Program Income Anticipated</b>	<b>\$0.00</b>
<b>Co-Funding</b>	<b>\$1,286,935</b>

**2.0 PRE-AWARD COSTS**

The Alabama Gulf Coast Recovery Council’s (AGCRC) Deepwater Horizon (DWH) Restoration Coordinator/Biologist IV, dedicated approximately 50 hours and the Grants Manager/Biologist III dedicated approximately 50 hours to the draft grant application prior to award. Therefore, estimated pre-award costs for developing the grant application are \$5,136 (salary & fringe). Pre-award activities began on October 1, 2019.

**3.0 Budget Object Classes Applicable to All Projects and Programs – DIRECT COSTS**

**3.1 PERSONNEL**

**Alabama Gulf Coast Recovery Council (AGCRC) Executive Director** is responsible for coordinating and implementing all activities undertaken for project submission, selection, and funding awards for RESTORE Act funding. The Executive Director will provide support for RESTORE Act activities including, but not limited to, subrecipient monitoring; participating in meetings and conference calls, as needed; reviewing subrecipient agreements, procurement documents, contracts, reports, and all other necessary documents for grant administration. Time is traced using CORONA, which allows employees to input tasks by project. The timesheets are electronically approved by assigned supervisors.

**ADCNR’s Deepwater Horizon (DWH) Restoration Coordinator/Biologist IV** will provide support for RESTORE Act activities including, but not limited to, subrecipient monitoring; participating in meetings and conference calls, as needed; reviewing subrecipient agreements, procurement documents, contracts, reports, and all other

necessary documents for grant administration. Time is tracked using CORONA, which allows employees to input tasks by project. The timesheets are electronically approved by assigned supervisors.

**Grants Manager/Biologist III** will assist in preparing draft proposals for Executive Director review, developing budgets and expense details, monitoring, reviewing subrecipient reports and invoices, submitting semi-annual reports and reimbursements to RESTORE Council, and participating in meetings and conference calls as needed. Time is tracked using CORONA, which allows employees to input tasks by project. The timesheets are electronically approved by assigned supervisors.

**Grants Coordination Officer (GCO)** will provide support for RESTORE Act activities including, but not limited to, all federal grant compliance requirements and subrecipient monitoring. Time is tracked using CORONA, which allows employees to input tasks by project. The timesheets are electronically approved by assigned supervisors.

**Administrative Assistant** will provide general office support for the Executive Director and Biologist III/Grants Manager as needed. Time is tracked using CORONA, which allows employees to input tasks by project. The timesheets are electronically approved by assigned supervisors.

**ADCNR Personnel Staff - Time**

<b>Position/Role</b>	<b>Duties and Responsibilities</b>	<b>Unit Cost (Salary)</b>	<b>Unit or % Time</b>	<b>Total</b>	<b>Pre-Award Costs?</b>
DWH Restoration Coordinator / Biologist IV	Coordinating & supporting all staff in submission of RESTORE Act grants	\$97,696	50 hours	\$2,348	Pre-Award
Grants Manager / Biologist III	Prepare documents for all activities for Spill Impact Component RESTORE Act funding	\$58,128	50 hours	\$1,397	Pre-Award
AGCRC Executive Director	Coordinating & implementing all activities for Spill Impact Component RESTORE Act funding	\$105,866	1%	\$2,117	
DWH Restoration Coordinator / Biologist IV	Coordinating & supporting all staff in submission of RESTORE Act grants	\$97,696	3.5%	\$6,839	
Grants Manager / Biologist III	Prepare documents for all activities for Spill Impact Component RESTORE Act funding	\$58,128	4%	\$4,650	
Grants Coordination Officer	Provide general office support	\$62,530	1.5%	\$1,876	
Administrative Assistant	Provide general office support	\$36,492	2%	\$1,460	

**TOTAL ADCNR PERSONNEL: \$20,687**



### 3.2 FRINGE BENEFITS

This includes FICA, cost of leave, employee insurance, retirement and unemployment benefit plans. The fringe rate percentage varies by employee and will also vary from year to year based upon federal guidance and the state legislative process.

#### ADCNR Personnel Staff - Fringe

Position (s)	Total Compensation (life of project)	Fringe %	Total Fringe Benefit (life of project)	Pre-Award Costs?
DWH Restoration Coordinator / Biologist IV	\$2,348	34.4	\$808	Pre-Award
Grants Manager / Biologist III	\$1,397	41.7	\$583	Pre-Award
AGCRC Executive Director	\$2,117	32.7	\$692	
DWH Restoration Coordinator / Biologist IV	\$6,839	34.4	\$2,353	
Grants Manager / Biologist III	\$4,650	41.7	\$1,940	
Grants Coordination Officer	\$1,876	51.8	\$972	
Administrative Assistant	\$1,460	55.6	\$812	

**TOTAL ADCNR FRINGE BENEFITS: \$8,160**

### 3.3 TRAVEL

Grants Manager/Biologist III will travel 6 times (every other month) to the work site. Work site trip will be used to ensure scope of work if being followed and invoices reflect work completed.

Purpose of Travel	Destination	# Trips	# Travelers	Item	Quantity or Rate	Total	Pre-Award Costs?
Project Oversight	Orange Beach, AL	6	1	Mileage	\$0.59 per mile	\$438.48	

**TOTAL ADCNR TRAVEL: \$438.48**

### 3.4 CONSTRUCTION and LAND ACQUISITION

N/A

### 3.5 EQUIPMENT

N/A

### 3.6 SUPPLIES

Postage – Postage funds will be used to send grant related, as needed, out to contractors and subrecipient.

Item Name Description	Unit Cost	Quantity	Total	Pre-Award Costs?
Postage	\$100	1	\$100	

**TOTAL ADCNR SUPPLIES: \$100**

### 3.7 OTHER DIRECT COSTS

N/A

### 3.8 SUBRECIPIENTS

The City of Orange Beach will be a sub-recipient to the Alabama Department of Conservation and Natural Resources. A sub-award agreement will be issued for \$1,813,065 to complete the scope of work. Prior to execution of a subaward, DCNR will develop a subrecipient monitoring plan to provide consistent support and oversight to subrecipients. Elements of this oversight include: the completion of a subrecipient risk assessment; holding a project kick off meeting to review terms and conditions of the grant, scope of work and how information will be shared; site visits at a frequency determined by the scope of work specifics; and completion of a monthly written progress report by the subrecipient detailing fund expenditures; progress to date and any current or potential issues of concern. DCNR is also offering quarterly technical assistance workshops to subrecipients as part of their monitoring activities. The City of Orange Beach will contribute \$1,286,935 towards the construction costs associated with this project. The City has provided a letter committing to funding this portion of the project and has shared the resolution passing the fiscal year 2020 budget which included funds for Canal Road improvements. The final approval will come from the City Council when prior to release of the project Request for Quote. Pay-outs on the contract activity will be shared 25% Orange Beach General Fund – 75% Bucket 3 Restore Funds until the Restore Funds have been expended. At that point, the City of Orange Beach will pay 100% of all invoices associated with this project.

Contractual—\$3,100,000 is the estimated cost of the construction work or contract, based on an itemized engineer’s estimate. This cost covers the complete construction of the project at the awarded contract prices for each of the items within the contract. The engineer’s estimate is based on historical prices for similar local projects. The cost of construction will be paid from \$1,813,065 in Federal funds and \$1,286,935 in co-funding from the City of Orange Beach. There will only be one contract for the construction activities to complete this project.

1. Name of Contractor—TBD
2. Method of Selection— Bids will be solicited from qualified contractors following federal procurement standards, applicable Alabama State Bid Laws, along with City of Orange Beach procurement standards.
3. Period of Performance—Award + 24 Months
4. Scope of Work—The contractor will construct the project according to the contract documents and specifications prepared for this project. The cost shown is for construction activities only. This cost includes (but is not limited to) the contractors' labor, materials, bonds, insurance, and all other proper and essential costs required to construct this project. In addition to the major cost of purchasing and laying asphalt on Canal Road, these costs include earthwork, construction of curbs, gutters and sidewalks, installation of drainage solutions, purchasing and installation of road signs. All other costs for the project (including but not limited to Right of Way acquisition, Design and Permitting Services Construction Administration, Construction Engineering and Inspection) will be paid for directly by the City of Orange Beach. The Construction Cost Estimate was generated by calculating the actual unit-based pay items needed to construct the project as shown on the approved plans and specifications/contract documents. Unit costs for the required pay items were then determined based on historical data for the same pay items based on project(s) with similar size, type and location to the subject project. The calculated Units were then multiplied by the unit costs shown from historical projects to determine an estimated construction cost.
5. Method of Accountability— Progress and performance of the work will be monitored by the City Engineer, who is a licensed professional engineer in the State of Alabama, and other qualified personnel on a daily basis. Payment will be made only for work that has been completed to the satisfaction of the City Engineer. Retainage will be held until the project is substantially complete in accordance with Alabama

law. In addition, the contractor will be required to provide a bond to insure completion of the work in a satisfactory manner.

### 3.9 CONTRACTORS/CONSULTANTS

#### Volkert & Associates Inc.

ADCNR followed State procurement policies and procedures (Code of Alabama 1975 – Article 2 – State Bid Laws (41-16-20) to identify and select Volkert & Associates Inc. (Volkert) to provide DWH Program Management Services as needed (contract awarded 2/17/17). ADCNR estimates \$54,161.88 in contract costs for Volkert for this project. Volkert services may be used to provide technical expertise in overall grant administration support. Volkert services will be secured through task orders and reimbursed based upon actual time committed to the project. This estimate represents the top of the range.

1. Method of Selection—Volkert & Associates Inc. was selected as a result of a Request for Proposal procurement process.
2. Period of Performance—March 2, 2017 - March 2, 2021
3. Scope of Work—Volkert services may be used to provide program management services, including engineering, planning, environmental and construction management and other technical services on an as-needed basis to support restoration efforts on the Alabama coast.
4. Method of Accountability—Contractor will bill DCNR monthly for services performed.
5. Itemized Budget and Justification—Scope of services, approved documents, an itemized budget will be provided as requested by DCNR.

Organization	Description	Amount	Pre-Award Costs?
Volkert & Associates Inc.	Contracted Technical Support	\$54,161.88	

**TOTAL CONTRACTUAL:           \$54,161.88**

### 4.0 Budget Object Classes Applicable to All Projects and Programs – INDIRECT COSTS

INDIRECT, OVERHEAD, OR G&A RATE: 24.09%

BASIS: Total direct costs, less capital expenditures and passthrough funds. Passthrough funds are normally defined as payments to participants, stipends to eligible recipients, or subawards, all of which normally require minimal administrative effort.

TOTAL CALCULATED INDIRECT/OVERHEAD COSTS: \$7,055

**TOTAL OF INDIRECT COSTS: \$7,055**

### 5.0 PROGRAM INCOME

N/A

### 6.0 CASH DRAWDOWN PROJECTIONS

Estimated cash drawdown projections are outlined in RAAMS.

## BUDGET SUMMARY

	Amount
<b>Personnel</b>	\$28,847.00
Personnel	\$20,687.00
Fringe Benefits	\$8,160.00
<b>Travel</b>	\$438.00
Travel	\$438.00
Project Oversight	\$438.00
<b>Construction</b>	
Construction management/legal expenses	\$0.00
Land, structures, rights-of-way, appraisals, etc.	\$0.00
Relocation expenses and payments	\$0.00
Architectural and engineering fees	\$0.00
Other architectural and engineering fees	\$0.00
Project inspection fees	\$0.00
Site work	\$0.00
Demolition and removal	\$0.00
Construction	\$0.00
Construction	\$0.00
Contingencies	\$0.00
<b>Equipment</b>	\$0.00
Equipment	\$0.00
<b>Supplies</b>	\$101.00
Supplies	\$101.00
Postage	\$101.00
<b>Other Direct Costs</b>	\$0.00
Other Direct Costs	\$0.00
Miscellaneous	\$0.00
<b>Subrecipients and Contractors</b>	\$1,867,227.00
Subrecipient – City of Orange Beach	\$1,813,065.00
Contractor	\$54,162.00
Volkert & Associates Inc.	\$54,162.00
<b>Total Direct Costs</b>	\$1,896,613.00
<b>Indirect Charges</b>	\$7,055.00
Indirect Charges	\$7,055.00
Total direct costs, less capital expenditures and passthrough funds. Passthrough funds are normally defined as payments to participants, stipends to eligible recipients, or subawards, all of which normally require minimal administrative effort. Fixed	\$7,055.00
<b>Total Indirect Costs</b>	\$7,055.00
<b>Total GCERC Costs</b>	\$1,903,668.00
<b>Co-Funding</b>	\$1,286,935.00
Co-Funding – City of Orange Beach	\$1,286,935.00
	\$1,286,935.00
<b>Total Project Costs</b>	\$3,190,603.00
<b>Income</b>	\$0.00
Project (program) income	\$0.00

**MILESTONES**

Milestone	Area of Effort	Description	Start Date	Expected Date	Amount	Deliverable
Project Management	Project Oversight and Grants Management	ADCNR project management, subrecipient monitoring, reviewing subrecipient agreements, procurement documents, contracts, grant administration, ensuring grant compliance requirements and providing financial and performance reports.	04/01/2020	03/30/2022	\$90,603.00	No
Construction	Construction	Construction of phase 1 through 4 of the project and post-construction monitoring of road way design phases. Complete all planned traffic safety and capacity improvements on Canal Road between SR-161 and Wilson Boulevard according to E&D plans and permits, at cost and on-time. A construction completion report, as well as construction as-builts will be provided as a deliverable. will be submitted at the end of the project.	04/01/2020	03/30/2022	\$1,813,065.00	Yes

**APPROVED METRICS**

<b>Template Name:</b>	Community Resilience
<b>Metric Name:</b>	RES005 - Community Resilience - # of improvements to recreational habitat/infrastructure

<b>Baseline</b>	0.00
<b>Current</b>	0.00
<b>Completion</b>	1.00

<b>Notes:</b>	
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## **APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL LAWS**

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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 USC 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 USC. 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 USC. 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 USC 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 USC 3702 and 3704,

as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 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 USC 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 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 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 USC 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC 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 USC 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 USC 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.



## **PROCUREMENT OF RECOVERED MATERIALS**

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The contractor must comply with federal regulations regarding procurement of recovered materials found at 2 CFR §200.323.

2 CFR §200.323 requires the Project Owner and its contractors to 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 CFR 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 during 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.

40 CFR §247.12 designates the following Construction Products:

(a) Building insulation products, including the following items:

- (1) Loose-fill insulation, including but not limited to cellulose fiber, mineral fibers (fiberglass and rock wool), vermiculite, and perlite;
- (2) Blanket and batt insulation, including but not limited to mineral fibers (fiberglass and rock wool);
- (3) Board (sheathing, roof decking, wall panel) insulation, including but not limited to structural fiberboard and laminated paperboard products, perlite composite board, polyurethane, polyisocyanurate, polystyrene, phenolics, and composites; and
- (4) Spray-in-place insulation, including but not limited to foam-in-place polyurethane and polyisocyanurate, and spray-on cellulose.

(b) Structural fiberboard and laminated paperboard products for applications other than building insulation, including building board, sheathing, shingle backer, sound deadening board, roof insulating board, insulating wallboard, acoustical and non-acoustical ceiling tile, acoustical and non-acoustical lay-in panels, floor underlayments, and roof overlay (coverboard).

(c) Cement and concrete, including concrete products such as pipe and block containing:

- (1) Coal fly ash;
- (2) Ground granulated blast furnace slag (GGBF);
- (3) Cenospheres; or
- (4) Silica fume from silicon and ferrosilicon metal production.

- (d) Carpet made from polyester fiber made from recovered materials for use in moderate-wear applications such as single-family housing and similar wear applications.
- (e) Floor tiles and patio blocks containing recovered rubber or plastic.
- (f) Shower and restroom dividers/partitions containing recovered plastic or steel.
- (g)
  - (1) Consolidated latex paint used for covering graffiti; and
  - (2) Reprocessed latex paint used for interior and exterior architectural applications such as wallboard, ceilings, and trim; gutter boards; and concrete, stucco, masonry, wood, and metal surfaces.
- (h) Carpet cushion made from bonded polyurethane, jute, synthetic fibers, or rubber containing recovered materials.
- (i) Flowable fill containing coal fly ash and/or ferrous foundry sands.
- (j) Railroad grade crossing surfaces made from cement and concrete containing fly ash, recovered rubber, recovered steel, recovered wood, or recovered plastic.
- (k) Modular threshold ramps containing recovered steel, rubber, or aluminum.
- (l) Nonpressure pipe containing recovered steel, plastic, or cement.
- (m) Roofing materials containing recovered steel, aluminum, fiber, rubber, plastic or plastic composites, or cement.

## **PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OF EQUIPMENT**

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The contractor must comply with federal regulations regarding prohibition on certain telecommunications and video surveillance services or equipment found at 2 CFR §200.216, which states:

(a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain;

(2) Extend or renew a contract to procure or obtain; or

(3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) 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).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) 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 a covered foreign country.

(b) In implementing the prohibition under Public Law 115-232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

(c) See Public Law 115-232, section 889 for additional information.

(d) See also §200.471.

## **DOMESTIC PREFERENCES FOR PROCUREMENTS**

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The contractor must comply with federal regulations regarding domestic preferences for procurements found at 2 CFR §200.322, which states:

(a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

## **CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS**

**Documentation of compliance with the following requirements is a matter of contractor responsibility. When subcontracting, the contractor must submit documentation of good faith efforts to meet the project's MBE/WBE requirements before contracted work can commence. (MBE/WBE requirements are outlined below and can be found at 2. C. F. R. §200.321.) Failure on the part of the contractor to submit proper documentation may cause the Owner not to execute or to terminate the contract.**

(a) 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.

(b) 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.

The prime contractor should note that this requirement mandates two responsibilities. Separate solicitations must be made of minority **and** women's business enterprises.

### **SUBMITTAL OF MINORITY BUSINESS ENTERPRISE AND WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) DOCUMENTATION**

Before the Notice of Award can be issued, the lowest responsive and responsible bidder will be required to submit either:

- A written certification that no subcontracts will be issued.
- OR -
- The Subcontractor Listing Form detailing all subcontractors that will perform work on the project, including name, contact person, address, phone, and status (MBE, WBE or Non).

If subcontractors will be utilized, the lowest responsive and responsible bidder will be required to submit the following for subcontracts proposed to be awarded to MBE/WBE enterprises:

- A certification from each MBE and/or WBE firm declaring its status as a MBE or WBE firm. This can be an SBA, ADECA, or ALDOT certification. A self-certification is acceptable, if the certification specifies the basis for MBE/WBE designation (e.g., the business is 51% owned and daily operation is controlled by one or more women or minority owners).

If subcontractors will be utilized, the lowest responsive and responsible bidder will be required to submit the following for subcontracts proposed to be awarded to Non-MBE/WBE:

- For all subcontracts for which there are capable certified MBE/WBE firms existing to potentially perform the work, letters transmitted to MBE and WBE firms requesting quotes or proposals for specific subcontracting opportunities, for construction, equipment, materials, or supply needs and encouraging inquiries for further details. Solicitations should have been sent in a timely manner, including allowed response time. (See “Sample Letter from Contractor to MBE/WBE Firms” below.)
- A listing of certified MBE and WBE firms from whom quotes or proposals were received, if any, who were not awarded subcontracts, for construction, equipment, materials or supplies.
- Evidence that each Non-MBE/WBE subcontractor or supplier selected for the scope of work or material purchase, was lower in price than each MBE/WBE proposal (or that there is some other acceptable reason to select the Non-MBE/WBE) and that the scope of work, or material purchase, was the same for both the MBE/WBE and Non-MBE/WBE.

**Bidders may utilize the following resources to assist in MBE/WBE affirmative outreach:**

Alabama Governor’s Office of Minority Affairs  
 Minority & Women’s Business Enterprise  
<https://goma.alabama.gov/mwbe/>

U.S. Small Business Administration  
<https://www.sba.gov/>

Alabama Department of Economic and Community Affairs  
 Office of Minority Business Enterprise  
<https://adeca.alabama.gov/ombe/>

U.S. Department of Commerce Minority Business  
 Development Agency  
<https://www.mbda.gov/>

Alabama Department of Transportation  
 Construction Bureau  
 1409 Coliseum Boulevard  
 Montgomery, AL 36130  
<https://www.dot.state.al.us/programs/DBE.html>

**Should the Prime Contractor intend to later issue a subcontract, the above affirmative steps must be followed and documentation of such submitted to the Owner for review as described under this section.**

# SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS

## (CONTRACTOR'S LETTERHEAD)

[DATE]

[MBE/WBE COMPANY NAME]

[ADDRESS]

[CITY, STATE ZIP]

RE: [NAME OF PROJECT]

Dear [MBE/WBE FIRM]:

This company intends to submit a bid on the above referenced project.

We are soliciting a proposal from you for any item or items on this project for which you are qualified to subcontract. You may submit proposals to subcontract items of construction or for project materials and supplies if you are a distributor of materials or equipment.

A [BID SCHEDULE OR DESCRIPTION OF THE SPECIFIC ITEM TO BID] is attached for your review. You are encouraged to submit proposals on any item(s) for which you are qualified to subcontract. Proposals must be submitted by [SUBMITTAL DEADLINE] to be considered.

For further details, you are encouraged to contact [NAME OF OWNER REPRESENTATIVE] by email at [EMAIL ADDRESS] or by telephone at [TELEPHONE NUMBER] during normal business hours.

Sincerely,

[NAME OF REPRESENTATIVE]

[NAME OF COMPANY]

Enclosure: [BID SCHEDULE OR DESCRIPTION OF THE SPECIFIC ITEM TO BID]

## **41 CFR §60-1.4(b) EQUAL OPPORTUNITY CLAUSE**

*(for Federally Assisted Construction Contracts)*

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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 applicant 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 applicant 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 applicant 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 applicant 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 applicant 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.

**41 CFR §60-4.2(d) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (Executive Order 11246)**

1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Specifications" set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area, are as follows:

<b>Time-tables</b>	<b>Covered Area</b> (Geographical area where the contract is to be performed)	<b>Goals for minority participation for each trade</b>	<b>Goals for female participation in each trade</b>
Until Further Notice	Baldwin County, AL	25.9 %	6.9% for all Covered Areas
	Mobile County, AL	25.9 %	

These goals are applicable to all the Contractor's construction work (whether or not it is Federal or federally assisted) performed in the covered area. If the contractor performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the contractor also is subject to the goals for both its federally involved and non-federally involved construction.

The Contractor's compliance with the Executive Order and the regulations in 41 CFR part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR part 60-4. Compliance with the goals will be measured against the total work hours performed.

3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
4. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is the Alabama County within the Gulf Coast Region where the contract will be performed.

## **41 CFR §60-4.3(a) STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (Executive Order 11246)**

1. As used in these specifications:

a. "Covered area" means the geographical area described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.

3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or Subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or Subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or Subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.

4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and

training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered Construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.

5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.

b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organizations' responses.

c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.

d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.

e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.

f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.

g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Subcontractors with whom the Contractor does or anticipates doing business.

i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR part 60-3.

l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.

n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a contractor association, joint contractor-union, contractor-community, or other similar group of which the contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through p of these Specifications provided that the contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.

9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.

11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, contractors shall not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

**SUBCONTRACTOR LISTING FORM** (v.10.22.2020)

The prime contractor must submit this form to the Owner prior to contract execution and must update it for each subcontractor performing any work resulting from this contract. If additional lines are needed, this form may be duplicated.

<b>Subcontractor Name and Contact Person</b>	<b>Subcontractor Address and Phone Number</b>	<b>Subcontractor DUNS</b>	<b>MBE (Y/N)</b>	<b>WBE (Y/N)</b>	<b>On Site during this period (Y/N)</b>

**COMPLETED BY:** \_\_\_\_\_ **DATE:** \_\_\_\_\_



# **SECTION VI**

## **ADDITIONAL TERMS RELATING TO PURCHASES WITH FEDERAL GRANT AWARDS**

### **ARTICLE 1 – FEDERAL GRANT FUNDING**

This procurement may be funded in whole or part with federal grant funds.

### **ARTICLE 2 – LOCAL VENDOR PREFERENCE**

No local vendor preference will be considered or granted in evaluating bids which are funded in whole or part by federal grant awards.

### **ARTICLE 3 – REMEDIES FOR NON-PERFORMANCE / TERMINATION OF CONTRACT**

#### Immediate Termination

This bid award is subject to the appropriation and availability of City funding. The bid award will terminate immediately and absolutely if the City determines that adequate funds are not appropriated or granted, or funds are de-appropriated such that the City cannot fulfill its obligations under the bid, which determination is at the City's sole discretion and shall be conclusive. Further, the City may terminate the bid award for any one or more of the following reasons effective immediately without advance notice:

- i) In the event the bidder or bid awardee ("Contractor") is required to be certified or licensed as a condition precedent to providing goods and services, the revocation or loss of such license or certification may result in immediate termination of the bid award effective as of the date on which the license or certification is no longer in effect;
- ii) The City determines that the actions, or failure to act, of the Contractor, its agents, employees, or subcontractors have caused, or reasonably could cause, life, health, or safety to be jeopardized; and/or
- iii) The City determines that the Contractor furnished any statement, representation, or certification in connection with the bidding or bid award process which is materially false, deceptive, incorrect, or incomplete.

#### Termination for Cause

The occurrence of any one or more of the following events shall constitute cause for the City to declare the Contractor in default of its obligation under the bid award:

- i) Contractor's persistent failure to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the Progress Schedule);
- ii) Failure of Contractor to perform or otherwise to comply with a material term of the Contract Documents;
- iii) Contractor's disregard of Laws or Regulations of any public body having jurisdiction; or
- iv) Contractor's repeated disregard of the authority of Owner or Engineer.

If one or more of the events identified above occurs, then after giving Contractor (and any surety) ten days written notice that Owner is considering a declaration that Contractor is in default and termination of the contract, Owner may proceed to:

- i) declare Contractor to be in default, and give Contractor (and any surety) notice that the Contract is terminated; and
- ii) enforce the rights available to Owner under any applicable performance bond.

Subject to the terms and operation of any applicable performance bond, if Owner has terminated the Contract for cause, Owner may exclude Contractor from the Site, take possession of the Work, incorporate in the Work all materials and equipment stored at the Site or for which Owner has paid Contractor but which are stored elsewhere, and complete the Work as Owner may deem expedient.

Owner may not proceed with termination of the Contract if Contractor within seven days of receipt of notice of intent to terminate begins to correct its failure to perform and proceeds diligently to cure such failure.

If Owner proceeds to terminate the contract, Contractor shall not be entitled to receive any further payment until the Work is completed. If the unpaid balance of the Contract Price exceeds the cost to complete the Work, including all related claims, costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals) sustained by Owner, such excess will be paid to Contractor. If the cost to complete the Work including such related claims, costs, losses, and damages exceeds such unpaid balance, Contractor shall pay the difference to Owner. Such claims, costs, losses, and damages incurred by Owner will be reviewed by Engineer as to their reasonableness and, when so approved by Engineer, incorporated in a Change Order. When exercising any rights or remedies under this paragraph, Owner shall not be required to obtain the lowest price for the Work performed.

Where Contractor's services have been so terminated by Owner, the termination will not affect any rights or remedies of Owner against Contractor then existing or which may thereafter accrue, or any rights or remedies of Owner against Contractor or any surety under any payment bond or performance bond. Any retention or payment of money due Contractor by Owner will not release Contractor from liability.

If and to the extent that Contractor has provided a performance bond under the provisions, the provisions of that bond shall govern over any inconsistent provisions herein.

#### Notice of Default

If there is a default event caused by the Contractor, the City shall provide written notice to the Contractor requesting that the breach or noncompliance be remedied within the period of time specified in the City's written notice to the Contractor. If the breach or noncompliance is not remedied within the period of time specified in the written notice, the City may:

- i) Immediately terminate the bid award without additional written notice;
- ii) Procure substitute goods or services from another source and charge the difference between the bid award price and the substitute price to the defaulting Contractor; and/or
- iii) Enforce the terms and conditions of the bid award and seek any legal or equitable remedies.

#### Termination upon Notice

Following thirty (30) days' written notice, the City may terminate the bid award in whole or in part without the payment of any penalty or incurring any further obligation to the Contractor. Following termination upon notice, the Contractor shall be entitled to compensation, upon submission of invoices and proper proof of claim, for goods and services provided under the bid to the City up to and including date of termination.

#### Payment Limitation in Event of Termination

In the event of termination of the bid award for any reason by the City, the City shall pay only those amounts, if any, due and owing to the Contractor for goods and services actually rendered up to and including the date of termination of the bid award and for which the City is obligated to pay pursuant to the bid award. Payment will be made only upon submission of invoices and proper proof of the Contractor's claim. This provision in no way limits the remedies available to the City in the event of termination.

### Owner May Terminate for Convenience

Upon seven days written notice to the Contractor, the City may, without cause and without prejudice to any other right or remedy of the City, terminate the Contract. In such case, Contractor shall be paid for (without duplication of any items):

- i) Completed and acceptable Work executed in accordance with the Contract Documents prior to the effective date of termination, including fair and reasonable sums for overhead and profit on such Work;
- ii) Expenses sustained prior to the effective date of termination in performing services and furnishing labor, materials, or equipment as required by the Contract Documents in connection with uncompleted Work, plus fair and reasonable sums for overhead and profit on such expenses;
- iii) Other reasonable expenses directly attributable to termination, including costs incurred to prepare a termination for convenience cost proposal; and

Contractor shall not be paid on account of loss of anticipated overhead, profits, or revenue, or other economic loss arising out of or resulting from such termination.

### Termination Duties

Upon receipt of notice of termination or upon request of the City, the Contractor shall:

- i) Cease work under the bid award and take all necessary or appropriate steps to limit disbursements and minimize costs, and furnish a report within thirty (30) days of the date of notice of termination, describing the status of all work under the bid award, including, without limitation, results accomplished, conclusions resulting there from, and any other matters the City may require;
- ii) Immediately cease using and return to the City any personal property or materials, whether tangible or intangible, provided by the City to the Contractor;
- iii) Comply with the City's instructions for the timely transfer of any active files and work product by the Contractor under the bid award;
- iv) Cooperate in good faith with the City, its employees, agents, and contractors during the transition period between the notification of termination and the substitution of any replacement contractor; and
- v) Immediately return to the City any payments made by the City for goods and services that were not delivered or rendered by the Contractor.

## **ARTICLE 4 – EQUAL EMPLOYMENT OPPORTUNITY**

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 applicant 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 applicant 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 applicant 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 applicant 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 applicant 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.

## **ARTICLE 5 – CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**

Compliance with 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 (b)(1) of this section 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 (b)(1) of this section, 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 (b)(1) of this section.
- (3) *Withholding for unpaid wages and liquidated damages.* The City 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 (b)(2) of this section.
- (4) *Subcontracts.* The contractor or subcontractor shall insert in any subcontracts the clauses

set forth in paragraph (b)(1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (b)(1) through (4) of this section.

Further Compliance with the Contract Work Hours and Safety Standards Act.

- (1) 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.
- (2) Records to be maintained under this provision shall be made available by the contractor or subcontractor for inspection, copying, or transcription by authorized representatives of the Department of Homeland Security, the Federal Emergency Management Agency, and the Department of Labor, and the contractor or subcontractor will permit such representatives to interview employees during working hours on the job.

## **ARTICLE 6 – CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT**

The Contractor shall 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 ADCNR and the Regional Office of the Environmental Protection Agency.

### Clean Air Act

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.
- (2) The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to ADCNR and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with grant funding from the RESTORE Council and the ADCNR under the RESTORE Act.

### Federal Water Pollution Control Act

- (1) The contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to the City and understands and agrees that the City will, in turn, report each violation as required to assure notification to ADCNR and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with grant funding from the RESTORE Council and the ADCNR under the RESTORE Act.

## **SECTION VII**

### **CERTIFICATION REGARDING LOBBYING**

APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

If any funds other than federal appropriated funds have been paid or will be paid to 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 this federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

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

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S.C. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

"The Contractor, \_\_\_\_\_, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, Administrative Remedies for False Claims and Statements, apply to this certification and disclosure, if any.

\_\_\_\_\_  
Signature of Contractor's Authorized Official

\_\_\_\_\_  
Name and Title of Contractor's Authorized Official

\_\_\_\_\_  
Date

# **SECTION VIII SUPPLEMENTAL SPECIFICATIONS**

(REVISED 03/21/2022)

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## Supplemental Specification No. 101-18

SUBJECT: Definition of Terms

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 101 DEFINITION OF TERMS

#### 101.01 Definitions.

(b) Terms.

*Amend the following terms to read as shown:*

Area:	City of Orange Beach
Department:	The Public Works Department of the City of Orange Beach.
Director:	The Community Development Director of the City of Orange Beach.
Engineer:	The Community Development Director; acting directly or through the Project Engineer as his representative who is responsible for engineering supervision of the construction.
Region:	The Public Works Department of the City of Orange Beach.
Region Engineer:	The Community Development Director of the City of Orange Beach.
Retainage:	The Department will withhold retainage. Retainage is the money belonging to the Contractor which was held by the Department conditioned on final completion and acceptance of all work in connection with a project or projects by the Contractor.
State:	City of Orange Beach, the party of the first part to the Contract, acting by and through the Community Development Director.

## **Supplemental Specification No. 102-18**

SUBJECT: Proposal Requirements and Conditions

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 102 PROPOSAL REQUIREMENTS AND CONDITIONS

#### 102.06 Preparation of Proposal.

(a) Proposal Form.

***Delete this subarticle and replace with the following:***

The bidder's proposal must be submitted on the complete original proposal form provided by the City.

(b) Details.

***Delete this subarticle and replace with the following:***

On the "BID FORM" included in the proposal form the bidder shall enter in figures a unit price and the extended amount bid (unit price X quantity) in the appropriate column for each bid item, exclusive of those items for which a fixed contract unit price and extension amount are shown. In all prices and amounts entered on the proposal form, the respective figures for dollars and cents shall be clearly separated by a single decimal. If the bidder desires to bid a fraction of a cent for the unit price, he can do so by entering up to four figures to the right of a decimal. On "lump sum" items an entry shall be shown in the amount bid column. If a bidder wishes to bid an item "free", then he shall enter "0.00" in the unit price column (if applicable) and "0.00" in the amount bid column. After all extensions are made, the bidder shall total the extended amounts of the bid items and show his total bid amount in the appropriate place on the proposal form.

All figures shall be legibly shown in ink or typed. Any interlineation, erasure, or other alteration of a figure shall be initialed by the signer of the proposal. The CITY will check the extension of each item given in the proposal and correct all errors and discrepancies. In case of a discrepancy between a unit bid price and the extension amount, the unit price shall govern. The sum of the extension amounts will be the contract bid price.

A pay item may be shown with a maximum allowable amount for the bid. The bidder shall enter an amount for the bid that is equal or less than the maximum allowable amount. If the bid entered is greater than the maximum allowable amount, the CITY will adjust the bid price to the maximum allowable amount for that item and recalculate the total bid amount.

(c) Signing.

***Delete the subarticle as written and replace with the following:***

The bidder's proposal must be signed with ink by the individual, by one or more members of the partnership, by one or more members or officers of each firm representing a joint venture, or by one or more officers of a corporation, or by an agent of the Contractor legally qualified and acceptable to the City. If the proposal is made by an individual, his name and business address must be shown; by a partnership, the name and business address of each partnership member must be shown; as a joint venture, the name and business address of each member or officer of the firms represented by the joint venture must be shown; by a corporation, the name of the corporation and the business address of its corporate officials must be shown.

The proposal bid bond, if bid bond is tendered, shall be properly signed by the bidder and the surety.

(d) Computer Bidding.

***Delete this subarticle***

#### 102.06 Irregular Proposals.

(a) General.

***Delete this subarticle and replace with the following:***

Proposals will be considered irregular and may be rejected if they contain any omissions, alteration of form, additions not called for, incomplete bids (includes failure to enter a unit bid price on a bid item), interlineations, erasures or alterations not initialed by the person signing the proposal, or other irregularities of any kind. Proposals may be rejected at any time prior to the execution of the contract by the City.

Any bidder using the same or different names for submitting more than one proposal upon any project will be disqualified from further consideration on that project. Evidence that any bidder is interested, as a principal, in more than one proposal for work contemplated (for example bidding in a partnership, as a joint partnership or association, and as a partnership, association, or individuals) will cause the rejection of any such proposal. A bidder, however, may submit a proposal as a principal and as a Subcontractor to some other principal, or may submit a proposal as a Subcontractor to as many other principals as he desires, and by doing so will not be liable to disqualification in the intent of these Specifications.

#### 102.08 Combination Bids.

***Delete this article***

#### 102.10 Delivery of Proposals.

***Delete this article and replace with the following:***

Each proposal for each contract shall be placed, together with the proposal guarantee, in a sealed envelope on the outside of which is written in large letters "SEALED BID", and so marked as to indicate the bidder's name, the name of the bid, and the opening day and

time. Proposals will be received by the City at the location stated in the Invitation to Bid, until the hour and date set therein for the opening of bids. No proposal will be considered which has not been received prior to the hour and date set for the opening of bids. Proposals received after that time will be returned unopened.

102.11 Withdrawal or Revision of Proposals.

***Delete this article and replace with the following:***

A bidder may withdraw or revise a proposal after it has been deposited with the City, provided the request for such is received by the City in writing before the time set for opening proposals. The request must bear the same signature(s) which the bidder has affixed to the proposal. No proposal may be modified or corrected after the time set for opening such proposals.

Withdrawal of proposals after bid opening will be permitted without forfeiture of bid guarantee only as provided for by, and when evidence of a mistake is furnished in accordance with, Section 39-2-11(d), Code of Alabama, 1975. Such evidence of mistake must be furnished no later than three working days after the opening of bids. Upon such withdrawal without forfeiture, the bidder shall be prohibited from (1) doing any work on the contract, either as a subcontractor or in any other capacity, and (2) bidding on the same project if it is readvertised for letting.

102.13 Multiple Bids.

***Delete this article***

## Supplemental Specification No. 105-18

SUBJECT: Control of Work

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 105 CONTROL OF WORK

#### 105.12 Oversize/Overweight Vehicle Permit and Load Restrictions.

##### (b) Load Restrictions

***Delete the subarticle and replace with the following:***

The Contractor shall comply with all legal load restrictions in the hauling of materials on public roads beyond the limits of the project. In the hauling of materials on city streets or county roads, it shall be the responsibility of the Contractor to regulate his loads so that damage does not occur, regardless of the legal or posted load limit. Maintenance of public roads shall be as outlined in Article 104.07. A special permit will not relieve the Contractor of liability for damage which may result from the moving of material or equipment.

Within the project limits, loads shall be so regulated that damage will not occur to base or pavement layers and structures, but in no case shall loads exceed the legal load limit unless permitted in writing by the Engineer under special conditions. No loads will be permitted on base, pavement or structures before the expiration of any required curing period. The Contractor shall be responsible for all damage by his hauling and other construction equipment within the project limits.

Gross weight {mass} tickets for loads delivered to the project will be verified by the Engineer that all loads incorporated in the project are within the legal load limit. Required information for verification will be secured at the time of delivery; however, verification of weights {masses} may be made at any time during the project.

On loads of materials not accompanied by a gross weight {mass} ticket, the Contractor shall furnish, upon request of the Engineer, the tare weight {mass} of any truck delivering such materials to the project. These truck tare weights {masses}, along with appropriate volumes and conversion factors, will be used by the Engineer in determining approximate quantities of materials which may be hauled to the project and remain within the legal load limit. If the Engineer feels that the legal load limit is being exceeded, he may order the Contractor to verify the weight {mass} of designated loads at an approved truck scale.

Payment will be made only for that portion of a load up to, and including, the legal load limit.

No payment will be made for any portion of a load exceeding the legal load limit.

#### 105.13 Maintenance of the Work.

(a) General.

***Add the following to the end of the first sentence in the first paragraph:***

and shall maintain it in that condition for thirty (30) days after the final construction inspection.

## **Supplemental Specification No. 107-18**

SUBJECT: Legal Relations and Responsibility to Public

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 107 LEGAL RELATIONS AND RESPONSIBILITY TO PUBLIC

#### 107.17 Contractor's Responsibility for Work.

***Add the following to the end of the first paragraph:***

This does not include theft. The Contractor is responsible for protecting their work from theft, and will be responsible for repairing any damages caused by theft.

#### 107.21 Stormwater Management.

(c) NPDES Notice of Intent.

***Delete this subarticle and replace with the following:***

A "Notice of Intent" (NOI) is an application filed with ADEM requesting NPDES registration. If an NOI has been filed or is required for the project site, the City will be the OWNER of record with ADEM for the NOI. The Contractor shall be the OPERATOR and shall comply with all requirements of the NOI.

A Project Note will be shown on the plans to indicate whether or not an NOI has been filed with ADEM for the project. If an NOI has been filed, the note may also provide information regarding the availability of a Construction Best Management Practices Plan (CBMPP) for the project. If an NOI has not been filed, the note may further indicate that the Contractor is required to file an NOI at his own expense.

The Contractor shall be responsible for filing all NOI's required by ADEM on all material pits, waste areas, plant sites, haul roads, and other off-site areas used by him to construct the project. For each area requiring an NOI to be filed, a copy of written acknowledgement from ADEM verifying that a complete NOI has been filed shall be forwarded to the City before ground is disturbed in that area.

**Supplemental Specification No. 108-18**

SUBJECT: Prosecution and Progress

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

SECTION 108  
PROSECUTION AND PROGRESS

108.04 Prosecution of Work.

(b) Soil Erosion and Stormwater Management.

3. Contractor’s Stormwater Management Plan.

*Delete this subarticle.*

4. Fuel Tanks.

*Delete this subarticle.*

108.11 Schedule of Liquidated Damages.

*Delete this article and replace with the following:*

Original Contract Amount		Liquidated Damages Daily Charge	
More Than	To and Including	Calendar Day or Fixed Date	Work Day
\$ 0	\$ 500,000	\$ 850	\$ 1700
500,000	1,000,000	1200	2400
1,000,000	2,000,000	1500	3000
2,000,000	10,000,000	2050	4100
10,000,000	-----	3100	6200

When the contract time is on the calendar day or date basis, the schedule for calendar days shall be used. When the contract time is on a work day basis, the schedule for work days shall be used.



## **Supplemental Specification No. 109-18**

SUBJECT: Measurement and Payment

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 109 MEASUREMENT AND PAYMENT

#### 109.07 Partial Payment.

***Add the following to the end of this article:***

In making partial payments, there shall be retained five (5) percent of the estimated amount of the work done and the value of materials stored on the site, and after fifty (50) percent completion (original contract plus supplemental agreements) has been accomplished, no further retainage will be withheld. The retainage above set out, shall be held until completion of all work, final acceptance by the Department as noted in Subarticle 105.15(c) and the final estimate paid.

#### 109.08 Payment to Subcontractors.

***Delete this article.***

#### 109.12 Final Payment.

***Add the following to this article:***

(e) Semifinal Payment.

Wherever final payment is delayed or it appears that it may be delayed, due to conditions over which the Contractor has no control, a semifinal estimate may be prepared to make payment of that portion of the retainage that may be deemed appropriate by the Engineer in accordance with the following conditions:

1. No payment will be made until the Contractor has made application for such payment and has notified the Engineer of a waiver of all claims, except those previously filed prior to the date of such application and claims for adjustment to final quantities of Contract Items.
2. No payment will be made until proper notification of consent to release retainage has been received from the Contractor's Surety.
3. A non-resident contractor must provide a certified "statement of good standing" from the State Department of Revenue and appropriate County and/or City authority. This statement shall certify that the non-resident contractor has paid all taxes due and payable to the State of Alabama or any political subdivision thereof.

4. Retainage will not be released below \$5000 or 0.5% of the contract amount, whichever is the higher amount, without written approval of the Engineer. On projects with large outstanding claims by the Contractor against the City, the Engineer reserves the right at his sole discretion to increase the above amount of retainage retained or to deny the release of any retainage pending final settlement.
5. The semifinal estimate retainage shall, in addition to that noted in Item 4 above, reflect liquidated damages that may be unresolved at the time of execution.
6. No payment will be made until the Contractor submits the affidavit required in Subarticle 109.12(c) above.

## **Supplemental Specification No. 110-18**

SUBJECT: Claims

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 110 CLAIMS

*Delete the article as written and add the article listed below:*

#### 110.01 General.

When filing a claim, the Contractor shall follow the procedures set forth in this Section.

#### 110.02 Notice of Intent.

In any case where the Contractor deems that extra compensation is due him for additional cost not clearly covered in his contract and not ordered by the Project Engineer as extra work as defined herein, the Contractor shall notify the Project Engineer in writing signed by an Officer of the Company, with a copy to the Director, of his intention to make claim for such extra compensation.

The written notice of intent shall be furnished to the Project Engineer prior to the time the contested work is started. Oral notification by the Contractor and confirmed in writing by the Contractor within three calendar days, will be accepted as complying with this requirement.

The written notice of intent shall set forth the reasons the Contractor believes additional compensation will be due, the nature of cost involved and insofar as possible the total amount of the claim.

The Contractor hereby agrees to waive any claim for additional compensation if notification, as provided in the foregoing, is not furnished or the Project Engineer is not provided facilities by the Contractor for keeping account of actual costs.

Such notice by the Contractor, and the fact that the Project Engineer has kept account of the cost as aforesaid, is not evidence of the validity of the claim. A separate determination of the validity of the claim will be made by the City.

#### 110.03 Record Keeping.

After giving the Project Engineer and the Director a notice of intent to file a claim, the Contractor shall keep daily records of all costs incurred for affected operations. These daily records shall identify each operation affected, the specific locations where work is affected, and the potential effect to the project's schedule. The Project Engineer will also keep records of all labor, material, and equipment applicable to affected operations. On Monday, or the first work day, of each week following the date of the notice of intent to file a claim, the Contractor shall provide Project Engineer with the daily records for the preceding week. If the Contractor's records indicate costs greater than those kept by the Project Engineer, the Project Engineer will meet with the Contractor and present its records to the Contractor at the meeting. The Contractor shall notify the Project Engineer in writing within three work days of any inaccuracies noted in, or disagreements with, the Project Engineer's records. The Project

Engineer will review the matter, correct any inaccuracies he finds in his records, and notify the Contractor in writing of his decision.

Refusal or failure by the Contractor to attend the aforementioned meetings and present his records shall constitute a waiver by the Contractor of his claim.

To protect the integrity of the independent records maintained by the Project Engineer for comparison with those submitted by the contractor, the Project Engineer's records, other than those mentioned above, will not be made available to the Contractor until after the Project Engineer's receipt of the Contractor's complete records documenting the claim. The Project Engineer will retain possession of the records and provide copying facilities with the contractor reimbursing the Project Engineer for the expense of the copying. No amendment to the claim shall be made following receipt of the Project Engineer's records.

#### 110.04 Claims Process.

##### (a) General.

After the work has been completed on the disputed item(s) of work, the Contractor shall have 90 calendar days to submit his claim. Any claim not submitted within this 90 calendar day period is waived. The Contractor shall submit six copies of the claim, containing the required documentation listed in Article 110.03, to the Project Engineer. Once the claim is received, a joint review of the claim will be made by the Directoring Department and a written response to the Contractor will be made within 90 calendar days. If the Contractor does not agree with this decision, he may request to make a presentation to the Claims Committee. This written request submitted and signed by an Officer of the Company, along with six additional copies of the original claim, shall be made to the Project Engineer, by certified mail, within 30 calendar days from the date of the City's response. Failure to make the request within the required time period shall constitute waiver of the claim by the Contractor.

#### 110.05 Claim Compensation.

##### (a) General.

##### 1. Compensable Items.

The liability of the City for claims will be limited to the following specifically identified compensable items:

- a. Additional job site labor expenses
- b. Additional costs for materials
- c. Additional job-site overhead
- d. An additional 10 percent of the total of Subitems a, b, and c above for home office overhead and profit
- e. Equipment costs, which shall be determined in accordance with the requirements of Item 109.04(b)4
- f. Bond costs
- g. Subcontractor costs as determined by, and limited to, those items identified as payable under Subitems a, b, c, d, e, and f above

- h. Administrative allowance, to the Prime Contractor, equal to three percent of the first \$20,000 and one percent of all over \$20,000 of the total amount for processing a claim on behalf of a subcontractor
- i. Gross receipts tax
- j. Interest that accrues after 30 calendar days from the date of the Mayor's signature on the supplemental agreement that approves payment for a claim

2. Non-Compensable Items.

The City will have no liability for the following specifically identified non-compensable items:

- a. Profit, in excess of that provided herein
- b. Loss of anticipated profit
- c. Labor and equipment inefficiencies
- d. Home office overhead in excess of that provided herein
- e. Consequential damages, including but not limited to loss of bonding capacity, loss of bidding opportunities and insolvency.
- f. Indirect costs or expenses of any nature
- g. Attorney fees, claims preparation expenses or costs of litigation
- h. Interest prior to the final resolution of the claim as defined in Subitem 110.05(a)1.j. above

(b) Claims For Delay.

The City will have no liability for damages due to delay, beyond those items that are specially identified as compensable under Subarticle 110.05(a) above. Equipment costs, for equipment involved in a delay claim, shall be determined in accordance with the requirements for Standby Rates as provided in Item 109.04(b)4.

The City will be liable only for those delay damages caused by or arising from acts or omissions on the part of the City, which violate legal or contractual duties owed to the Contractor by the City. Such delays may constitute a basis for a claim for delay damages and/or a request for a time extension. The Contractor assumes the risk of damages from all other causes of delay.

(c) Claims for Acceleration.

The City will have no liability for any constructive acceleration unless the City gives express written direction for the Contractor to accelerate his effort beyond that required by the original contract. Any acceleration related costs will be handled as extra work as provided in Article 104.03.

110.06 Required Claim Documentation.

All claims shall be submitted in writing signed by an Officer of the Company, and shall be sufficient in detail to enable the Project Engineer and the Director to ascertain the basis and the amount of each claim. All information submitted to the City under this Article will be used solely for analyzing and/or resolving the claim. As a minimum, the following information shall be provided for all claims:

- (a) A copy of the “Written Notice of Potential Claim” filed for the specific claim by the Contractor.
- (b) The date on which actions resulting in the claim occurred or conditions resulting in the claim became evident.
- (c) A detailed factual statement of the claim providing all necessary dates, locations and items of work affected by the claim.
- (d) The specific provisions of the Contract that support the claim, and a statement of the reasons why such provisions support the claim.
- (e) The amount of additional compensation sought and a breakdown of the amount into the categories specified as payable under Article 110.05, Claim Compensation.
- (f) The name, function, and activity of each City official, or employee, involved in, or knowledgeable about facts that give rise to such claim.
- (g) The name, function, and activity of each Contractor or Subcontractor official, or employee, involved in, or knowledgeable about facts that give rise to such claim.
- (h) The identification of any pertinent documents, and the substance of any material oral communication relating to such claim.
- (i) If an extension of time is also sought, the specific days for which it is sought and the basis or such request.

For delay claims, in addition to the above, a description of the operations that were delayed, the reasons for the delay and how they were delayed will be required.

#### 110.07 Auditing of Claims.

All claims filed against the City shall be subject to audit by a Certified Public Accounting Firm employed by the City at any time following the filing of such claim. The audit may begin on ten days notice to the Contractor, Subcontractor, or Supplier. The Contractor, Subcontractor, or Supplier shall cooperate with the auditors. Failure of the Contractor, Subcontractor, or Supplier to maintain and retain sufficient records to allow the City’s auditor to verify the claim shall constitute a waiver of that portion of such claim that cannot be verified and shall bar recovery there under.

Without limiting the generality of the foregoing, and as a minimum, the auditors shall have available to them the following documents:

- (a) Daily time sheets and foreman’s daily reports
- (b) Union agreements, if any
- (c) Insurance, welfare, and benefits records
- (d) Payroll register
- (e) Earnings records
- (f) Payroll tax returns
- (g) Material invoices, purchase orders, and all material and supply acquisition contracts
- (h) Material cost distribution worksheet
- (i) Equipment records (list of company equipment, rates, etc.)
- (j) Vendor rental agreements, and Subcontractor invoices
- (k) Omit
- (l) Canceled checks (payroll and vendors)
- (m) Job cost report
- (n) Job payroll ledger.
- (o) General ledger, general journal, (if used) and all subsidiary ledgers and journals together with all supporting documentation pertinent to entries made in these ledgers and journals.

- (p) Cash disbursements journal.
- (q) Financial statements for all years reflecting the operations on this project.
- (r) Income tax returns for all years reflecting the operations on this project.
- (s) Depreciation records on all company equipment whether such records are maintained by the company involved, its accountant, or others.
- (t) If a source other than depreciation records is used to develop costs for the Contractor's internal purposes in establishing the actual cost of owning and operating equipment, all such other source documents.
- (u) All documents which reflect the Contractor's actual profit and overhead during the years this Project was being performed and for each of the five years prior to the commencement of this Project.
- (v) All documents related to the preparation of the Contractor's bid including the final calculations on which the bid was based.
- (w) All documents which relate to each and every claim together with all documents which support the amount of damages as to each claim.
- (x) Worksheets used to prepare the claim establishing the cost components for items of the claim including, but not limited to, labor, benefits and insurance, materials, equipment, subcontractors, and all documents which establish the time periods, individuals involved, the hours and the rates for the individuals.

**Supplemental Specification No. 111-18**

SUBJECT: Disadvantaged Business Enterprise (DBE)

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

SECTION 111  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

*Delete this article.*



## **Supplemental Specification No. 210-18**

SUBJECT: Excavation and Embankment

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 210 EXCAVATION AND EMBANKMENT

#### 210.09 Method of Measurement.

(a) General.

***Delete the first two (2) paragraphs and replace with the following:***

Measurement for Unclassified Excavation, Channel Excavation and Muck Excavation will be either by the cubic yard of the material in its original position computed from cross sections by the average end area method or per ton as specified by the unit of measure of the pay item.

Measurement for Borrow Excavation, Borrow Excavation (Underwater Backfill) or Borrow Excavation (Underwater Embankment) will be either by the ton or by the cubic yard, loose volume of the material in the hauling vehicle at the point of use as specified by the unit measure of the pay item.

## **Supplemental Specification No. 214-18**

SUBJECT: Structure Excavation and Backfill for Drainage Structures and Minor Structures

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 214 STRUCTURE EXCAVATION AND BACKFILL FOR DRAINAGE STRUCTURES AND MINOR STRUCTURES

#### 214.03 Construction Requirements.

(a) General.

***Delete the first sentence and replace with the following:***

Structure Excavation shall be of the size and depth below the structure, conforming to the outline for the structure, shown on the plans or established by the Engineer.

#### 214.04 Method of Measurement.

(a) Structure Excavation.

1. Quantity of Excavation.

***Delete the subarticle and add the following:***

The quantity of structure excavation will be the number of cubic yards {cubic meters}, measured in its original position below the bottom of the structure to the depth directed by the Engineer to remove unsuitable material. The width of the backfill trench for a pipe culvert shall be defined for payment as the pipe's inside diameter plus three (3) feet. The width of the backfill trench for a box culvert shall be the width of the box culvert plus four (4) feet. This will also include the foundation backfill, utilizing existing materials, needed to bring the grade back up to the bottom of the structure. Structure Excavation does not include the excavation from the ground line to the bottom of the structure, this excavation is a subsidiary obligation of the pay items under Sections 524, 530, 533, 535, 614, 619, 620, 621, 649 and 1001.

4. Depth of Excavation.

***Delete the subarticle and add the following:***

The depth of excavation will be as deep as required to remove unsuitable material from the bottom of the structure to reach a suitable foundation as directed by the Engineer.

(b) Foundation Backfill.

***Add the following the end of the paragraph:***

The width of the backfill trench for a pipe culvert shall be defined for payment as the pipe's inside diameter plus three (3) feet. The width of the backfill trench for a box culvert shall be the width of the box culvert plus four (4) feet.

214.05 Basis of Payment.

(a) Structure Excavation.

***Delete the subarticle and add the following:***

Payment will be made for the number of cubic yards, measured as detailed in Section 214.04.

Payment as noted above shall be payment in full for furnishing all materials, equipment, tools, labor, pumping, bailing, and draining, and all incidentals necessary to complete the work. It shall also include installation and removal of any cribs, cofferdams, shoring, sheeting, or other protection, and the satisfactory disposal of any excess or unsuitable material from the excavation, and the placement and compaction of local backfill or embankment of the material excavated and suitable for such use. Field raising or lowering of the structure for which the excavation is required and the extra work involved shall be considered incidental to the overall project.

(b) Foundation Backfill.

***Delete the subarticle and add the following:***

Foundation Backfill, Local, shall not be paid for separately. This work is a subsidiary obligation of Structure Excavation. Foundation Backfill, Commercial, shall require certified load tickets from an approved vendor for weight and material verification for full payment. Without proper documentation of Foundation Backfill, Commercial, visually acceptable material shall be paid for at 50% of the unit price for Foundation Backfill (Commercial).

## **Supplemental Specification No. 230-18**

SUBJECT: Roadbed Processing

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 230 ROADBED PROCESSING

#### 230.03 Construction Requirements.

(a) General.

***Delete the subarticle and add the following:***

Choice of equipment utilized to perform the work under this section shall in general be that of the contractor, provided such produces the desired results. The Engineer reserves the right to disapprove any equipment, construction method, or other operation which is detrimental to the subgrade soils and which would result in failing the improved roadbed materials. The Contractor shall be required to strictly comply with the recommendations of the Engineer and Testing Laboratory. The cost of this work shall be reflected in the appropriate pay items set forth for this project.

(b) Improved Roadbed.

1. Preparation Of Roadbed.

***Delete the subarticle and add the following:***

Both cuts and fills shall be graded to the elevation designated on the plans, below subgrade elevation in accordance with the requirements of section 210 and to the typical section shown on the plans or directed. No selected roadbed material shall be placed until the graded earth surface is satisfactory to grade, cross section and density. The bottom surface of the modified roadbed section shall be compacted to 100% Standard Density and proof rolled prior to placing the select granular material of the modified roadbed. The areas that fail proof rolling shall be undercut as per the directive of the Engineer. The areas of undercut shall be backfilled with a select granular material, Item 210-D, compacted to 100% Standard Density.

#### 230.05 Basis of Payment.

(a) Unit Price Coverage.

***Delete the subarticle and add the following:***

Each separate layer of roadbed processed and accepted, and measured as noted above, will be paid for at the unit price bid for 100 foot roadbed stations. Said unit price bid shall be full compensation for mixing and compacting the 6 inches of existing material below the proposed base course material. This includes scarifying and windrowing as necessary to

expedite drying of existing soils, mixing, remixing, watering, and re-processing as necessary to obtain and maintain the required grade, section, and density as noted in this Section. This also includes all equipment, tools, labor, and incidentals necessary to complete the work as described herein.

## **Supplemental Specification No. 530-18**

SUBJECT: Roadway Pipe Culverts

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 530 ROADWAY PIPE CULVERTS

#### 530.03 Construction Requirements.

(d) Placing Pipe.

3. Joining Pipe.

a. Rigid Pipe (Concrete, C.I.)

***Delete the second paragraph of the subarticle and replace with the following:***

Joints shall be sealed with bituminous plastic cement or rubber type gaskets. Joints shall be thoroughly cleaned before being sealed and shall be sealed for the full circumference of the joint unless otherwise directed.

***Add the following to the end of the third paragraph:***

All joints shall be wrapped full-width with a non-woven filter fabric, equally on both sides, after being sealed.

#### 530.04 Method of Measurement.

***Delete the second paragraph of the subarticle and replace with the following:***

Structure excavation and foundation backfill will be paid for as specified by the current Supplemental Specification for Section 214, if required.

#### 530.05 Basis of Payment.

(a) UNIT PRICE COVERAGE.

***Delete the following portion from the last sentence of the paragraph:***

“except that Foundation Backfill and Structure Excavation shall be paid for separately.”

***Replace it with the following:***

except that structure excavation and foundation backfill will be measured and paid for under Section 214 and the current supplemental specification thereto.

## Supplemental Specification No. 533-18

SUBJECT: Storm Sewer Pipe

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 533 STORM SEWER PIPE

#### 533.03 Construction Requirements.

(c) Laying Pipe.

2. Sealing Joints.

***Delete the subarticle and add the following:***

Unless specified otherwise, joints shall be sealed as specified in Item 530.03(d)3 and any supplemental specification attached thereto for the entire circumference of the pipe. Walking or working on or over the completed pipe line, except such as is necessary for tamping or backfilling, will not be permitted until at least 1 foot of backfill is in place over the pipe.

#### 533.04 Method of Measurement.

***Delete the subarticle and add the following:***

Storm sewer pipe will be measured in the same manner as specified in Article 530.04. Structure excavation and foundation backfill will be paid for as specified by the current Supplemental Specification for Section 214, if required.

#### 533.05 Basis of Payment.

(a) General.

***Delete the following portion from the last sentence of the paragraph:***

“except that excavation and foundation backfill will be paid for as provided in Section 214.”

***Replace it with the following:***

except that structure excavation and foundation backfill will be measured and paid for under Section 214 and the current supplemental specification thereto.

## **Supplemental Specification No. 535-18**

SUBJECT: Side Drain Pipe

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 535 SIDE DRAIN PIPE

#### 535.03 Construction Requirements.

(a) General.

*Delete the first paragraph and add the following:*

Construction details for installing side drain pipe shall be as specified in Section 530 and all current Supplemental Specifications thereto attached, except as modified in this Section.



## **Supplemental Specification No. 619-18**

SUBJECT: Structure Excavation and Backfill for Pipe End Treatments

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 619 PIPE CULVERT END TREATMENTS

#### 619.01 Description.

***Delete the second paragraph and add the following:***

Unless specified otherwise on the plans or in the proposal, the Contractor shall, for the required end treatment, construct a slope paved headwall in accordance with plan details and these specifications.

#### 619.05 Basis of Payment.

(a) Unit Price Coverage.

***Delete the second sentence and add the following:***

Such price shall be full compensation for the furnishing of all materials and the installation and construction thereof, necessary for the complete construction of the end treatment, and for all labor, tools, equipment, and incidentals necessary to complete the work. Structure excavation and backfill will be measured and paid for under Section 214 and the current supplemental specification thereto.

## **Supplemental Specification No. 621-18**

SUBJECT: Inlets, Junction Boxes, Manholes, and Miscellaneous Drainage Structures

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

SECTION 621  
INLETS, JUNCTION BOXES, MANHOLES, AND  
MISCELLANEOUS DRAINAGE STRUCTURES

621.05 Basis of Payment.

(b) Excavation and Backfill.

***Delete the subarticle and add the following:***

Structure excavation and backfill will be measured and paid for under Section 214 and the current supplemental specification thereto, if required.

## **Supplemental Specification No. 650-18**

SUBJECT: Topsoil

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 650 TOPSOIL

#### 650.03 Construction Requirements

*Add the following:*

(d) MAINTENANCE

The Contractor shall maintain the topsoil that has been placed, without extra compensation, in connection with any seeding, sodding, planting, or other work, until final completion of the project. Maintenance shall consist of preserving, protecting, and such other work as may be necessary to keep the work in a satisfactory condition.

#### 650.04 Method of Measurement

(B) TOPSOIL FROM STOCKPILES, ITEM 650-B

*Delete the subarticle and add the following:*

This item covers topsoil obtained onsite and stockpiled within the right-of-way. This topsoil will be measured in cubic yards by the cross section and average end areas method at the stockpile.

All of the "Topsoil from Stockpiles" (Item 650-B) shall be placed and measured for payment prior to using "Topsoil" (Item 650-A) on project.

## **Supplemental Specification No. 652-18**

SUBJECT: Ground Preparation, Vegetation Establishment and Mowing

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

SECTION 652  
GROUND PREPARATION, VEGETATION ESTABLISHMENT  
AND MOWING

652.03 Construction Requirements.

(d) Preparation and Planting in Soft Soil.

2. Initial Soil Amendments.

***Add the following paragraph at the beginning of the subarticle:***

The fertilizer and lime described below shall be applied at least one week prior to sowing seed. After application, the treated topsoil shall be watered as necessary to leach the lime and fertilizer into the topsoil composition. Watering shall be done at least one time prior to sowing seed.

## **Supplemental Specification No. 665-18**

SUBJECT: Temporary Soil Erosion and Sediment Control

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 665 TEMPORARY SOIL EROSION AND SEDIMENT CONTROL

#### 665.03 Construction Requirements.

(a) Erosion Control and Runoff Conveyance.

1. Temporary Seeding and Mulching.

c. Temporary Seeding and Mulching.

***Delete the last sentence in the subarticle and add the following:***

Seeding and mulching shall also be applied by either hydraulic or conventional methods. Mulching shall be applied at a rate of no less than 2.0 tons per acre, separately or concurrently with fertilizer.

## Supplemental Specification No. 701-18

SUBJECT: Traffic Stripe

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

### SECTION 701 TRAFFIC STRIPE

#### 701.03 Construction Requirements.

(e) Class 2, Standard Thermoplastic.

***Delete item 7 and replace with the following:***

7. Retroreflectivity of Class 2 Thermoplastic.

The target retroreflectivity shall be 450 mcd/lux/sq m for the white stripe and 300 mcd/lux/sq m for yellow stripe.

(f) Class 2T, Thin Film Spray Applied Thermoplastic.

***Delete item 7 and replace with the following:***

7. Retroreflectivity of Class 2T Thermoplastic.

The target retroreflectivity shall be 250 mcd/lux/sq m for white stripe and 175 mcd/lux/sq m for yellow stripe.

(g) Class 3, TAPE.

***Delete paragraphs 4 thru 9.***

**Supplemental Specification No. 710-18**

SUBJECT: Roadway Signs

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

SECTION 710  
ROADWAY SIGNS

710.01 Description.

(b) Types and Classes of Signs

*Replace the table “Classes and Descriptions of Signs” with the following:*

CLASSES AND DESCRIPTIONS OF SIGNS	
Class 1	Non-reflectorized Background with Type IV Reflectorized Demountable Copy
Class 1A	Non-reflectorized Background with Non-Reflectorized Demountable Copy
Class 2	Type IV Reflectorized Sheeting Background with the same Type Reflectorized Sheeting Demountable or Cut-Out Copy
Class 2A	Type IV Reflectorized Sheeting Background with Non-Reflectorized Demountable or Cut-Out Copy For Multiple Extruded Panels, Type XI Reflectorized Sheeting Background with Digital Printing is also allowable.
Class 3	Non-reflectorized Background with Screen Copy
Class 4	Type IV Reflectorized Background with Screen Copy
Class 5	Type IV Reflectorized Sheeting Background with Screen Copy
Class 6	Type IV Reflectorized Sheeting Background with Type XI Reflectorized Sheeting Demountable or Cut-out Copy For Multiple Extruded Panels, Type XI Reflectorized Sheeting Background with Digital Printing is also allowable.
Class 7	Type IV Reflectorized Sheeting Background with Screen Copy
Class 8	Type IV Reflectorized Sheeting Background with Screen Copy
Class 9	Type XI Reflectorized Sheeting Background with Type XI Reflectorized Sheeting Demountable or Cut-Out Copy
Class 10	Type XI Reflectorized Sheeting Background with Screen Copy

**Supplemental Specification No. 860-18**

SUBJECT: Roadside Improvement Materials

The Alabama Department of Transportation Standard Specifications for Highway Construction, 2018 Edition, is hereby amended as follows:

SECTION 860  
ROADSIDE IMPROVEMENT MATERIALS

860.01 Seed.

(d) Seed Mixes.

ZONE 3 - AREAS SUBJECT TO FREQUENT MOWING

*Omit table ZONE 3 - AREAS SUBJECT TO FREQUENT MOWING and replace with the following:*

<b>ZONE 3 - AREAS SUBJECT TO FREQUENT MOWING</b>				
REQUIRED POUNDS PER ACRE {KILOGRAMS PER HECTARE} OF PURE LIVE SEED				
Date of Planting	Sept. 1 to Feb. 29		Mar. 1 to Aug. 31	Mar 1. to Aug. 31
Annual Ryegrass	10 {11}	25 {28}		
Hulled Bermudagrass		*	30 {33}	
Unhulled Bermudagrass	30 {34}		20 {22}	12 {13}
Annual Lespedeza (Kobe)				24 {27}
Pensacola Bahia Grass				47 {53}
Reseeding Crimson Clover	5 {6}			
Notes	1	2	3	3
Required Permanent Plant	Bermudagrass			Pensacola Bahia Grass
<p>1. During this season Ryegrass, Bermudagrass and Clover are required where vegetation must be established within an area no further than 15 feet {3 m} from the edge of mainline pavement. (This is usually required for short duration work that is done on pavement resurfacing projects.)</p> <p>2. Annual Ryegrass is required where vegetation must be established within an area that extends further than 15 feet {3 m} from the edge of mainline pavement. Seeding in stubble for the establishment of permanent vegetation is required during the following month of March.</p> <p>3. Bermudagrass will be required as the permanent plant if it is not shown on the plans that Pensacola Bahia Grass will be required as the permanent plant.</p>				



**SECTION IX  
BID BOND  
(SAMPLE)**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor/Principal)

\_\_\_\_\_, as Principal,  
(Address)

and \_\_\_\_\_  
(Name of Surety)

of \_\_\_\_\_, as Surety,  
(Address)

are held and firmly bound unto the **City of Orange Beach**, as obligee, in the full and just sum of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

lawful money of the United States, for the payment whereof the Principal and the Surety bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the said Principal is herewith submitting its bid for:

**CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD**

RESTORE Grant Project No. GNSSP20AL0006-01-00 State Expenditure Plan #22

Canal Rd Improvements E of SR-161

&

City Project Access Improvements and Multi-Use Trail Connections

from Callaway Dr to Wilson Blvd

The condition of this obligation is such that, if the aforesaid Principal shall be awarded the Contract, the said Principal will, within the time required, enter into a formal Contract, and give a good and sufficient bond to secure the performance of the terms and conditions of the Contract, then this obligation to be void; otherwise, the Principal and the Surety will pay unto the full amount of said bond. If no other bids are received, the full amount of the proposal guarantee shall be so retained or recovered as liquidated damages for such default.

SIGNED, SEALED AND DELIVERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

By: \_\_\_\_\_ (seal)  
Signature

By: \_\_\_\_\_ (seal)  
Signature (attach power of attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Bids will not be considered unless Bid Bond is signed by Principal and Surety, or in lieu thereof, a certified check must accompany the bid.

**SECTION X**  
**PERFORMANCE BOND**  
**(SAMPLE)**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor/Principal)

\_\_\_\_\_, as Principal,  
(Address)

and \_\_\_\_\_  
(Name of Surety)

of \_\_\_\_\_, as Surety,  
(Address)

are held and firmly bound unto the **City of Orange Beach**, as obligee, in the full and just sum of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

lawful money of the United States, for the payment whereof the Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written agreement dated \_\_\_\_\_ entered into a Contract with the Owner for \_\_\_\_\_ which agreement is by reference made a part hereof.

NOW THEREFORE, the conditions of the obligation are such that if the Principal shall faithfully perform the Contract on his part, and satisfy all claims and demands, incurred for the same, and shall fully indemnify and save harmless the Owner from all costs and damage which he may suffer by reason of failure to do so, and shall reimburse and repay the Owner all outlay and expense which the Owner may incur in making good for any such default thence this obligation shall be null and void; otherwise, it shall remain in full force and effect.

PROVIDED, HOWEVER, that no suit, action or proceedings, by reason of any default whatever be brought on his bond after twelve months from the day on which the final payment under the Contract falls due.

PROVIDED, further, that said Surety, for value received hereby stipulate and agree that no change, extension of time, or addition to the terms of the Contract or to the work to be performed thereunder

of the specifications thereof shall in any way effect their obligations on this bond, and they do hereby waive notice of any such change, extension of time, alteration or addition to the terms of the Contract, or to the work, or to the specifications.

SIGNED, SEALED AND DELIVERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor's Name and Corporate Seal

\_\_\_\_\_  
Surety's Name and Corporate Seal

By: \_\_\_\_\_(seal)  
Signature

By: \_\_\_\_\_(seal)  
Signature (attach power of attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**SECTION XI**  
**LABOR AND MATERIALS PAYMENT BOND**  
**(SAMPLE)**

KNOW ALL MEN BY THESE PRESENTS:

THAT \_\_\_\_\_  
(Name of Contractor/Principal)

\_\_\_\_\_, as Principal,  
(Address)

and \_\_\_\_\_  
(Name of Surety)

of \_\_\_\_\_, as Surety,  
(Address)

are held and firmly bound unto the **City of Orange Beach**, as obligee, in the full and just sum of:

\_\_\_\_\_ Dollars (\$\_\_\_\_\_)

lawful money of the United States, for the payment whereof the Principal and the Surety, jointly and severally, bind themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, firmly, by these presents.

WHEREAS, the Principal has, by means of a written agreement dated \_\_\_\_\_ entered into a Contract with the Owner for \_\_\_\_\_ which agreement is by reference made a part hereof.

NOW THEREFORE, the conditions of the obligation are such that if the Principal and all subcontractors to whom any portion of the work in said Contract is sublet and all assignees of said Principal and of such subcontractors shall promptly make payments to all persons supplying him or them with labor, materials, or supplies for or in the prosecution of the work provided for in such Contract, or any amendment or extension of or addition to said Contract, and for the payment of reasonable attorney's fees incurred by the successful claimant or plaintiffs in suits or claims against the Contractor arising out of or in connection with the said Contract, then the above obligation shall be void; otherwise to remain in full force and effect.

PROVIDED, HOWEVER, that this bond is subject to the following conditions and limitations:

- (a) Any person, firm or corporation that has furnished labor, materials, or supplies for or in the prosecution of the work provided for in said Contract shall have a direct right to action against the Principal and Surety on this bond, which right of action shall be asserted in a proceeding, instituted in the County in which the work provided for in said Contract is to be performed or in any County in which said Principal or Surety does business. Such right of action shall be asserted in a proceeding instituted in the name of the claimant or claimants for his or their

use and benefit against the Principal and Surety or either of them, but not later than one (1) year after the final settlement of said Contract falls due, in which action such claim or claims shall be adjusted and judgement rendered thereon.

- (b) The Principal and Surety hereby designate and appoint \_\_\_\_\_, or his successor or representative as the agent of each of them to receive and accept services of process or other pleading issued, or filed in any proceeding instituted on this bond and hereby consent that such service shall be the same as personal service on the Principal and/or Surety.
- (c) The Surety shall not be liable hereunder for any damages or compensation recoverable under Workmen’s Compensation or Employer’s Liability Statute.
- (d) In no event shall the Surety be liable for a greater sum than the penalty of this bond, or subject to any suit, action or proceeding thereon that is instituted later than one (1) year after the final settlement of said Contract.
- (e) This bond is given pursuant to the terms of an Act of the Legislature of the State of Alabama approved February 8, 1935, entitled, “An Act to further provide for Bonds and Contractors on State and other public works and suits thereon.”
- (f) The full name and residence of each individual party to the bond must be inserted in the first paragraph.
- (g) If the Principal is a partnership, the full name of all partners must be inserted in the first paragraph which must recite that they are the partners composing the partnership (to be named) and all partners must execute the bond as individuals.
- (h) The State of Incorporation of each corporate party to bond must be inserted in the first paragraph and the bond must be executed under the Corporate Seal of each party attested by its secretary or other appropriate officer.
- (i) The date of the bond must not be prior to the date of the Contract.

SIGNED, SEALED AND DELIVERED this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.

**CONTRACTOR AS PRINCIPAL**

**SURETY**

\_\_\_\_\_  
Contractor’s Name and Corporate Seal

\_\_\_\_\_  
Surety’s Name and Corporate Seal

By: \_\_\_\_\_(seal)  
Signature

By: \_\_\_\_\_(seal)  
Signature (attach power of attorney)

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

Attest: \_\_\_\_\_  
Signature

Attest: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Title

**SECTION XII  
NOTICE OF AWARD  
(SAMPLE)**

DATED:

TO:

PROJECT: **CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD**

You have been awarded a contract for CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD.

Within fifteen (15) days of the date of this Notice of Award, you must deliver to the City the enclosed contract documents, fully executed, signed and witnessed, and a Certificate of Insurance as follows:

- 2 originals Contract Agreement
- 1 original Performance Bond
- 1 original Labor and Materials Payment Bond
- 1 original Certificate of Insurance certifying compliance with all insurance requirements as specified in the General Conditions
- 1 original Certification Regarding Lobbying (See Section VII of Bid Documents)
- 1 copy Alabama General Contractors License
- 1 copy Orange Beach Business License
- 1 copy Proof of Enrollment in E-Verify

Please contact Timeka Cunningham in the Finance Department at (251) 981-6782 for more information regarding the Business License.

You will be notified of the time and place for a pre-construction conference; your proposed work schedule must be delivered to the City at that time.

Failure to deliver the aforementioned contract documents and insurance certificate within the time specified will entitle the City to consider your bid abandoned, to annul this Notice of Award, and to declare your Bid Bond forfeited.

**CITY OF ORANGE BEACH**

By: \_\_\_\_\_

**SECTION XIII  
NOTICE TO PROCEED  
(SAMPLE)**

DATED:

TO:

PROJECT: **CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD**

You are hereby notified to commence work in accordance with the Agreement dated the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, on or before the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

You are to complete the work by a fixed calendar date of May 17, 2024.

**City of Orange Beach, Alabama (Owner)**

By: \_\_\_\_\_

**ACCEPTANCE OF NOTICE**

Receipt of the above NOTICE TO PROCEED is hereby acknowledged this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_

By: \_\_\_\_\_



**SECTION XIV  
WAIVER AND RELEASE OF LIEN  
(SAMPLE)**

FROM:

TO: City of Orange Beach, Alabama (Owner)

PROJECT: **CANAL ROAD IMPROVEMENTS FROM SR-161 TO WILSON BLVD**

KNOW ALL MEN BY THESE PRESENTS:

1. The undersigned, having been employed by the City of Orange Beach to furnish labor and/or materials for the referenced project, does hereby waive and release any and all lien and claim or right to lien and claim against the City of Orange Beach on the referenced project on account of labor, services, equipment, materials, etc. furnished for the referenced project.
2. The undersigned further certifies that to the best of his knowledge and belief, there are no unsatisfied or outstanding claims of any character arising out of the furnishing of labor, equipment, services, and/or materials for the referenced project.
3. The undersigned further agree that, after execution of this document, it will indemnify, defend at its expense, and save the City of Orange Beach harmless from any and all claims or liens arising out of the undersigned's furnishing of labor, equipment, services, and/or materials for the referenced project.
4. The undersigned has executed this document in order to induce the City of Orange Beach to make final payment to and in no way acts as a release of any claim the undersigned may have against parties other than the City of Orange Beach arising out of the furnishing of labor and/or materials for the referenced project.

IN WITNESS WHEREOF, the undersigned has signed and sealed this instrument this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
CONTRACTOR

STATE OF ALABAMA  
COUNTY OF BALDWIN

Personally appeared before me the undersigned Notary Public in and for said County and State, \_\_\_\_\_, who is known to me and who, after being duly sworn, deposes and says that the facts stated in the above affidavit are true.

\_\_\_\_\_  
NOTARY PUBLIC