MUNICIPAL DOCKET
REGULAR MEETING OF DECEMBER 15, 2020
THE MAYOR AND BOARD OF ALDERMEN
THE CITY OF LONG BEACH, MISSISSIPPI

5:00 O'CLOCK P.M. LONG BEACH CITY HALL, 201 JEFF DAVIS AVE.

	5:00 O'CLOCK P.M. LONG BEACH CITY HALL, 201 JEFF DAVIS AVE.	
I.	CALL TO ORDER	
II.	INVOCATION AND PLEDGE OF ALLEGIANCE	
III.	ROLL CALL AND ESTABLISH QUORUM	
IV.	PUBLIC HEARINGS	
V.	ANNOUNCEMENTS; PRESENTATIONS; PROCLAMATIONS	
VI.	AMENDMENTS TO THE MUNICIPAL DOCKET	
VII.	APPROVE MINUTES:	
, 224	1. MAYOR AND BOARD OF ALDERMEN	
	a. December 1, 2020 Regular	
	b. December 8, 2020 Work Session	
	2. PLANNING & DEVELOPMENT COMMISSION	
	a. December 10, 2020 Regular	
VIII.	APPROVE DOCKET OF CLAIMS NUMBER(S):	
	1. 121520	
IX.	UNFINISHED BUSINESS	
	1. Library Board Appointment	
	2. Rent Deferral Request – Parrish's Restaurant & Lounge	
X.	NEW BUSINESS	
	1. Appointment to Planning & Development Commission – Alderman Johnson	
	2. Memorandum of Agreement; MDOT – Pineville Rd Sidewalks Phase III	
	3. Memorandum of Agreement; MDOT – 28th Street & Klondyke Rd Intersection	
	4. Mississippi Main Street Membership	
	5. Extend State of Emergency – Hurricane Zeta	
	6. Insurance Renewals	
	7. Final Debris Collection	
	8. Contract; Overstreet & Assoc Engineering Harbor Repair/Replace Hurr. Zeta	
	9. Contract; Andercorp – Program Mgmt. Hurricane Zeta	
	10. Discussion - Current Tax Abatement Ordinance - Alderman Frazer	
XI.	DEPARTMENTAL BUSINESS	
	1. MAYOR'S OFFICE	
	2. PERSONNEL	
	Police Dept. – Retirement (1); Transfer (1); Step Increase (3)	
	3. CITY CLERK	
	a. Revenue/Expense Report November 2020	
	b. School Board Appointment Update	
	c. Resolution - Party Executive Agreement	
	4. FIRE DEPARTMENT	
	5. POLICE DEPARTMENT	
	6. ENGINEERING	
	a. Contract; Overstreet & Assoc Trautman Basin Lift Station	
	b. Contract Amendment; Overstreet & Assoc Library HVAC Repairs	

8. RECREATION9. BUILDING OFFICE

10. HARBOR

11. DERELICT PROPERTIES

PUBLIC WORKS

a. 19132 Pineville Rd; Cynthia Saucier – Assess Cleaning Fees

XII. REPORT FROM CITY ATTORNEY

XIII. ADJOURN (OR) RECESS

7.

Be it remembered that a regular meeting of the Mayor and Board of Aldermen, Long Beach, Mississippi, was begun and held at 5:00 o'clock p.m., Long Beach City Hall Meeting Room, 201 Jeff Davis Avenue, in said City, it being the third Tuesday in December, 2020, and the same being the time, date and place fixed by Laws of the State of Mississippi and ordinance of the City of Long Beach for holding said meeting.

There were present and in attendance on said board and at the meeting the following named persons: Mayor George L. Bass, Aldermen Donald Frazer, Ronald

Robertson, Bernie Parker, Angie Johnson, Mark E. Lishen, Patricia Bennett, Deputy City Clerk Kini Gonsoulin, and City Attorney Stephen B. Simpson, Esq.

It was noted that Alderman Angie Johnson was present via telephone.

Absent the meeting was Alderman Timothy McCaffrey.

There being a quorum present sufficient to transact the business of the City, the following proceedings were had and done.

Alderman Frazer made motion seconded by Alderman Robertson and unanimously carried to approve the following meeting minutes of the Mayor and Board of Alderman, as submitted:

- December 1, 2020; Regular
- December 8, 2020; Work Session

Alderman Parker made motion seconded by Alderman Robertson and unanimously carried to approve the regular minutes of the Planning & Development Commission dated December 10, 2020, as submitted.

Alderman Frazer made motion seconded by Alderman Robertson and unanimously carried to approve payment of invoices listed in Docket of Claims number 121520.

The Library Board Appointment was tabled until the January 5, 2020 meeting.

Based on advice from City Attorney Steve Simpson, Alderman Frazer made motion seconded by Alderman Robertson and unanimously carried to remove the Rent Deferral Request – Parrish's Restaurant & Lounge item from the agenda and take no action.

Alderman Johnson made motion seconded by Alderman Frazer and unanimously carried to appoint Jennifer Glenn as the Ward 3 Planning & Development Commissioner for the unexpired term ending June 30, 2020.

Alderman Lishen made motion seconded by Alderman Frazer and unanimously carried to approve the following Memorandum of Agreement with MDOT for the Pineville Road Sidewalk Project Phase III:

STP-9083-00(003) / 108636-701000 Pineville Road Sidewalk Project P3 City of Long Beach Rev. 6.24.2020

Memorandum of Agreement

STP-9083-00(003) / 108636-701000 Pineville Road Sidewalk Project Phase III Long Beach, Mississippi

This Agreement is made between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (hereinafter referred to as the "Commission"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation ("MDOT") and City of Long Beach (hereinafter referred to as the "LPA"), for the purpose of establishing the terms under which the LPA may utilize federal funds to complete the proposed project as described below, effective as of the date of the last execution by the Commission.

WHEREAS, the Commission has oversight responsibility and authority over federal funds that are available for local public agency projects; and

WHEREAS, the LPA intends to develop and construct sidewalk improvements along Pineville Road; (hereinafter referred to as the "Project"), and the Commission intends to allow the LPA access to available federal funds and manage the Project under the terms and provisions of this Memorandum of Agreement; and

WHEREAS, it is anticipated that approximately \$600,000.00 in federal funds are available for the construction of the Project, and that the above mentioned federal funds may be rescinded if they are not obligated on or before N/A, and that the above funds are subject to normal rescissions and obligational limitations; and

WHEREAS, the LPA will be responsible for all Project costs over and above the maximum amount of federal funds allocated to the Project by the Commission;

WHEREAS, the Commission and the LPA desire to set forth, by this Agreement, more fully, the agreements of the parties by which the Project will be developed and completed; and

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the Commission enter into this Memorandum of Agreement for the use of the currently available federal funds and any future federal funds that may be allocated to this Project, agree and covenant as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

- A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:
- The LPA shall immediately designate a full time employee of the LPA as the Project Director, who will serve as the person responsible for completion of all phases of the Project and will coordinate all Project activities with the MDOT District LPA Engineer.

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- 2. The LPA shall promptly follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are necessary for the Project including, but not limited to, project activation, reporting requirements for federal awards (including the single audit), consultant selection, necessary permits, environmental process, preliminary design, right-of-way acquisition, advertisement for and selection of a contractor, construction oversight, and project close out activities.
- The LPA shall submit to MDOT four (4) complete sets of as-built plans in printed form and the original electronic files in a format that is compatible with Microstation prior to MDOT acceptance. Upon request, MDOT may waive this requirement for selected projects.
- 4. The LPA shall be responsible for all maintenance and operation of the Project during and after completion so that the federal investment in the Project is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of federal funds through all available legal actions.
- 5. The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.
- 6. The LPA agrees that if any act or omission on the part of the LPA causes loss of Federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA will be solely responsible for all additional costs.
- 7. In compliance with State Law, the LPA shall pay all payments owed to Contractors and Consultants according to the terms of the contract, and in all instances payments shall be made within forty-five (45) days from the day they were due and payable. MDOT reserves the right to withhold reimbursement until adequate proof of payment has been produced by the LPA.

Excepted from this requirement are payments to railroads for any work included in the Project. Payments to railroads, their consultants or contractors, for work included in the Project, may be made by MDOT, at its sole discretion. Payments made by MDOT to railroads, their consultants or contractors shall come from the funds obligated for the Project.

- 8. The LPA shall be solely responsible for payment of any and all funds required to complete the Project, over and above the available federal funds for the Project.
- 9. All contracts and subcontracts shall include a provision for compliance with Senate Bill 2988 from the 2008 Session of the Mississippi Legislature entitled "The Mississippi Employment Protection Act," as published in the General Laws of 2008 and codified in the Mississippi Code of 1972, as amended (Sections 71-11-1 and 71-11-3), and any rules or regulations promulgated by the Commission, the Department of Employment Security, the Department of Revenue, the Secretary of State, or the Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1, et seq., Mississippi Code of 1972, as amended) regarding compliance with the Act. Under this Act, the LPA and every sub-recipient or subcontractor shall register with and participate in

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a federal work authorization program operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208., Division C, Section 403(a); 8 USC, Section 1324a.

10. The LPA will be required to acknowledge MDOT and FHWA in all public relations efforts for the Project including press releases, materials for groundbreakings, ribbon cuttings or other public events and any other public information or media resources by notifying the MDOT Public Affairs Division, via telephone at 601-359-7074 or by electronic mail at comments@mdot.ms.gov. At a minimum, the following example sentence should be included:

"This project was funded (partially) by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this Project.

- 11. The LPA agrees that if the Project is not kept upon a schedule that meets MDOT guidelines, then the funds allocated to the Project may be rescinded. If the Project funds are rescinded, then the LPA may be required to refund any amounts paid unto the LPA by MDOT. The MDOT guidelines are derived from Title 23, United States Code, Section 102(b) and Title 23, Code of Federal Regulations, Part 630.112(c)(2).
- 12. The LPA will be required to submit to the District LPA Engineer monthly progress reports through the Notice to Proceed for construction, which shall include, but not be limited to, the work that has been completed that month and the planned work for the upcoming month. The LPA will also provide a project progress schedule that will report project milestones and the target date for the LPA's request for Ad Authority. These project milestones are to be updated once any milestones are missed.
- 13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards to prevent fraud and overpayments. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.
- 14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this Project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.
- 15. The LPA, being classified as a lower tier participant in federal funding, certifies, by execution of this agreement, that neither it nor those individuals or entities with which it contracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 16. The LPA agrees that it will require that engineering plans prepared for the construction of the Project be signed and sealed by the professional engineer responsible

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for preparation of the plans. This requirement applies to the engineer assigned to the Project by a consulting engineering firm under contract to the LPA, or to an engineer that is a full-time, or part-time employee of the LPA. Further, the LPA agrees that it is solely responsible for errors and omissions that occur during Project development or during construction, regardless of any review or oversight activity on the part of MTC/MDOT.

17. The LPA agrees that once construction of the Project has commenced, the LPA is responsible for the Project being completed according to the plans and specifications, addenda or supplemental agreement as amended. The LPA acknowledges and agrees that this responsibility continues after the federal funds provided through MDOT are exhausted.

B. THE COMMISSION WILL:

- Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with MTC/MDOT and FHWA approval.
- Approve permit applications that meet with MDOT standards that are necessary to allow the LPA access to the property of the Commission for the purposes of constructing the proposed transportation improvements. The Commission may enter into an appropriate agreement in its discretion.
- Work with the LPA, through the District LPA Engineer, during the various phases
 of the work with the goal of producing a project that will be acceptable to the Commission
 upon completion.
- Review all submittals in a timely manner, in accordance with the PDM, to allow the Project to progress in an orderly fashion. The review and oversight conducted by MTC does not relieve the LPA from its full responsibility for the proper design and construction of the Project.
- During the progress of the Project, assist the LPA in obtaining reimbursements of federal funding for any project cost that is eligible for reimbursement.
- 6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.
- 7. At its discretion, make payments directly to railroad companies, their consultants or contractors for work on railroads included in the Project. The payments made shall come from Project funds obligated for the Project.

ARTICLE II. GENERAL PROVISIONS

A. The Commission shall have the right to audit all accounts associated with the Project, and should there be any overpayment by the Commission to the LPA, the LPA agrees to refund any such overpayment within thirty (30) days of written notification. Should the LPA fail to reimburse the Commission, the Commission shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.

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- B. This Memorandum of Agreement shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice given by the LPA, shall not, however, cancel any contract made by the LPA that is to further the purpose of this agreement and that is underway at the time of termination. Any construction contract underway shall be allowed to conclude under its own terms, The LPA agrees to bear complete and total, legal and financial responsibility for any such contract. Additionally, funds may be suspended or terminated under the provisions of Section F of this Article.
- C. It is understood that this is a Memorandum of Agreement and that more specific requirements for the development and construction of the transportation improvement Project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the Standard Operating Procedures for MDOT, and other related regulatory authorities. The LPA agrees that it will abide by all such applicable authority.
- D. Should the LPA miss the obligation deadline set in this MOU, the Commission reserves the right to refuse to obligate funds for the Project.
- E. The Executive Director of MDOT is authorized to withhold federal funds for the Project for failure of the LPA, its consultants, or its contractor to follow the requirements of the Standard Specifications for Road and Bridge Construction, latest edition, or the latest online LPA Project Development Manual.
- F. Before federal funds are terminated, the LPA will be notified in writing by the Executive Director of the conditions that make termination of funds imminent. If no effective effort has been made by the LPA, its agents, employees, contractors or subcontractors, to correct the conditions set forth in the Director's notice, within fifteen (15) calendar days after notice is given, the Executive Director may declare the federal funds suspended for the Project and notify the LPA accordingly. The LPA will then have forty-five (45) days in which to correct all conditions of which complaint is made. If all conditions are not corrected within forty-five (45) days, the Executive Director may declare the federal funds for the Project terminated and notify the LPA accordingly. If all conditions are corrected, within the forty-five (45) day period, the LPA will be reimbursed under the terms of this agreement, for all work satisfactorily completed during the forty-five day period.
- G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the Project, then MDOT time may be charged to the Project. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the Project may increase.

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ARTICLE III. NOTICE & DESIGNATED AGENTS

A. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise indentured in the addenda hereto:

For Contractual Administrative Matters:

COMMISSION: Executive Director MDOT P.O. Box 1850 Jackson, MS 39215-1850 Phone: (601) 359-7002 Fax: (601) 359-7110

LPA: George Bass, Mayor City of Long Beach P.O. Box 929 Long Beach, MS 39560 Phone: (228) 863-1556 Fax: (228) 865-0822

For Technical Matters:

COMMISSION:
David Seyfarth
District LPA Coordinator – District 6
MDOT
16499-B Hwy 49
Saucier, MS 39574
Phone: (228) 832-0682
Fax: (228) 831-0681

LPA: Kini Gonsoulin Comptroller City of Long Beach P.O. Box 929 Long Beach, MS 39560 Phone: (228) 863-1556 Fax: (228) 865-0822

B. All notices given hereunder shall be by U.S. Certified Mail, return receipt requested, or by facsimile and shall be effective only upon receipt by the addressee at the above addresses or telephone numbers.

ARTICLE IV. RELATIONSHIP OF THE PARTIES

- A. The relationship of the LPA to the Commission is that of an independent contractor, and said LPA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission by reason hereof. The LPA will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the Commission, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.
- B. The Commission executes all directives and orders through the MDOT. The LPA executes all directives and orders pursuant to applicable law, policies, procedures and regulations. All notices, communications, and correspondence between the Commission and the LPA shall be directed to the designated agent shown above in Article III.

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ARTICLE V. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

To the extent permitted by law, the Commission and the LPA agree that neither party nor their agents, employees, contractors or subcontractors, will be held liable for any claim, loss, damage, cost, charge or expenditure arising out of any negligent act, actions, neglect or omission caused solely by the other party, its agents, employees, contractors or subcontractors.

ARTICLE VI. MISCELLANEOUS

No modification of this Memorandum of Agreement shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Memorandum of Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

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ARTICLE VII. AUTHORITY TO CONTRACT

Both parties hereto represent that they have authority to enter into this

	Memorandum of Agreement.			
	This Agreement may be executed in one or more counterparts (facsimile transmissic email or otherwise), each of which shall be an original Agreement, and all of which shall be together constitute but one Agreement.			
	So agreed this the 15th day of December, 2020.			
	City of Long Beach			
	George Bass Mayor			
	Attested:			
	(Appropriate clerk etc.)			
	So agreed this the day of 20			
	MISSISSIPPI TRANSPORTATION COMMISSION By and through the duly authorized Executive Director			
	Melinda L. McGrath, PE Executive Director Mississippi Department of Transportation			
	Book, Page,			
Page 8 of 8				

M.B. 94 12.15.20 Reg

Alderman Lishen made motion seconded by Alderman Parker and unanimously carried to approve the following Memorandum of Agreement with MDOT for the 28th Street & Klondyke Road Intersection Project:

STP-9394-00(001) / 108637-701000 28th Street at Klondyke Road City of Long Beach Rev. 6.24,2020

Memorandum of Agreement

STP-9394-00(001) / 108637-701000 28th Street at Klondyke Road Long Beach, Mississippi

This Agreement is made between the Mississippi Transportation Commission, a body Corporate of the State of Mississippi (hereinafter referred to as the "Commission"), acting by and through the duly authorized Executive Director of the Mississippi Department of Transportation ("MDOT") and City of Long Beach (hereinafter referred to as the "LPA"), for the purpose of establishing the terms under which the LPA may utilize federal funds to complete the proposed project as described below, effective as of the date of the last execution by the Commission.

WHEREAS, the Commission has oversight responsibility and authority over federal funds that are available for local public agency projects; and

WHEREAS, the LPA intends to develop and construct Intersection Improvements at 28th Street and Klondyke Road; (hereinafter referred to as the "Project"), and the Commission intends to allow the LPA access to available federal funds and manage the Project under the terms and provisions of this Memorandum of Agreement; and

WHEREAS, it is anticipated that approximately \$800,000.00 in federal funds are available for the construction of the Project, and that the above mentioned federal funds may be rescinded if they are not obligated on or before N/A, and that the above funds are subject to normal rescissions and obligational limitations; and

WHEREAS, the LPA will be responsible for all Project costs over and above the maximum amount of federal funds allocated to the Project by the Commission;

WHEREAS, the Commission and the LPA desire to set forth, by this Agreement, more fully, the agreements of the parties by which the Project will be developed and completed; and

NOW, THEREFORE, for and in consideration of the premises and agreements of the parties as hereinafter contained, the LPA and the Commission enter into this Memorandum of Agreement for the use of the currently available federal funds and any future federal funds that may be allocated to this Project, agree and covenant as follows:

ARTICLE I. DUTIES AND RESPONSIBILITIES

- A. The LPA, which is hereby designated as the Local Sponsor for the purposes herein, hereby contracts, covenants and binds itself to the following responsibilities, duties, terms and conditions:
- 1. The LPA shall immediately designate a full time employee of the LPA as the Project Director, who will serve as the person responsible for completion of all phases of the Project and will coordinate all Project activities with the MDOT District LPA Engineer.

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- 2. The LPA shall promptly follow the procedures set out in the latest online version of the Project Development Manual (PDM) for Local Public Agencies that are necessary for the Project including, but not limited to, project activation, reporting requirements for federal awards (including the single audit), consultant selection, necessary permits, environmental process, preliminary design, right-of-way acquisition, advertisement for and selection of a contractor, construction oversight, and project close out activities.
- The LPA shall submit to MDOT four (4) complete sets of as-built plans in printed form and the original electronic files in a format that is compatible with Microstation prior to MDOT acceptance. Upon request, MDOT may waive this requirement for selected projects.
- 4. The LPA shall be responsible for all maintenance and operation of the Project during and after completion so that the federal investment in the Project is preserved. If maintenance is not performed, as appropriate, future federal funds may be withheld for any projects in the jurisdiction of the local agency, or the Commission may seek recovery of federal funds through all available legal actions.
- The LPA shall follow and abide by any and all federal requirements, specifically, but not limited to, the provisions that no retainage shall be withheld from installment payments to the construction contractor.
- 6. The LPA agrees that if any act or omission on the part of the LPA causes loss of Federal funding from FHWA or any other source, or any penalty being imposed by the United States of America under the Clean Water Act, 33 U.S.C. § 1251, et seq. or any other provision of law, the LPA will be solely responsible for all additional costs.
- 7. In compliance with State Law, the LPA shall pay all payments owed to Contractors and Consultants according to the terms of the contract, and in all instances payments shall be made within forty-five (45) days from the day they were due and payable. MDOT reserves the right to withhold reimbursement until adequate proof of payment has been produced by the LPA.

Excepted from this requirement are payments to railroads for any work included in the Project. Payments to railroads, their consultants or contractors, for work included in the Project, may be made by MDOT, at its sole discretion. Payments made by MDOT to railroads, their consultants or contractors shall come from the funds obligated for the Project.

- The LPA shall be solely responsible for payment of any and all funds required to complete the Project, over and above the available federal funds for the Project.
- 9. All contracts and subcontracts shall include a provision for compliance with Senate Bill 2988 from the 2008 Session of the Mississippi Legislature entitled "The Mississippi Employment Protection Act," as published in the General Laws of 2008 and codified in the Mississippi Code of 1972, as amended (Sections 71-11-1 and 71-11-3), and any rules or regulations promulgated by the Commission, the Department of Employment Security, the Department of Revenue, the Secretary of State, or the Department of Human Services in accordance with the Mississippi Administrative Procedures Law (Section 25-43-1, et seq., Mississippi Code of 1972, as amended) regarding compliance with the Act. Under this Act, the LPA and every sub-recipient or subcontractor shall register with and participate in

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STP-9394-00(001) / 108637-701000 28th Street at Klondyke Road City of Long Beach Rev. 6,24,2020

a federal work authorization program operated by the United States Department of Homeland Security to electronically verify information of newly hired employees pursuant to the Illegal Immigration Reform and Immigration Responsibility Act of 1996, Public Law 104-208., Division C, Section 403(a); 8 USC, Section 1324a.

10. The LPA will be required to acknowledge MDOT and FHWA in all public relations efforts for the Project including press releases, materials for groundbreakings, ribbon cuttings or other public events and any other public information or media resources by notifying the MDOT Public Affairs Division, via telephone at 601-359-7074 or by electronic mail at comments@mdot.ms.gov. At a minimum, the following example sentence should be included:

"This project was funded (partially) by the Mississippi Department of Transportation and the Federal Highway Administration."

When appropriate, an invitation should be extended to MDOT Public Affairs for the Transportation Commissioner, MDOT Executive Director or other designee to speak at any official public ceremony for this Project.

- 11. The LPA agrees that if the Project is not kept upon a schedule that meets MDOT guidelines, then the funds allocated to the Project may be rescinded. If the Project funds are rescinded, then the LPA may be required to refund any amounts paid unto the LPA by MDOT. The MDOT guidelines are derived from Title 23, United States Code, Section 102(b) and Title 23, Code of Federal Regulations, Part 630.112(c)(2).
- 12. The LPA will be required to submit to the District LPA Engineer monthly progress reports through the Notice to Proceed for construction, which shall include, but not be limited to, the work that has been completed that month and the planned work for the upcoming month. The LPA will also provide a project progress schedule that will report project milestones and the target date for the LPA's request for Ad Authority. These project milestones are to be updated once any milestones are missed.
- 13. The LPA agrees to maintain, and make available to Commission, a sufficient accounting system with proper internal controls and safeguards to prevent fraud and overpayments. The accounting system and its controls should at all times maintain adequate recording and reporting of federal funds received by the LPA. If sufficient internal controls over the LPA's federal funding are not maintained, federal funds may be withheld and future transportation projects will not be considered.
- 14. The LPA agrees that any planning studies prepared or produced, as part of, or in conjunction with, this Project, shall in no way obligate the Commission to any other terms or conditions other than those stated herein.
- 15. The LPA, being classified as a lower tier participant in federal funding, certifies, by execution of this agreement, that neither it nor those individuals or entities with which it contracts are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 16. The LPA agrees that it will require that engineering plans prepared for the construction of the Project be signed and sealed by the professional engineer responsible

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STP-9394-00(001) / 108637-701000 28th Street at Klondyke Road City of Long Beach

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for preparation of the plans. This requirement applies to the engineer assigned to the Project by a consulting engineering firm under contract to the LPA, or to an engineer that is a full-time, or part-time employee of the LPA. Further, the LPA agrees that it is solely responsible for errors and omissions that occur during Project development or during construction, regardless of any review or oversight activity on the part of MTC/MDOT.

17. The LPA agrees that once construction of the Project has commenced, the LPA is responsible for the Project being completed according to the plans and specifications, addenda or supplemental agreement as amended. The LPA acknowledges and agrees that this responsibility continues after the federal funds provided through MDOT are exhausted.

B. THE COMMISSION WILL:

- 1. Allow the LPA to design and construct the proposed transportation improvements provided that the design meets with MTC/MDOT and FHWA approval.
- 2. Approve permit applications that meet with MDOT standards that are necessary to allow the LPA access to the property of the Commission for the purposes of constructing the proposed transportation improvements. The Commission may enter into an appropriate agreement in its discretion.
- 3. Work with the LPA, through the District LPA Engineer, during the various phases of the work with the goal of producing a project that will be acceptable to the Commission upon completion.
- 4. Review all submittals in a timely manner, in accordance with the PDM, to allow the Project to progress in an orderly fashion. The review and oversight conducted by MTC does not relieve the LPA from its full responsibility for the proper design and construction of the Project.
- During the progress of the Project, assist the LPA in obtaining reimbursements of federal funding for any project cost that is eligible for reimbursement.
- 6. Submit all documents to the Federal Highway Administration (FHWA) when required or requested by the FHWA.
- 7. At its discretion, make payments directly to railroad companies, their consultants or contractors for work on railroads included in the Project. The payments made shall come from Project funds obligated for the Project.

ARTICLE II. GENERAL PROVISIONS

A. The Commission shall have the right to audit all accounts associated with the Project, and should there be any overpayment by the Commission to the LPA, the LPA agrees to refund any such overpayment within thirty (30) days of written notification. Should the LPA fail to reimburse the Commission, the Commission shall have the right to offset the amount due from any other funds in its possession that are due the LPA on this or any other project, current or future.

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- B. This Memorandum of Agreement shall be subject to termination at any time upon thirty (30) days written notice by either party. Such notice given by the LPA, shall not, however, cancel any contract made by the LPA that is to further the purpose of this agreement and that is underway at the time of termination. Any construction contract underway shall be allowed to conclude under its own terms. The LPA agrees to bear complete and total, legal and financial responsibility for any such contract. Additionally, funds may be suspended or terminated under the provisions of Section F of this Article.
- C. It is understood that this is a Memorandum of Agreement and that more specific requirements for the development and construction of the transportation improvement Project are contained in the Federal Statutes, the Code of Federal Regulations, the Mississippi Code, and the Standard Operating Procedures for MDOT, and other related regulatory authorities. The LPA agrees that it will abide by all such applicable authority.
- $\label{eq:Def} \textbf{D.} \qquad \text{Should the LPA miss the obligation deadline set in this MOU, the Commission reserves the right to refuse to obligate funds for the Project.}$
- E. The Executive Director of MDOT is authorized to withhold federal funds for the Project for failure of the LPA, its consultants, or its contractor to follow the requirements of the Standard Specifications for Road and Bridge Construction, latest edition, or the latest online LPA Project Development Manual.
- F. Before federal funds are terminated, the LPA will be notified in writing by the Executive Director of the conditions that make termination of funds imminent. If no effective effort has been made by the LPA, its agents, employees, contractors or subcontractors, to correct the conditions set forth in the Director's notice, within fifteen (15) calendar days after notice is given, the Executive Director may declare the federal funds suspended for the Project and notify the LPA accordingly. The LPA will then have forty-five (45) days in which to correct all conditions of which complaint is made. If all conditions are not corrected within forty-five (45) days, the Executive Director may declare the federal funds for the Project terminated and notify the LPA accordingly. If all conditions are corrected, within the forty-five (45) day period, the LPA will be reimbursed under the terms of this agreement, for all work satisfactorily completed during the forty-five day period.
- G. In the event that circumstances call for MDOT to expend staff time and other resources to address issues on the Project, then MDOT time may be charged to the Project. Assessing charges to a project is within the sole discretion of MDOT. Any charges made will impact the amount of funds available to reimburse the LPA, and therefore the LPA's contribution to the Project may increase.

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ARTICLE III. NOTICE & DESIGNATED AGENTS

A. For purposes of implementing this section and all other sections of this Agreement with regard to notice, the following individuals are herewith designated as agents for the respective parties unless otherwise indentured in the addenda hereto:

For Contractual Administrative Matters:

COMMISSION: Executive Director MDOT P.O. Box 1850 Jackson, MS 39215-1850 Phone: (601) 359-7002 Fax: (601) 359-7110

LPA: George Bass, Mayor City of Long Beach P.O. Box 929 Long Beach, MS 39560 Phone: (228) 863-1556 Fax: (228) 865-0822

For Technical Matters:

COMMISSION:
David Seyfarth
District LPA Coordinator – District 6
MDOT
16499-B Hwy 49
Saucier, MS 39574
Phone: (228) 832-0682
Fax: (228) 831-0681

LPA: Kini Gonsoulin Comptroller City of Long Beach P.O. Box 929 Long Beach, MS 39560 Phone: (228) 863-1556 Fax: (228) 865-0822

B. All notices given hereunder shall be by U.S. Certified Mail, return receipt requested, or by facsimile and shall be effective only upon receipt by the addressee at the above addresses or telephone numbers.

ARTICLE IV. RELATIONSHIP OF THE PARTIES

- A. The relationship of the LPA to the Commission is that of an independent contractor, and said LPA, in accordance with its status as an independent contractor, covenants and agrees that it will conduct itself consistent with such status, that it will neither hold itself out as, nor claim to be, an officer or employee of the Commission by reason hereof. The LPA will not by reason hereof, make any claim, demand or application or for any right or privilege applicable to an officer or employee of the Commission, including, but not limited to, workers' compensation coverage, unemployment insurance benefits, social security coverage, retirement membership or credit, or any form of tax withholding whatsoever.
- B. The Commission executes all directives and orders through the MDOT. The LPA executes all directives and orders pursuant to applicable law, policies, procedures and regulations. All notices, communications, and correspondence between the Commission and the LPA shall be directed to the designated agent shown above in Article III.

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ARTICLE V. RESPONSIBILITIES FOR CLAIMS AND LIABILITY

To the extent permitted by law, the Commission and the LPA agree that neither party nor their agents, employees, contractors or subcontractors, will be held liable for any claim, loss, damage, cost, charge or expenditure arising out of any negligent act, actions, neglect or omission caused solely by the other party, its agents, employees, contractors or subcontractors.

ARTICLE VI. MISCELLANEOUS

No modification of this Memorandum of Agreement shall be binding unless such modification shall be in writing and signed by all parties. If any provision of this Memorandum of Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Memorandum of Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

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ARTICLE VII. AUTHORITY TO CONTRACT

Both parties hereto represent that they have authority to enter into this Memorandum of Agreement.

This Agreement may be executed in one or more counterparts (facsimile transmission, email or otherwise), each of which shall be an original Agreement, and all of which shall

together constitute but one Agreement. So agreed this the 15th day of December 2020. City of Long Beach Attested: Store (Appropriate clerk etc.) So agreed this the ___ __ day of _ MISSISSIPPI TRANSPORTATION COMMISSION By and through the duly authorized **Executive Director** Melinda L. McGrath, PE **Executive Director** Mississippi Department of Transportation _, Page ِ Page 8 of 8

Alderman Parker made motion seconded by Alderman Frazer and unanimously carried to renew the City's Mississippi Main Street membership for 2021.

Alderman Lishen made motion seconded by Alderman Frazer to extend the State of Emergency for Hurricane Zeta, and after discussion, Alderman Frazer offered a substitute motion to extend the State of Emergency for Hurricane Zeta and authorize an amendment to the contracts with Necaise Brothers and Overstreet & Associates to

perform one final sweep of storm debris collection from the western City limits to the eastern City limits. Alderman Lishen seconded the motion and it carried unanimously.

Mayor Bass recognized Mr. Tom Sawyer, Account Executive of Brown & Brown Insurance to present the City's Insurance Renewals. After discussion, Alderman Frazer made motion seconded by Alderman Lishen and unanimously carried to approve the Insurance Renewals as submitted. A copy of the policy is on file in the City Clerk's Office.

Alderman Parker made motion seconded by Alderman Robertson and unanimously carried to approve the following contract with Overstreet & Associates for Engineering Services to Repair/Replace Harbor:

161 Lameuse St., Suite 203 Biloxi, MS 39530 228-967-7137



630 Delmas Ave., Suite B Pascagoula, MS 39567 228-967-7137

December 11, 2020

City of Long Beach P.O. Box 929 Long Beach, MS 39560

RE: Hurricane Zeta Permanent Repairs - Long Beach Smallcraft Harbor

Ladies and Gentlemen:

At your last meeting, you awarded the contract for Engineering Services for the referenced permanent repairs following Hurricane Zeta to Overstreet & Associates. Attached hereto is the proposed Master Agreement for that work, which will bear the date of your award. This professional services contract is structured to allow individual amendments/task orders as the needed services are identified, using a contract configuration similar to previous storm repair efforts for the City.

Additionally, we have attached the first Contract Amendment to perform engineering services for water-side structural evaluation of the piers inside the Harbor. This will include evaluation/integrity testing of 125 of the timber piles in the Harbor in order to project a comprehensive status of the remainder of the piles. Other elements of the pier structural systems can be visually evaluated and this data will be included in a summary of all findings for this work.

Please authorize the Mayor to execute this Contract and the attached Amendment 1 so that we may begin Hurricane Zeta recovery work in the Harbor.

Sincerely,

David Ball, P.E.

DB:1124 Attachment

STANDARD FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

This Agreement is intended to serve as the Master Agreement between Owner and Engineer for the various associated infrastructure improvement and repair projects resulting from Hurricane Isaac. As specific projects are identified, along with detailed scopes of work for each project, appropriate amendments to this Master Agreement will be prepared for authorization by the Owner, for each specific project. For each individual project, an Amendment to this Master Agreement will be prepared, which will include: a description of the project and the detailed scope of work; times for rendering professional services; and selection of one of the methods of payment options as indicated in Exhibit C.

OWNER and ENGINEER in consideration of their mutual covenants as set forth herein agree as follows:

Standard Form of Agreement Between Owner and Engineer for Professional Services Page 1 of 13

ARTICLE 1 - SERVICES OF ENGINEER

1.01 Scope

- A. ENGINEER shall provide the Basic and Additional Services set forth herein and in Exhibit A.
- B. Upon this Agreement becoming effective, ENGINEER is authorized to begin Basic Services as set forth in Exhibit A.
- C. If authorized by OWNER, ENGINEER shall furnish Resident Project Representative(s) with duties, responsibilities and limitations of authority as set forth in Exhibit D.

ARTICLE 2 - OWNER'S RESPONSIBILITIES

2.01 General

A. OWNER shall have the responsibilities set forth herein and in Exhibit B.

ARTICLE 3 - TIMES FOR RENDERING SERVICES

3.01 General

- A. ENGINEER's services and compensation under this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion. Unless specific periods of time or specific dates for providing services are specified in this Agreement, ENGINEER's obligation to render services hereunder will be for a period which may reasonably be required for the completion of said services.
- B. If in this Agreement specific periods of time for rendering services are set forth of specific dates by which services are to be completed are provided, and if such periods of time or dates are changed through no fault of ENGINEER, the rates and amounts of compensation provided for herein shall be subject to equitable adjustment. If OWNER has requested changed in the scope, extent, or character of the Project, the time of performance of ENGINEER's services shall be adjusted equitably.
- C. For purposes of this Agreement the term "day" means a calendar day of 24 hours.

3.02 Suspension

- A. If OWNER fails to give prompt written authorization to proceed with any phase of services after completion of the immediately preceding phase, or if ENGINEER's services are delayed through no fault of ENGINEER, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement.
- B. If ENGINEER's services are delayed or suspended in whole or in part by OWNER, or if ENGINEER's services are extended by Contractor's actions or inactions for more than 90 days through no fault of ENGINEER, ENGINEER shall be entitled to equitable adjustment of rates and amounts of compensation provided for elsewhere in this Agreement to reflect, reasonable costs incurred by ENGINEER in connection with, among other things, such delay or suspension and reactivation and the fact that the time for performance under this Agreement has been revised.

ARTICLE 4 - PAYMENTS TO ENGINEER

4.01 Methods of Payment for Services and Reimbursable Expenses of ENGINEER

- A. For Basic Services. OWNER shall pay ENGINEER for Basic Services performed or furnished under Exhibit A, Part 1, as set forth in Exhibit C.
- B. For Additional Services. OWNER shall pay ENGINEER for Additional Services performed or furnished under Exhibit A, Part 2, as set forth in Exhibit C.
- C. For Reimbursable Expenses. In addition to payments provided for in paragraphs 4.01.A and 4.01.B, OWNER shall pay ENGINEER for Reimbursable Expenses incurred by ENGINEER and ENGINEER's Consultants as set forth in Exhibit C.

4.02 Other Provisions Concerning Payments

- A. Preparation of Invoices. Invoices will be prepared in accordance with ENGINEER's standard invoicing practices and will be submitted to OWNER by ENGINEER, unless otherwise agreed. The amount billed in each invoice will be calculated as set forth in Exhibit C.
- B. Payment of Invoices. Invoices are due and payable within 30 days of receipt. If OWNER fails to make any

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payment due ENGINEER for services and expenses within 30 days after receipt of ENGINEER's invoice therefor, the amounts due ENGINEER will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law, if less) from said thirtieth day. In addition, ENGINEER may, after giving seven days written notice to OWNER, suspend services under this Agreement until ENGINEER has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

C. Disputed Invoices. In the event of a disputed or contested invoice, only that portion so contested may be withheld from payment, and the undisputed portion will be paid.

D. Payments Upon Termination.

- 1. In the event of any termination under paragraph 6.06, ENGINEER will be entitled to invoice OWNER and will be paid in accordance with Exhibit C for all services performed or furnished and all Reimbursable Expenses incurred through the effective date of termination.
- 2. In the event of termination by OWNER for convenience or by ENGINEER for case, ENGINEER, in addition to invoicing for those items identified in subparagraph 4.02.D.1, shall be entitled to invoice OWNER and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with ENGINEER's Consultants, and other related close-out costs, using methods and rates for Additional Services as set forth in Exhibit C.
- E. Records of ENGINEER's Costs. Records of ENGINEER's costs pertinent to ENGINEER's compensation under this Agreement shall be kept in accordance with generally accepted accounting practices. To the extent necessary to verify ENGINEER's charges and upon OWNER's timely request, copies of such records will be made available to OWNER at cost.
- F. Legislative Actions. In the event of legislative actions after the Effective Date of the Agreement by any level of government that imposes taxes, fees, or costs on ENGINEER's services or other costs in connection with this Project or compensation therefor, such new taxes, fees, or costs shall be invoiced to and paid by OWNER as a Reimbursable Expense to which a Factor of 1.0 shall be

applied. Should such taxes, fees, or costs be imposed, they shall be in addition to ENGINEER's estimated total compensation.

ARTICLE 5 - OPINIONS OF COST

5.01 Opinions of Probable Construction Cost

A. ENGINEER's opinions of probable Construction Cost provided for herein are to be made on the basis of ENGINEER's experience and qualifications and represent ENGINEER's best judgment as an experienced and qualified professional generally familiar with the industry. However, since ENGINEER has no control over the cost of labor, materials, equipment, or services furnished by others, or over the Contractor's methods of determining prices, or over competitive bidding or market conditions, ENGINEER cannot and does not guarantee that proposals, bids, or actual Construction Cost will not vary from opinions of probable Construction Cost prepared by ENGINEER. If OWNER wishes greater assurance as to probable Construction Cost, OWNER shall employ an independent cost estimator as provided in Exhibit B.

5.02 Designing to Construction Cost Limit

A. If a Construction Cost limit is established between OWNER and ENGINEER, such Construction Cost limit and a statement of ENGINEER's rights and responsibilities with respect thereto will be specifically set forth in Exhibit F, "Construction Cost Limit" to this Agreement.

5.03 Opinions of Total Project Costs

A. ENGINEER assumes no responsibility for the accuracy of opinions of Total Project Costs.

ARTICLE 6 - GENERAL CONSIDERATIONS

6.01 Standards of Performance

A. The standard of care for all professional engineering and related services performed or furnished by ENGINEER under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

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- B. ENGINEER shall be responsible for the technical accuracy of its services and documents resulting therefrom, and OWNER shall not be responsible for discovering deficiencies therein. ENGINEER shall correct such deficiencies without additional compensation except to the extent such action is directly attributable to deficiencies in OWNER-furnished information.
- C. ENGINEER shall perform or furnish professional engineering and related services in all phases of the Project to which this Agreement applies, ENGINEER shall serve as OWNER's prime professional for the Project. ENGINEER may employ such ENGINEER'S Consultants as ENGINEER deems necessary to assist in the performance or furnishing of the services. ENGINEER shall not be required to employ any ENGINEER'S Consultant unacceptable to ENGINEER.
- D. ENGINEER and OWNER shall comply with applicable Laws or Regulations and OWNER-mandated standards. This Agreement is based on these requirements as of its Effective Date. Changes to these requirements after the Effective Date of this Agreement may be the basis for modifications to OWNER's responsibilities or to ENGINEER's scope of services, times of performance, or compensation.
- E. OWNER shall be responsible for, and ENGINEER may rely upon, the accuracy and completeness of all requirements, programs, instructions, reports, data, and other information furnished by OWNER to ENGINEER pursuant to this Agreement. ENGINEER may use such requirements, reports, data, and information in performing and furnishing services under this Agreement.
- F. OWNER shall make decisions and carry out its other responsibilities in a timely manner and shall bear all costs incident thereto so as not to delay the services to ENGINEER.
- G. Prior to the commencement of the Construction Phase, OWNER shall notify ENGINEER of any variations from the language indicated in Exhibit E, "Notice of Acceptability of Work", or of any other notice or certification that ENGINEER will be requested to provide to OWNER or third parties in connection with the Project. OWNER and ENGINEER shall reach agreement on the terms of any such requested notice or certification, and OWNER shall authorize such Additional Services as are necessary to enable ENGINEER to provide the notices or certifications requested.
- H. ENGINEER shall not be required to sign any documents, no matter by whom requested, that would

result in the ENGINEER's having to certify, guarantee or warrant the existence of conditions whose existence the ENGINEER cannot ascertain. OWNER agrees not to make resolution of any dispute with the ENGINEER or payment of any amount due to the ENGINEER in any way contingent upon the ENGINEER's signing any such certification.

- I. During the Construction Phase, ENGINEER shall not supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures and programs incident to the Contractor's work in progress, nor for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work.
- J. ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- K. ENGINEER shall not be responsible for the acts or omissions of any Contractor(s), subcontractor or supplier, or of any of the Contractor's agents or employees or any other persons (except ENGINEER's own employees) at the Site or otherwise furnishing or performing any of the Contractor's work; or for any decision made on interpretations or clarifications of the Contract Documents given by the OWNER without consultation and advice of ENGINEER.
- L. The General Conditions for any construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (Document No. 1910-8, 1996 Edition) unless both parties mutually agree to use other General Conditions as specifically referenced in Exhibit J.

6.02 Authorized Project Representatives

A. Contemporaneous with the execution of this Agreement, ENGINEER and OWNER shall designate specific individuals to act as ENGINEER's and OWNER's representatives with respect to the services to be performed or furnished by ENGINEER and responsibilities of OWNER under this Agreement. Such individuals shall have authority to transmit instructions, receive information, and render decisions relative to the Project on behalf of each respective party.

6.03 Design without Construction Phase Services

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A. Should OWNER provide Construction Phase services with either OWNER's representatives or a third party, ENGINEER's Basic Services under this Agreement will be considered to be completed upon completion of the Final Design Phase or Bidding or Negotiating Phase as outlined in Exhibit A.

B. It is understood and agreed that if ENGINEER's Basic Services under this Agreement do not include Project observation, or review of the Contractor's performance, or any other Construction Phase services, and that such services will be provided by OWNER, then OWNER assumes all responsibility for interpretation of the Contract Documents and for construction observation or review and waives any claims against the ENGINEER that may be in any way connected thereto.

6.04 Use of Documents

- A. All Documents are instruments of service in respect to this Project, and ENGINEER shall retain an ownership and property interest therein (including the right of reuse at the discretion of the ENGINEER) whether or not the Project is completed.
- B. Copies of OWNER-furnished data may be relied upon by ENGINEER are limited to the printed copies (also known as hard copies) that are delivered to the ENGINEER pursuant to Exhibit B. Files in electronic media format of text, data, graphics, or of other types that are furnished by OWNER to ENGINEER are only for convenience of ENGINEER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- C. Copies of Documents that may be relied upon by OWNER are limited to the printed copies (also known as hard copies) that are signed or sealed by the ENGINEER. Files in electronic media format of text, data, graphics, or of other types that are furnished by ENGINEER to OWNER are only for convenience of OWNER. Any conclusion or information obtained or derived from such electronic files will be at the user's sole risk.
- D. Because data stored in electronic media format can deteriorate or be modified inadvertently or otherwise without authorization of the data's creator, the party receiving electronic files agrees that it will perform acceptance tests or procedures within 60 days, after which the receiving party shall be deemed to have accepted the data thus transferred. Any errors detected within the 60-day acceptance period will be corrected by the party delivering the electronic files. ENGINEER shall not be

responsible to maintain documents stored in electronic media format after acceptance by OWNER.

- E. When transferring documents in electronic media format, ENGINEER makes no representations as to long term compatibility, usability, or readability of documents resulting from the use of software application packages, operating systems, or computer hardware differing from those used by ENGINEER at the beginning of this Project.
- F. OWNER may make and retain copies of Documents for information and reference in connection with use on the Project by OWNER. Such Documents are not intended or represented to be suitable for reuse by OWNER or others on extensions of the Project or on any other project. Any such reuse or modification without written verification or adaptation by ENGINEER, as appropriate for the specific purpose intended, will be at OWNER's sole risk and without liability or legal exposure to ENGINEER or to ENGINEER's Consultants. OWNER shall indemnify and hold harmless ENGINEER and ENGINEER's Consultants from all claims, damages, losses, and expenses, including attorneys' fees arising out of or resulting therefrom.
- G. If there is a discrepancy between the electronic files and the hard copies, the hard copies govern.
- H. Any verification or adaptation of the Documents for extensions of the Project or for any other project will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

6.05 Insurance

- A. ENGINEER shall procure and maintain insurance as set forth in Exhibit G, "Insurance".
- B. OWNER shall procure and maintain insurance as set forth in Exhibit G, "Insurance". OWNER shall cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds on any general liability or property insurance policies carried by OWNER which are applicable to the Project.
- C. OWNER shall require Contractor to purchase and maintain general liability and other insurance as specified in the Contract Documents and to cause ENGINEER and ENGINEER's Consultants to be listed as additional insureds with respect to such liability and other insurance purchased and maintained by Contractor for the Project.
- $\ensuremath{\mathsf{D}}.$ OWNER and ENGINEER shall each deliver to the other certificates of insurance evidencing the coverages

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indicated in Exhibit G. Such certificates shall be furnished prior to commencement of ENGINEER's services and at renewals thereafter during the life of the Agreement.

- E. All policies of property insurance shall contain provisions to the effect that ENGINEER's and ENGINEER's Consultants' interested are covered and that in the event of payment of any loss or damage the insurers will have no rights of recovery against any of the insureds or additional insureds thereunder.
- F. At any time, OWNER may request that ENGINEER, at OWNER's sole expense, provide additional insurance coverage, increased limits, or revised deductibles that are more protective than those specified in Exhibit G. If so requested by OWNER, with the concurrence of ENGINEER, and if commercially available, ENGINEER shall obtain such additional insurance coverage, different limits, or revised deductibles for such periods of time as requested by OWNER, and Exhibit G will be supplemented to incorporate these requirements.

6.06 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

b. By ENGINEER:

- 1) upon seven days written notice if ENGINEER believes that ENGINEER is being requested by OWNER to furnish or perform service contrary to ENGINEER's responsibilities as a licensed professional; or
- upon seven days written notice if the ENGINEER's services for the Project are delayed or suspended for more than 90 days for reasons beyond ENGINEER's control.
- ENGINEER shall have no liability to OWNER on account of such termination.
- c. Notwithstanding the foregoing, this Agreement will not terminate as a result of such substantial failure if the party receiving such notice begins,

within seven days of receipt of such notice, to correct its failure to perform and proceeds diligently to cure such failure within no more than 30 days of receipt thereof; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.

2. For convenience

- a. By OWNER effective upon the receipt of notice by ENGINEER.
- B. The terminating party under paragraphs 6.06.A.1 or 6.06.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow ENGINEER to demobilize personnel and equipment from the Site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

6.07 Controlling Law

 \mathbf{A}_{\ast} This Agreement is to be governed by the law of the state in which the Project is located.

6.08 Successors, Assigns, and Beneficiaries

- A. OWNER and ENGINEER each is hereby bound and the partners, successors, executors, administrators, and legal representatives of OWNER and ENGINEER (and to the extent permitted by paragraph 6.08.8 the assigns of OWNER and ENGINEER) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements and obligations of this Agreement.
- B. Neither OWNER nor ENGINEER may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty of responsibility under this Agreement.

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- C. Unless expressly provided otherwise in this Agreement:
 - 1. Nothing in this Agreement shall be construed to create, impose, or give rise to any duty owed by OWNER or ENGINEER to any Contractor, Contractor's subcontractor, supplier, other individual or entity, or to any surety for or employee of any of them.
 - 2. All duties and responsibilities undertaken pursuant to this Agreement will be for sole and exclusive benefit of OWNER and ENGINEER and not for the benefit of any other party. The OWNER agrees that the substance of the provisions of this paragraph 6.08.C shall appear in the Contract Documents.

6.09 Dispute Resolution

- A. OWNER and ENGINEER agree to negotiate all disputes between them in good faith for a period of 30 days from the date of notice prior to exercising their rights under Exhibit H or other provisions of this Agreement, or under law. In the absence of such an agreement, the parties may exercise their rights under law.
- B. If and to the extent that OWNER and ENGINEER have agreed on a method and procedure for resolving disputes between them arising out of or relating to this Agreement, such dispute resolution method and procedure is set fort in exhibit H, "Dispute Resolution".

6.10 Hazardous Environmental Condition

- A. OWNER represents to ENGINEER that to the best of its knowledge a Hazardous Environmental Condition does not exist.
- B. OWNER has disclosed to the best of its knowledge to ENGINEER that existence of all Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Material located at or near the Site, including type, quantity and location.
- C. If a Hazardous Environmental Condition is encountered or alleged, ENGINEER shall have the obligation to notify OWNER and, to the extent of applicable Laws and Regulations, appropriate governmental officials.
- D. It is acknowledged by both parties that ENGINEER's scope of service does not include any services related to a Hazardous Environmental Condition. In the event ENGINEER or any other party encounters a Hazardous Environmental Condition, ENGINEER may, at its option and

without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

- E. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger", "operator", "generator", or "transporter" of hazardous substances, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the Site in connection with ENGINEER's activities under this Agreement.
- F. If ENGINEER's services under this Agreement cannot be performed because of a Hazardous Environmental Condition, the existence of the condition shall justify ENGINEER's terminating this Agreement for cause on 30 days notice.

6.11 Allocation of Risks

A. Indemnification

- 1. To the fullest extent permitted by law, ENGINEER shall indemnify and hold harmless OWNER, OWNER's officers, directors, partners, and employees from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of ENGINEER or ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants in the performance and furnishing of ENGINEER's services under this Agreement.
- 2. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, ENGINEER's officers, directors, partners, employees, and ENGINEER's Consultants from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused solely by the negligent acts or omissions of OWNER or OWNER's officers, directors, partners, employees, and

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OWNER's consultants with respect to this Agreement or the Project.

- 3. To the fullest extent permitted by law, ENGINEER's total liability to OWNER and anyone claiming by, through, or under OWNER for any cost, loss, or damages caused in part by the negligence of ENGINEER and in part by the negligence of OWNER or any other negligent entity or individual, shall not exceed the percentage share that ENGINEER's negligence bears to the total negligence of OWNER, ENGINEER, and all other negligent entities and individuals.
- 4. In addition to the indemnity provided under paragraph 6.11.A.2 of this Agreement, and to the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER and its officers, directors, partners, employees, and ENGINEER's Consultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from a Hazardous Environmental Condition, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph 6.11.A.4. shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's own negligence of willful misconduct.
- 5. The indemnification provision of paragraph 6.11.A.1 is subject to and limited by the provisions agreed to by OWNER and ENGINEER in Exhibit I, "Allocation of Risks," if any.

6.12 Notices

A. Any notices required under this Agreement will be in writing, addressed to the appropriate party at its address on the signature page and given personally, or by registered or certified mail postage prepaid, or by a commercial courier service. All notices shall be effective upon the date of receipt.

6.13 Survival

A. All express representations, indemnifications, or limitations of liability included in this Agreement will survive its completion or termination for any reason.

6.14 Severability

A. Any provision or part of the Agreement held to be void or unenforceable under any Laws or Regulations shall be deemed stricken, and all remaining provisions shall continue to be valid and binding upon OWNER and ENGINEER, who agree that the Agreement shall be reformed to replace such stricken provision or part thereof with a valid and enforceable provision that comes as close as possible to expressing the intention of the stricken provision.

6.15 Waiver

A. Non-enforcement of any provision by either party shall not constitute a waiver of that provision, nor shall it affect the enforceability of that provision or of the remainder of this Agreement.

6.16 Heading

A. The headings used in this Agreement are for general reference only and do not have special significance.

ARTICLE 7 - DEFINITIONS

7.01 Defined Terms

- A. Wherever used in this Agreement (including the Exhibits hereto) and printed with initial or all capital letters, the terms listed below have the meanings indicated, which are applicable to both the singular and plural thereof:
 - Addenda--Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bidding Documents.
 - 2. Additional Services—The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 2 of this Agreement.
 - 3. Agreement--This "Standard Form of Agreement between OWNER and ENGINEER for Professional Services", including those Exhibits listed in Article 8 thereof.
 - 4. Application for Payment—The form acceptable to ENGINEER which is to be used by Contractor in requesting progress or final payments for the completion of its Work and which is to be accompanied

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by such supporting documentation as is required by the Contract Documents.

- 5. Asbestos—Any material that contains more than one percent asbestos and is friable or is releasing asbestos fibers into the air above current action levels established by the United States Occupational Safety and Health Administration.
- 6. Basic Services—The services to be performed for or furnished to OWNER by ENGINEER in accordance with Exhibit A, Part 1, of this Agreement.
- 7. Bid--The offer or proposal of the bidder submitted on the prescribed form settling forth the prices for the Work to be performed.
- 8. Bidding Documents--The advertisement or invitation to Bid, instructions to bidders, the Bid form and attachments, the Bid bond, if any, the proposed Contract Documents, and all Addenda, if any.
- 9. Change Order--A document recommended by ENGINEER, which is signed by Contractor and OWNER to authorize an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Times, issued on or after the Effective Date of the Construction Agreement.
- Construction Agreement—The written instrument which is evidence of the agreement, contained in the Contract Documents, between OWNER and Contractor covering the Work.
- $11. \quad \textit{Construction} \quad \textit{Contract--} \\ \text{The} \quad \text{entire} \quad \text{and} \\ \text{integrated written agreement between the OWNER and} \\ \text{Contractor concerning the Work.}$
- 12. Construction Cost—The cost to OWNER of those portions of the entire Project designed or specified by ENGINEER. Construction Cost does not include costs of services of ENGINEER or other design professionals and consultants, cost of land, rights-of-way, or compensation for damages to properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this Agreement. Construction Cost is one of the items comprising Total Project Costs.

- Contract Documents-Documents that establish the rights and obligations of the parties engaged in construction and include the Construction Agreement between OWNER and Contractor, Addenda (which pertain to the Contract Documents), Contractor's Bid (including documentation Bid documentation accompanying the Bid and any post-Bid documentation submitted prior to the notice of award) when attached as an exhibit to the Construction Agreement, the notice to proceed, the bonds, appropriate certifications, the General Conditions, the Supplementary Conditions, the Specifications and the Drawings as the same are more specifically identified in the Construction Agreement, together with all Written Amendments, Change Orders, Work Change Directives, Field Orders, and ENGINEER's written interpretations and clarifications issued on or after the Effective Date of the Construction Agreement. Approved Shop Drawings and the reports and drawings of subsurface and physical conditions are not Contract Documents.
- 14 Contract Price—The moneys payable by OWNER to Contractor for completion of the Work in accordance with the Contract Documents and as stated in the Construction Agreement.
- 15. Contract Times—The numbers of days or the dates stated in the Construction Agreement to: (i) achieve Substantial Completion, and (ii) complete the Work so that it is ready for final payment as evidenced by ENGINEER's written recommendation of final payment.
- Contractor--An individual or entity with whom OWNER enters into a Construction Agreement.
- 17. Correction Period The time after Substantial Completion during which Contractor must correct, at no cost to OWNER, any Defective Work, normally one year after the date of Substantial Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee or specific provision of the Contract Documents.
- 18. Defective--An adjective which, when modifying the word Work, refers to Work that is unsatisfactory, faulty, or deficient, in that it does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test, or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER's recommendation of final payment.

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- 19. Documents—Data, reports, Drawings, Specifications, Record Drawings, and other deliverables, whether in printed or electronic media format, provided or furnished in appropriate phases by ENGINEER to OWNER pursuant to this Agreement.
- 20. *Drowings*--That part of the Contract Documents prepared or approved by ENGINEER which graphically shows the scope, extent, and character of the Work to be performed by Contractor. Shop Drawings are not Drawings as so defined.
- 21. Effective Date of the Construction Agreement—The date indicated in the Construction Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Construction Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 22. Effective Date of the Agreement--The date indicated in this Agreement on which it becomes effective, but if no such date is indicated, it means the date on which the Agreement is signed and delivered by the last of the two parties to sign and deliver.
- 23. ENGINEER's Consultants--Individuals or entities having a contract with ENGINEER to furnish

services with respect to this Project as ENGINEER's independent professional associates, consultants, subcontractors, or vendors. The term ENGINEER includes ENGINEER's Consultants.

- 24. Field Order--A written order issued by ENGINEER which directs minor changes in the Work but which does not involve a change in the Contract Price or the Contract Times.
- 25. General Conditions—That part of the Contract Documents which sets forth terms, conditions, and procedures that govern the Work to be performed or furnished by Contractor with respect to the Project.
- 26. Hazardous Environmental Condition—The presence at the Site of Asbestos, PCB's, Petroleum, Hazardous Waste, or Radioactive Materials in such quantities or circumstances that may present a substantial danger to persons or property exposed thereto in connection with the Work.
- 27. Hazardous Waste--The term Hazardous Waste shall have the meaning provided in Section 1004

of the Solid Waste Disposal Act (42 USC Section 6903) as amended from time to time.

- 28. Laws and Regulations; Laws or Regulations-Any and all applicable laws, rules, regulations, ordinances, codes, standards, and orders of any and all governmental bodies, agencies, authorities, and courts having jurisdiction.
 - 29. PCB's--Polychlorinated biphenyls.
- 30. Petroleum—Petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), such as oil, petroleum, fuel oil, oil sludge, oil refuse, gasoline, kerosene, and oil mixed with other non-Hazardous Waste and crude oils.
- 31. Radioactive Materials—Source, special nuclear, or byproduct material as defined by the Atomic Energy Act of 1954 (42 USC Section 2011 et seq.) as amended from time to time.
- 32. Record Drawings.—The Drawings as issued for construction on which the ENGINEER, upon completion of the Work, has shown changes due to Addenda or Change Orders and other information which ENGINEER considers significant based on record documents furnished by Contractor to ENGINEER and which were annotated by Contractor to show changes made during construction.
- 33. Reimbursoble Expenses—The expenses incurred directly by ENGINEER in connection with the performing or furnishing of Basic and Additional Services for the Project for which OWNER shall pay ENGINEER as indicated in Exhibit C.
- 34. Resident Project Representative--The authorized representative of ENGINEER, if any, assigned to assist ENGINEER at the Site during the Construction Phase. The Resident Project Representative will be ENGINEER's agent or employee and under ENGINEER's Representative includes any assistants of Resident Project Representative agreed to by OWNER. The duties and responsibilities of the Resident Project Representative are as set forth in Exhibit D.
- 35. Samples--Physical examples of materials, equipment, or workmanship that are representative of some portion of the Work and which establish the

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standards by which such portion of the Work will be judged.

- Shop Drawings--All drawings, diagrams, illustrations, schedules, and other data or information which are specifically prepared or assembled by or for Contractor and submitted by Contractor to ENGINEER to illustrate some portion of the Work.
- 37. Site--Lands or areas indicated in the Contract Documents as being furnished by OWNER upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands furnished by OWNER which are designated for use of
- Specifications--That part of the Contract Documents consisting of written technical descriptions of materials, equipment, systems, standards, and workmanship as applied to the Work and certain administrative details applicable thereto.
- Substantial Completion-The time at which the Work (or a specified part thereof) has progressed to the point where, in the opinion of ENGINEER, the Work (or a specified part thereof) is sufficiently complete, in accordance with the Contract Documents, so that the purposes for which it is intended. The terms "substantially complete" and "substantially competed as applied to all or part of the Work refer to Substantial Completion thereof.
- 40. Supplementary Conditions--That part of the Contract documents which amends or supplements the General Conditions
- Total Project Costs--The sum of the Construction Costs, allowances for contingencies, the total costs of services for ENGINEER or other design professionals and consultants, cost of land, rights-ofway, or compensation for damages for properties, or OWNER's costs for legal, accounting, insurance counseling or auditing services, or interest and financing charges incurred in connection with the Project, or the cost of other services to be provided by others to OWNER pursuant to Exhibit B of this
- 42. Work -- The entire completed construction or the various separately identifiable parts thereof required to be provided under the Contract Documents with respect to this Project. Work includes and is the result of performing or furnishing labor, services, and

documentation necessary to produce such construction and furnishing, installing, and incorporating all materials and all equipment into such construction, all as required by the Contract Documents.

- 43. Work Change Directive--A written directive to Contractor issued on or after the Effective Date of the Construction Agreement and signed by OWNER upon recommendation of the ENGINEER, ordering an addition, deletion, or revision in the Work, or responding to differing or unforeseen subsurface or physical conditions under which the Work is to be performed or to emergencies. A Work Change Directive will not change the Contract Price or the Contract Times but is evidence that the parties expect that the change directed or documented by a Work Change Directive will be incorporated in a subsequently issued Change Order following negotiations by the parties as to its effect, if any, on the Contract Price or Contract Times.
- 44. Written Amendment--A written amendment of the Contract Documents signed by OWNER and Contractor on or after the Effective Date of the Construction Agreement and normally dealing with the non-engineering or non-technical rather than strictly construction-related aspects of the Contract Documents.

ARTICLE 8 - EXHIBITS AND SPECIAL PROVISIONS

Exhibits Include

- A. Exhibit A, "ENGINEER's Services", consisting of 9
- B. Exhibit B, "OWNER's Responsibilities", consisting of
- C. Exhibit C1, "Payments to Engineer for Services and Reimbursable Expenses" – Lump Sum Method of Payment, consisting of 2 pages.

Exhibit C2, "Payments to Engineer for Services and Reimbursable Expenses" – Standard Hourly Rates Method of Payment, consisting of 2 pages.

- AND -

Appendix 1 to Exhibit C, "Standard Hourly Rates Schedule", consisting of 1 page.

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D. Exhibit D, "Duties, Responsibilities and Limitations of Authority of Resident Project Representative", consisting of 4 pages.		
E. Exhibit E, "Notice of Acceptability of Work", consisting of pages.		
F. Exhibit F, "Construction Cost Limit", consisting of page.		
G. Exhibit G, "Insurance", consisting of 2 pages.		
H. —Exhibit H, "Dispute Resolution", consisting of page.		
Exhibit I, "Allocation of Risks", consisting of page.		
Exhibit I "Special Provisions" consisting of pages		

8.02 Total Agreement

A. This Agreement (consisting of pages 1 to 12 inclusive, together with the Exhibits identified above) constitutes the entire agreement between OWNER and ENGINEER and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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IN WITNESS WHEREOF, the parties hereto have executed this agreement, the Effective Date of which is indicated on page 1.

OWNER.	ENGINEER:
CITY OPLONG BEACH, MISSISSIPPI	By: T- Janan Querattes, P.L.C. By: Topic of the second of
Title: Mayor	Title: President
Date Signed 12 15 2020	Date Signed: Dec. 11, 2020
Address for giving notices:	Address for giving notices:
P. O. Box 929	161 Lameuse St., Suite 203
Long Beach, MS 39560	Biloxi, MS 39530
Designated Representative (paragraph 6.02.A):	Designated Representative (paragraph 6.02.A):
	David Ball, P.E.
Title:	Title: Project Engineer
Phone Number:	Phane Number: <u>228-669-7835</u>
Facsimile Number:	Facsimile Number: <u>n/a</u>
E-Mail Address:	E-Mail Address: <u>david@overstreeteng.com</u>

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ENGINEER's Services

Article 1 of the Agreement is amended and supplemented to include the following agreement of the parties. ENGINEER shall provide Basic and Additional Services as set forth below.

PART 1 -- BASIC SERVICES

A1.01 Study and Report Phase

A. ENGINEER shall:

- 1. Consult with OWNER to define and clarify OWNER's requirements for the Project and available data.
- Advise OWNER as to the necessity of OWNER's providing data or services of the types described in Exhibit B which are not part of ENGINEER's Basic Services, and assist OWNER in obtaining such data and services.
- Identify, consult with, and analyze requirements of governmental authorities having jurisdiction to approve the portions of the Project designed or specified by ENGINEER, including but not limited to mitigating measures identified in the environmental assessment.
- Identify and evaluate * alternative solutions available to OWNER and, after consultation with OWNER, recommend OWNER those solutions which in ENGINEER's judgement meet OWNER's requirements for the project.
- 5. Prepare a report (the "Report") which will, as appropriate, contain schematic layouts, sketches and conceptual design criteria with appropriate exhibits to indicate the agreed-to requirements, considerations involved, and those alternate solutions available to OWNER which ENGINEER recommends. This Report will be accompanied by ENGINEER's opinion of Total Project Costs for each solution which is so recommended for the Project with each component separately itemized, including the following, which will be separately itemized: opinion of probable Construction Cost, allowances for contingencies and for the estimated total costs of design, professional, and related services provided by ENGINEER and, on the basis of information furnished by OWNER, allowances for other items and services included within the definition of Total Project Costs.
 - 6. Perform or provide the following additional Study and Report Phase tasks or deliverables:
- 7. Furnish 3 review copies of the Report to OWNER within __*_ days of authorization to begin services and review it with OWNER
- 8. Revise the Report In response to OWNER's and other parties' comments, as appropriate, and furnish 3 final copies of the revised Report to the OWNER within <u>*</u> days after completion of reviewing it with OWNER.
- B. ENGINEER's services under the Study and Report Phase will be considered complete on the date when the final copies of the revised Report have been delivered to OWNER.

A1.02 Preliminary Design Phase

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(Exhibit A - ENGINEER's Services)

- A. After acceptance by OWNER of the Report, selection by OWNER of a recommended solution and indication of any specific modifications or changes in the scope, extent, character, or design requirements of the Project desired by OWNER, and upon written authorization from OWNER, ENGINEER shall:
 - On the basis of the above acceptance, selection, and authorization, prepare Preliminary Design Phase documents consisting of final design criteria, preliminary drawings, outline specifications and written descriptions of the Project.
 - Provide necessary field surveys and topographic and utility mapping for design purposes. Utility mapping will be based upon information obtained from utility owners.
 - 3. Advise OWNER if additional reports, data, information, or services of the types described in Exhibit B are necessary and assist OWNER in obtaining such reports, data, information, or services.
 - 4. Based on the information contained in the Preliminary Design Phase documents, submit a revised opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, which will be itemized as provided in paragraph A1.01.A.5.
 - 5. Perform or provide the following additional Preliminary Design Phase tasks or deliverables:
 - 6. Furnish the Preliminary Design Phase documents to and review them with OWNER.
 - 7. Submit to OWNER 3 final copies of the Preliminary Design Phase documents and revised opinion of probable Construction Cost within _____ days after authorization to proceed with this phase.
- B. ENGINEER's services under the Preliminary Design Phase will be considered complete on the date when final copies of the Preliminary Design Phase documents have been delivered to OWNER.

A1.03 Final Design Phase

- A. After acceptance by OWNER of the Preliminary Design Phase documents and revised opinion of probable Construction Cost as determined in the Preliminary Design Phase, but subject to any OWNER-directed modifications or changes in the scope, extent, character, or design requirements of or for the Project, and upon written authorization from OWNER, ENGINEER shall:
 - On the basis of the above acceptance, direction, and authorization, prepare final Drawings indicating
 the scope, extent, and character of the Work to be performed and furnished by Contractor. Specifications will
 be prepared, where appropriate, in general conformance with the 16-division format of the Construction
 Specifications Institute.
 - Provide technical criteria, written descriptions, and design data for OWNER's use in filing applications for permits from or approvals of governmental authorities having jurisdiction to review or approve the final design of the Project and assist OWNER in consultations with appropriate authorities.
 - Advise OWNER of any adjustments to the opinion of probable Construction Cost and any adjustments to Total Project Costs known to ENGINEER, itemized as provided in paragraph A1.01.A.5.
 - 4. Perform or provide the following additional Final Design Phase tasks or deliverables:
 - Prepare and furnish Bidding Documents for review and approval by OWNER, its legal counsel, and other advisors, as appropriate, and assist OWNER in the preparation of other related documents.

Page 2 of 9 Pages (Exhibit A - ENGINEER's Services)

- Submit 3 final copies of the Bidding Documents and a revised opinion of probable Construction Cost to OWNER within _* days after authorization to proceed with this phase.
- B. In the event that the Work designed or specified by ENGINEER is to be performed or furnished under more than one prime contract, or if ENGINEER's services are to be separately sequenced with the work of one or more prime Contractors (such as in the case of fast-tracking), OWNER and ENGINEER shall, prior to commencement of the Final Design Phase, develop a schedule for performance of ENGINEER's services during the Final Design, Bidding or Negotiating, Construction, or Post-Construction Phases in order to sequence and coordinate properly such services as are applicable to the work under such separate prime contracts. This schedule is to be prepared and included in or become an amendment to Exhibit A whether or not the work under such contracts is to proceed concurrently.
- C. The number of prime contracts for Work designed or specified by ENGINEER upon which the ENGINEER's compensation has been established under this Agreement is __*_.
- D. ENGINEER's services under the Final Design Phase will be considered complete on the date when the submittals required by paragraph A1.03.A.6 have been delivered to OWNER.

A1.04 Bidding or Negotiating Phase

- A. After acceptance by OWNER of the Bidding Documents and the more recent opinion of probable Construction Costs as determined in the Final Design Phase, and upon written authorization by OWNER to proceed, ENGINEER shall:
 - 1. Assist OWNER in advertising for and obtaining bids or negotiating proposals for the Work and, where applicable, maintain a record of prospective bidders to whom Bidding Documents have been issued, attend pre-Bid conferences, if any, and receive and process Contractor deposits or charges for the Bidding Documents
 - 2. Issue Addenda as appropriate to clarify, correct, or change the Bidding Documents.
 - Consult with OWNER as to the acceptability of subcontractors, suppliers, and other individuals and entities proposed by Contractor for those portions of the Work as to which such acceptability is required by the Bidding Documents.
 - 4. Perform or provide the following additional Bidding or Negotiating Phase tasks or deliverables:
 - Attend the Bid opening, prepare Bid tabulation sheets, and assist OWNER in evaluating Bids or proposals and in assembling and awarding contracts for the Work.
- B. The Bidding or Negotiating Phase will be considered complete upon commencement of the Construction Phase or upon cessation of negotiations with prospective Contractors (except as may be required if Exhibit F is a part of this Agreement.)

A1.05 Construction Phase

A. Upon successful completion of the Bidding and Negotiating Phase, and upon written authorization from OWNER, ENGINEER shall:

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(Exhibit A - ENGINEER's Services)

- General Administration of Construction Contract. Consult with OWNER and act as OWNER's
 representative as provided in the General Conditions. The extent and limitations of the duties, responsibilities
 and authority of ENGINEER as assigned in said General Conditions shall not be modified, except as ENGINEER
 may otherwise agree in writing. All of OWNER's instructions to Contractor will be issued through ENGINEER,
 who shall have authority to act on behalf of OWNER in dealing with Contractor to the extent provided in this
 Agreement and said General Conditions except as otherwise provided in writing.
- Resident Project Representative (RPR). Provide the services of an RPR at the Site to assist the
 ENGINEER and to provide more extensive observation of Contractor's work. Duties, responsibilities, and
 authority of the RPR are as set forth in Exhibit D. The furnishing of such RPR's services will not extend
 ENGINEER's responsibilities or authority beyond the specific limits set forth elsewhere in this Agreement.
- Selecting Independent Testing Laboratory. Assist OWNER in the selection of an independent testing laboratory to perform the services identified in paragraph B2.01.0.
- 4. Pre-Construction Conference. Participate in a Pre-Construction Conference prior to commencement of Work at the Site.
- Baselines and Benchmarks. As appropriate, establish baselines and benchmarks for locating the Work which in ENGINEER's judgment are necessary to enable Contractor to proceed.
- 6. Visits to Site and Observation of Construction. In connection with observations of Contractor's work in progress while it is in progress:
 - a. Make visits to the Site at intervals appropriate to the various stages of construction, as ENGINEER deems necessary, in order to observe as an experienced and qualified design professional the progress and quality of the Work. Such visits and observations by ENGINEER, and the Resident Project Representative, if any, are not intended to be exhaustive or to extend to every aspect of Contractor's work in progress or to involve detailed inspections of Contractor's work in progress beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents, but rather are to be limited to spot checking, selective sampling, and similar methods of general observation of the Work based on ENGINEER's exercise of professional judgment as assisted by the Resident Project Representative, if any, Based on information obtained during such visits and such observations, ENGINEER will determine in general if Contractor's work is proceeding in accordance with the Contract Documents, and ENGINEER shall keep OWNER informed of the progress of the Work.
 - b. The purpose of ENGINEER's visits to, and representations by the Resident Project Representative, if any, at the Site, will be to enable ENGINEER to better carry out the duties and responsibilities assigned to and undertaken by ENGINEER during the Construction Phase, and, in addition, by the exercise of ENGINEER's efforts as an experienced and qualified design professional, to provide for OWNER a greater degree of confidence that the completed Work will conform in general to the Contract Documents and that the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents has been implemented and preserved by Contractor. ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over Contractor's work, nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected by Contractor, for safety precautions and programs incident to Contractor's work, or for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's furnishing and performing the Work. Accordingly, ENGINEER neither guarantees the performance of any Contractor nor assumes responsibility for any Contractor's failure to furnish and perform its work in accordance with the Contract Documents.
- 7. Defective Work. Recommend to OWNER that Contractor's work be disapproved and rejected while it is in progress if, on the basis of such observations, ENGINEER believes that such work will not produce a

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(Exhibit A - ENGINEER's Services)

completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents.

- 8. Clarifications and Interpretations: Field Orders. Issue necessary clarifications and interpretations of the Contract Documents as appropriate to the orderly completion of Contractor's work. Such clarifications and interpretations will be consistent with the intent of and reasonably inferable from the Contract Documents. ENGINEER may issue Field Orders authorizing minor variations from the requirements of the Contract Documents.
- Change Orders and Work Change Directives. Recommend Change Orders and Work Change Directives to OWNER, as appropriate, and prepare Change Orders and Work Change Directives as required.
- 10. Shop Drawings and Samples. Review and approve or take other appropriate action in respect to Shop Drawings and Samples and other data which Contractor is required to submit, but only for conformance with the information given in the Contract Documents and compatibility with the design concept of the completed Project as a functioning whole as Indicated in the Contract Documents. Such reviews and approvals or other action will not extend to means, methods, techniques, sequences, or procedures of construction or to safety precautions and programs incident thereto. ENGINEER has an obligation to meet any Contractor's submittal schedule that has earlier been acceptable to ENGINEER.
- 11. Substitutes and "or-equal". Evaluate and determine the acceptability of substitute or "or-equal" materials and equipment proposed by Contractor, but subject to the provisions of paragraph A2.02.A.2 of this Exhibit A.
- 12. Inspections and Tests. Requires such special inspections or tests of Contractor's work as deemed reasonably necessary, and receive and review all certificates of inspections, tests, and approvals required by Laws and Regulations or the Contract Documents. ENGINEER's review of such certificates will be for the purpose of determining that the results certified indicate compliance with the Contract Documents and will not constitute an independent evaluation that the content or procedures of such inspections, tests, or approvals comply with the requirements of the Contract Documents. ENGINEER shall be entitled to rely on the results of such tests.
- 13. Disagreements between OWNER and Contractor. Render formal written decisions on all claims of OWNER and Contractor relating to the acceptability of Contractor's work or the interpretation of the requirements of the Contract Documents pertaining to the execution and progress of Contractor's work. In rendering such decisions, ENGINEER shall be fair and not show partially to OWNER or Contractor and shall not be liable in connection with any decision rendered in good faith in such capacity.
- 14. Applications for Payment. Based on ENGINEER's observations as an experienced and qualified design professional and on review of Applications for Payment and accompanying supporting documentation:
 - a. Determine the amounts that ENGINEER recommends Contractor be paid. Such recommendations of payment will be in writing and will constitute ENGINEER's representation to OWNER, based on such observations and review, that, to the best of ENGINEER's knowledge, information and belief, Contractor's work has progressed to the point indicated, the quality of such work is generally in accordance with the Contract Documents (subject to an evaluation of the Work as a functioning whole prior to or upon Substantial Completion, to the results of any subsequent tests called for in the Contract Documents and to any other qualifications stated in the recommendation), and the conditions precedent to Contractor's being entitled to such payment appear to have been fulfilled in so far as it is ENGINEER's responsibility to observe Contractor's work. In the case of unit price work, ENGINEER's recommendations of payment will include final determinations of quantities and classifications of Contractor's work (subject to any subsequent adjustment allowed by the Contract Documents). The responsibilities of ENGINEER contained

Page 5 of 9 Pages (Exhibit A - ENGINEER's Services)

in paragraph A1.05.A.6.a are expressly subject to the limitations set forth in paragraph A1.05.A.6.b and other express or general limitations in this Agreement and elsewhere.

- b. By recommending any payment, ENGINEER shall not thereby be deemed to have represented that observations made by ENGINEER to check the quality or quantity of Contractor's work as it is performed and furnished have been exhaustive, extended to every aspect of Contractor's work in progress, or involved detailed inspections of the Work beyond the responsibilities specifically assigned to ENGINEER in this Agreement and the Contract Documents. Neither ENGINEER's review of Contractor's work for the purposes of recommending payments nor ENGINEER's recommendation of any payment including final payment will impose on ENGINEER responsibility to supervise, direct, or control Contractor's work in progress or for the means, methods, techniques, sequences, or procedures of construction or safety precautions or programs incident thereto, or Contractor's compliance with Laws and Regulations applicable to Contractor's furnishing and performing the Work. It will also not impose responsibility on ENGINEER to make any examination to ascertain how or for what purposes Contractor has used the moneys paid on account of the Contract Price, or to determine that title to any portion of the work in progress, materials, or equipment has passed to OWNER free and clear of any liens, claims, security interests, or encumbrances, or that there may not be other matters at issue between OWNER and Contractor that might affect the amount that should be paid.
- 15. Contractor's Completion Documents.
 - a. Receive and review maintenance and operating instructions, schedules, and guarantees.
- b. Receive bonds, certificates, or other evidence of insurance not previously submitted and required by the Contract Documents, certificates of inspection, tests and approvals, Shop Drawings, Samples and other data approved as provided under paragraph A1.05.A.10, and the annotated record documents which are to be assembled by Contractor in accordance with the Contract Documents to obtain final payment. The extent of such ENGINEER's review will be limited as provided in paragraph A1.05.A.10.
 - c. ENGINEER shall transmit these documents to OWNER.
- 16. Substantial Completion. Promptly after notice from Contractor that Contractor considers the entire Work ready for its intended use, in company with OWNER and Contractor, conduct an inspection to determine if the Work is Substantially Complete. If after considering any objections of OWNER, ENGINEER considers the Work Substantially Complete, ENGINEER shall deliver a certificate of Substantial completion to OWNER and Contractor.
- 17. Additional Tasks. Perform or provide the following additional Construction Phase tasks or deliverables:
- 18. Final Notice of Acceptability of the Work. Conduct a final inspection to determine if the completed Work of Contractor is acceptable so that ENGINEER may recommend, in writing, final payment to Contractor. Accompanying the recommendation for final payment, ENGINEER shall also provide a notice in the form attached hereto as Exhibit E (the "Notice of Acceptability of Work") that the Work is acceptable (subject to the provisions of paragraph A1.05.A.14.b) to the best of ENGINEER's knowledge, information, and belief and based on the extent of the services provided by ENGINEER under this Agreement.
- B. Duration of Construction Phase. The Construction Phase will commence with the execution of the first Construction Agreement for the Project or any part thereof and will terminate upon written recommendation by ENGINEER for final payment to Contractors. If the Project involves more than one prime contract as indicated in paragraph A1.03.C, Construction Phase services may be rendered at different times in respect to the separate contracts.

Page 6 of 9 Pages (Exhibit A - ENGINEER's Services)

C. Limitation of Responsibilities. ENGINEER shall not be responsible for the acts or omissions of any Contractor, or of any of their subcontractors, suppliers, or of any other individual or entity performing or furnishing any of the Work. ENGINEER shall not be responsible for failure of any Contractor to perform or furnish the Work in accordance with the Contract Documents.

A1.06 Post-Construction Phase

- A. Upon written authorization from OWNER, ENGINEER, during the Post-Construction Phase, shall:
 - 1. Provide assistance in connection with the testing and adjusting of Project equipment or systems.
 - 2. Assist OWNER in training OWNER's staff to operate and maintain Project, equipment, and systems.
- 3. Assist OWNER in developing procedures for control of the operation and maintenance of, and record keeping for Project equipment and systems.
- 4. Together with OWNER, visit the Project to observe any apparent defects in Work, assist OWNER in consultations and discussions with Contractor concerning correction of any such defects, and make recommendations as to replacement or correction of Defective Work, if present.
 - 5. Perform or provide the following additional Post-Construction Phase tasks or deliverables:
- 6. In company with OWNER or OWNER's representative, provide an inspection of the Project within one month before the end of the Correction Period to ascertain whether any portion of the Work is subject to correction.
- B. The Post-Construction Phase services may commence during the Construction Phase and, if not otherwise modified in this Exhibit A, will terminate at the end of the Correction Period.

PART 2 -- ADDITIONAL SERVICES

A2.01 Additional Services Requiring OWNER's Authorization in Advance

- A. If authorized in writing by OWNER, ENGINEER shall furnish or obtain from others Additional Services of the types listed below. These services will be paid for by OWNER as indicated in Article 4 of the Agreement.
 - 1. Preparation of applications and supporting documents (in addition to those furnished under Basic Services) for private or governmental grants, loans or advances in connection with the Project; preparation or review of environmental assessments and impact statements; review and evaluation of the effects on the design requirements for the Project of any such statements and documents prepared by others; and assistance in obtaining approvals of authorities having jurisdiction over the anticipated environmental impact of the Project.
 - 2. Services to make measured drawings of or to investigate existing conditions or facilities, or to verify the accuracy of drawings or other information furnished by OWNER.
 - 3. Services resulting from significant changes in the scope, extent, or character of the portions of the Project designed or specified by ENGINEER or its design requirements including, but not limited to, changes in size, complexity, OWNER's schedule, character of construction, or method of financing; and revising previously accepted studies, reports, Drawings, Specifications, or Contract Documents when such revisions are required

Page 7 of 9 Pages (Exhibit A - ENGINEER's Services)

by changes in Laws and Regulations enacted subsequent to the Effective Date of this Agreement or are due to any other causes beyond ENGINEER's control.

- 4. Services resulting from OWNER's request to evaluate additional Study and Report Phase alternative solutions beyond those identified in paragraph A1.04.A.4.
- 5. Services required as a result of OWNER's providing incomplete or incorrect Project Information with respect to Exhibit B.
 - 6. Providing renderings or models for OWNER's use.
- 7. Undertaking investigations and studies including, but not limited to, detailed consideration of operations, maintenance, and overhead expenses; the preparation of feasibility studies, cash flow and economic evaluations, rate schedules, and appraisals; assistance in obtaining financing for the Project; evaluating processes available for licensing, and assisting OWNER in obtaining process licensing; detailed quantity surveys of materials, equipment, and labor; and audits or inventories required in connection with construction performed by OWNER.
 - 8. Furnishing services of ENGINEER's Consultants for other than Basic Services.
 - 9. Services attributable to more prime construction contracts than specified in paragraph A1.03.C.
- Services during out-of-town travel required of ENGINEER other than for visits to the Site or OWNER's
 office.
- 11. Preparing for, coordinating with, participating in and responding to structured independent review processes, including, but not limited to, construction management, cost estimating, project peer review, value engineering, and constructibility review requested by OWNER; and performing or furnishing services required to revise studies, reports, Drawings, Specifications, or other Bidding Documents as a result of such review processes.
- 12. Preparing additional Bidding Documents or Contract Documents for alternate bids or prices requested by OWNER for the Work or a portion thereof.
- 13. Determining the acceptability of substitute materials and equipment proposed during the Bidding or Negotiating Phase when substitution prior to the award of contracts is allowed by the Bidding Documents.
- 14. Assistance in connection with Bid protests, rebidding, or renegotiating contracts for construction, materials, equipment, or services, except when such assistance is required by Exhibit F.
- 15. Providing construction surveys and staking to enable Contractor to perform its work other than as required under paragraph A1.05.A.5, and any type of property surveys or related engineering services needed for the transfer of interests in real property; and providing other special field surveys.
 - 16. Providing Construction Phase services beyond the Contract Times set forth in Exhibit C.
- 17. Providing assistance in resolving any Hazardous Environmental Condition in compliance with current Laws and Regulations.
- Preparing and furnishing to OWNER Record Drawings showing appropriate record information based on Project annotated record documents received from Contractor. (See A1.05, 17.a)
 - 19. Preparation of operation and maintenance manuals.

Page 8 of 9 Pages (Exhibit A - ENGINEER's Services)

- 20. Preparing to serve or serving as a consultant or witness for OWNER in any litigation, arbitration, or other dispute resolution process related to the Project.
- 21. Providing more extensive services required to enable ENGINEER to issue notices or certifications requested by OWNER under paragraph 6.01.G of the Agreement.
 - 22. Other services performed or furnished by ENGINEER not otherwise provided for in this Agreement.

A2.02 Required Additional Services

- A. ENGINEER shall perform or furnish, without requesting or receiving specific advance authorization from OWNER, the Additional Services of the types listed below. ENGINEER shall advise OWNER in writing promptly after starting any such Additional Services.
 - 1. Services in connection with Work Change Directives and Change Orders to reflect changes requested by OWNER so as to make the compensation commensurate with the extent of the Additional Services rendered.
 - 2. Services in making revisions to Drawings and Specifications occasioned by the acceptance of substitute materials or equipment other than "or-equal" items: and services after the award of the Construction Agreement in evaluating and determining the acceptability of a substitution which is found to be inappropriate for the Project or an excessive number of substitutions.
 - Services resulting from significant delays, changes, or price increases occurring as a direct or indirect result of materials, equipment, or energy shortages.
 - 4. Additional or extended services during construction made necessary by (1) emergencies or acts of God endangering the Work, (2) an occurrence of a Hazardous Environmental Condition, (3) work damaged by fire or other cause during construction, (4) a significant amount of defective, neglected, or delayed work by Contractor, (5) acceleration of the progress schedule involving services beyond normal working hours, or (6) default by Contractor.
 - 5. Services (other than Basic Services during the Post-Construction Phase) in connection with any partial utilization of any part of the Work by OWNER prior to Substantial Completion.
 - 6. Evaluating an unreasonable claim or an excessive number of claims submitted by Contractor or others in connection with the Work.
- * To be determined for each specific project and described in the associated project Amendment to this Master Agreement.

Page 9 of 9 Pages
(Exhibit A - ENGINEER's Services)

This is EXHIBIT B, consisting of 3 pages, referred to in and			
part of the Agreement between	OWNER and ENGINEER		
for Professional Services, dated	Dec. 1 2020.		

OWNER's Responsibilities

Article 2 of the Agreement is amended and supplemented to include the following agreement of the parties. B2.01 In addition to other responsibilities of OWNER as set forth in this Agreement, OWNER shall:

- A. Provide ENGINEER with all criteria and full information as to OWNER's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility, and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which OWNER will require to be included in the Drawings and Specifications; and furnish copies of OWNER's standard forms, conditions, and related documents for ENGINEER to include in the Bidding Documents, when applicable.
- B. Furnish to ENGINEER any other available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the Site.
- C. Following ENGINEER's assessment of initially-available Project information and data and upon ENGINEER's request, furnish or otherwise make available such additional Project related information and data as is reasonably required to enable ENGINEER to complete its Basic and Additional Services. Such additional information or data would generally include the following:
 - 1. Property descriptions.
 - 2. Zoning, deed, and other land use restrictions.
 - 3. Property, boundary, easement, right-of-way, and other special surveys or data, including establishing relevant reference points.
 - 4. Explorations and tests of subsurface conditions at or contiguous to the Site, drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the Site, or hydrographic surveys, with appropriate professional interpretation thereof.
 - 5. Environmental assessments, audits, investigations and impact statements, and other relevant environmental or cultural studies as to the Project, the Site, and adjacent areas.
 - 6. Data or consultations as required for the Project but not otherwise identified in the Agreement or the Exhibits thereto.
- D. Give prompt written notice to ENGINEER whenever OWNER observes or otherwise becomes aware of a Hazardous Environmental Condition or of any other development that affects the scope or time of performance of ENGINEER's services, or any defect or nonconformance in ENGINEER's services or in the work of any Contractor.
 - E. Authorize ENGINEER to provide Additional Services as set forth in Part 2 of Exhibit A of the Agreement as required.
- F. Arrange for safe access to and make all provisions for ENGINEER to enter upon public and private property as required for ENGINEER to perform services under the Agreement.
- G. Examine all alternate solutions, studies, reports, sketches, Drawings, Specifications, proposals, and other documents presented by ENGINEER (including obtaining advice of an attorney, insurance counselor, and other advisors or

Page 1 of 3 Pages (Exhibit B - OWNER's Responsibilities)

consultants as OWNER deems appropriate with respect to such examination) and render in writing timely decisions pertaining thereto.

- H. Provide reviews, approvals, and permits from all governmental authorities having jurisdiction to approve all phases of the Project designed or specified by ENGINEER and such reviews, approvals, and consents from others as may be necessary for completion of each phase of the Project.
 - I. Provide, as required for the Project:
 - 1. Accounting, bond and financial advisory, independent cost estimating, and insurance counseling services.
 - 2. Legal services with regard to issues pertaining to the Project as OWNER requires, Contractor raises, or ENGINEER reasonably requests.
 - 3. Such auditing services as OWNER requires to ascertain how or for what purpose Contractor has used the moneys paid.
 - 4. Placement and payment for advertisement for Bids in appropriate publications.
- Advise ENGINEER of the identity and scope of services of any independent consultants employed by OWNER to
 perform or furnish services in regard to the Project, including, but not limited to, cost estimating, project peer review, value
 engineering, and constructibility review.
- K. Furnish to ENGINEER data as to OWNER's anticipated costs for services to be provided by others for OWNER so that ENGINEER may make the necessary calculations to develop and periodically adjust ENGINEER's opinion of Total Project Costs.
- L. If OWNER designates a construction manager or an individual or entity other than, or in addition to, ENGINEER to represent OWNER at the Site, define and set forth as an attachment to this Exhibit B the duties, responsibilities, and limitations of authority of such other party and the relation thereof to the duties, responsibilities, and authority of ENGINEER.
- M. If more than one prime contract is to be awarded for the Work designed or specified by ENGINEER, designate a person or entity to have authority and responsibility for coordinating the activities among the various prime Contractors, and define and set forth the duties, responsibilities, and limitations of authority of such individual or entity and the relation thereof to the duties, responsibilities, and authority of ENGINEER as an attachment to this Exhibit B that is to be mutually agreed upon and made a part of this Agreement before such services begin.
- N. Attend the pre-bid conference, bid opening, pre-construction conferences, construction progress and other job related meetings, and Substantial Completion and final payment inspections.
- O. Provide the services of an independent testing laboratory to perform all inspections, tests, and approvals of Samples, materials, and equipment required by the Contract Documents, or to evaluate the performance of materials, equipment, and facilities of OWNER, prior to their incorporation into the Work with appropriate professional interpretation thereof.
- P. Provide inspection or monitoring services by an individual or entity other than ENGINEER (and disclose the identity of such individual or entity to ENGINEER) as OWNER determines necessary to verify:
 - That Contractor is complying with any Laws and Regulations applicable to Contractor's performing and furnishing the Work.
 - 2. That Contractor is taking all necessary precautions for safety of persons or property and complying with any special provisions of the Contract Documents applicable to safety.

Page 2 of 3 Pages (Exhibit B - OWNER's Responsibilities)

- Q. Provide ENGINEER with the findings and reports generated by the entities providing services pursuant to paragraphs 82.01.O and P.
 - R. Perform or provide the following additional services:

Page 3 of 3 Pages (Exhibit B - OWNER's Responsibilities)

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 - PAYMENTS TO THE ENGINEER

C4.01 For Basic Services Having A Determined Scope— Lump Sum Method of Payment

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

1. A Lump Sum amount of $\frac{*}{}$ based on the following assumed distribution of compensation:

a.	Study and Report Phase	\$_	睢	
Ь.	Preliminary Design Phase	\$_	*	
c.	Final Design Phase	\$_	*	_
d.	Bidding and Negotiating Phase	\$_	*	
e.	Construction Phase	\$_	*	

- ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.
- The Lump Sum includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated in the Lump Sum to account for labor, overhead, profit, and Reimbursable Expenses.
- 4. The portion of the Lump Sum amount billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.
- 5. The Lump Sum is conditioned on Contract Times to complete the Work not exceeding __*_months. Should the Contract Times to complete the Work be extended beyond this period, the total

compensation to ENGINEER shall be appropriately adjusted.

6. If more prime contracts are awarded for Work designed or specified by ENGINEER for the Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount equal to \$\frac{*}{2}\$ for all Basic Services for each prime contract added.

C4.02 For Services Having An Undetermined Scope --Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Additional Services having an undetermined scope as follows:

- 1. Resident Project Representative Services. For ENGINEER's Resident ٥f services Representative, if any, under paragraph A1.05A.2.a of Exhibit A. an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours. The total compensation under this paragraph is estimated to be \$ * based upon Contract Times as set forth in paragraph C4.01.
- 2. Post-Construction Phase Services. For Post-Construction Phase services under Paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt

Page 1 of 2 Pages (Exhibit C1 - Payment)

C4.03 For Additional Services

 $\boldsymbol{A}_{\rm s}$ OWNER shall pay ENGINEER for Additional Services as follows:

1. General. For services of ENGINEER's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours.

2 Serving as a Witness. For services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of \$1,000 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1). Compensation for ENGINEER's Consultants for such services will be on the basis provided in paragraph C4.06.

C4.05 Standard Hourly Rates

A. Standard Hourly Rates are set forth in Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

B. The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.

this Master Agreement.

To Be Determined for each specific project and described in the associated project Amendment to

Page 2 of 2 Pages (Exhibit C1 - Payment)

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 - PAYMENTS TO THE ENGINEER

C4.01 For Basic Services Having A Determined Scope— Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

- An amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
- 2. ENGINEER's Standard Hourly Rates are attached to this Exhibit C as Appendix 1,
 - The total compensation for services under paragraph C4.01 is estimated to be \$_*_ based on the following assumed distribution of compensation:
 - a. Study and Report Phase
 b. Preliminary Design Phase
 c. Final Design Phase
 d. Bidding and Negotiating Phase
 e. Construction Phase

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- 4. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total estimated compensation amount unless approved in writing by the OWNER.
- 5. The total estimated compensation for ENGINEER's services included in the breakdown by phases as noted in paragraph 4.01.A.3 incorporates

all labor, overhead, profit, Reimbursable Expenses and ENGINEER's Consultant's charges.

- 6. The amounts billed for ENGINEER's services under paragraph C4.01 will be based on the cumulative hours charged to the Project during the billing period by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class, plus Reimbursable Expenses and ENGINEER's Consultant's charges.
- The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.
- 8. The Standard Hourly Rates Method of Payment is conditioned on Contract Times to complete the Work not exceeding * months. Should the Contract Times to complete the Work be extended beyond this period, the total compensation to ENGINEER shall be appropriately adjusted.
- 9. If more prime contracts are awarded for Work designed or specified by ENGINEER for this Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount equal to 5—* for all Basic Services for each prime contract added.
- C4.02 For Basic Services Having An Undetermined Scope -- Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Basic Services having an undetermined scope as follows:

1. Resident Project Representative Services. For services of ENGINEER's Resident Project Representative, if any, under paragraph A1.05A.2.a of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and

Page 1 of 2 Pages (Exhibit C2 - Payment)

ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1,5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours. The total compensation under this paragraph is estimated to be $\frac{x}{2}$ based upon Contract Times as set forth in paragraph C4.01.

2. Post-Construction Phase Services. For Post-Construction Phase services under Paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours. The total compensation under this paragraph is estimated to be § *

C4.03 For Additional Services

A. OWNER shall pay ENGINEER for Additional Services as follows:

1. General. For services of ENGINEER's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours.

2 Serving as a Witness. For services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of \$1,000 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1). Compensation for ENGINEER's Consultants for such services will be on the basis provided in paragraph C4.06.

C4.05 Standard Hourly Rates

A. Standard Hourly Rates are set forth in Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating margin or profit.

- B. The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.
- To Be Determined for each specific project and described in the associated project Amendment to this Master Agreement.

Page 2 of 2 Pages (Exhibit C2 - Payment)

Standard Hourly Rates Schedule

Dagition	Dilling Box
Pasition	Billing Rate
Principal	\$175.00
Professional Engineer V	\$160.00
Professional Engineer IV	\$155.00
Professional Engineer III	\$140.00
Professional Engineer II	\$130.00
Professional Engineer I	\$120.00
Engineer Intern III	\$115.00
Engineer Intern II	\$100.00
Engineer Intern I	\$90.00
Professional Land Surveyor	\$120.00
Senior Project Manager	\$120.00
Project Manager	\$90.00
Sr. Survey Crew Chief	. \$90.00
RPR III	\$90.00
RPR II	\$80.00
RPR I	\$70.00
Engineering Technician III	\$85.00
Engineering Technician II	\$80.00
Engineering Technician I	\$70.00
CADD Technician III	. \$95.00
CADD Technician II	. \$85.00
CADD Technician I	. \$75.00
Project Technician	. \$70.00
Administrative/Clerical	\$65.00
Surveys with RTK GPS Equipment	. \$25.00

Page 1 of 2 Pages
(Appendix 1 to Exhibit C – Standard Hourly Rates Schedule)

Survey Project Manager/Land Surveyor Intern	\$100.00
Survey Technician II	\$75.00
Survey Technician II	\$60.00
Survey Crew III	\$175.00
Survey Crew II	\$130.00
Survey Crew I	\$110.00

Page 2 of 2 Pages
(Appendix 1 to Exhibit C — Standard Hourly Rates Schedule)

Payments to ENGINEER for Services and Reimbursable Expenses

Article 4 of the Agreement is amended and supplemented to include the following agreement of the parties:

ARTICLE 4 - PAYMENTS TO THE ENGINEER

C4.01 For Basic Services Having A Determined Scope— Fee as a percentage of Construction

A. OWNER shall pay ENGINEER for Basic Services set forth in Exhibit A, except for services of ENGINEER's Resident Project Representative and Post-Construction Phase services, if any, as follows:

- 1. An amount equal to a percentage of construction cost to be determined from the "Engineering and Design Services" section of the FEMA PA Guide, attached as Appendix 1 to Exhibit C3.
- 2. ENGINEER's Standard Hourly Rates are attached to this Exhibit C as Appendix 1.
- The total compensation for services under paragraph C4.01 is estimated to be \$_* based on the following assumed distribution of compensation:
 - a. Study and Report Phase
 b. Preliminary Design Phase
 c. Final Design Phase
 d. Bidding and Negotiating Phase \$ * .
 e. Construction Phase \$ * .
- 4. ENGINEER may alter the distribution of compensation between individual phases noted herein to be consistent with services actually rendered, but shall not exceed the total Lump Sum amount unless approved in writing by the OWNER.
- 5. The fee includes compensation for ENGINEER's services and services of ENGINEER's Consultants, if any. Appropriate amounts have been incorporated in the fee curves to account for labor, overhead, profit, and Reimbursable Expenses.

- The portion of the fee billed for ENGINEER's services will be based upon ENGINEER's estimate of the proportion of the total services actually completed during the billing period to the Lump Sum.
- 7. If more prime contracts are awarded for Work designed or specified by ENGINEER for the Project than identified in Exhibit A, the ENGINEER shall be compensated an additional amount equal to \$__** for all Basic Services for each prime contract added.
- 8. The final fee for Basic Services will be based on the final construction contract amount, and will be modified on an interim basis by Contract Amendment after Tabulation of the Construction Bids, and at other times as mutually agreeable.
- C4.02 For Services Having An Undetermined Scope --Standard Hourly Rates Method of Payment

A. OWNER shall pay ENGINEER for Additional Services having an undetermined scope as follows:

1. Resident Project Representative Services. For services of ENGINEER's Resident Project Representative, if any, under paragraph A1.05A.2.a of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the plus Reimbursable Expenses ENGINEER's Consultant's charges, if any, Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours. The total compensation under this paragraph is estimated to be \$ * based upon Contract Times as set forth in paragraph C4.01.

Page 1 of 2 Pages (Exhibit C3 - Payment)

2. Post-Construction Phase Services. For Post-Construction Phase services under Paragraph A1.06 of Exhibit A, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours. The total compensation under this paragraph is estimated to be § *

C4.03 For Additional Services

- A. OWNER shall pay ENGINEER for Additional Services as follows:
 - 1. General. For services of ENGINEER's employees engaged directly on the Project pursuant to paragraph A2.01 or A2.02 of Exhibit A, except for services as a consultant or witness under paragraph A2.01.A.20, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Additional Services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any. Overtime pay (i.e., hours spent in excess of 40 hours per calendar week), if any, for non-exempt employees shall be paid at an amount equal to the cumulative overtime hours charged times 1.5 multiplied by the standard hourly rates for each applicable billing class for all services performed during overtime hours.
 - 2 Serving as a Witness. For services performed by ENGINEER's employees as witnesses giving testimony in any litigation, arbitration, or other legal or administrative proceeding under paragraph A2.01.A.20, at the rate of \$1,000 per day or any portion thereof (but compensation for time spent in preparing to testify in any such litigation, arbitration, or proceeding will be on the basis provided in paragraph C4.03.A.1). Compensation for ENGINEER's Consultants for such services will be on the basis provided in paragraph C4.06.

C4.05 Standard Hourly Rates

A. Standard Hourly Rates are set forth in Appendix 1 to this Exhibit C and include salaries and wages paid to personnel in each billing class plus the cost of customary and statutory benefits, general and administrative overhead, non-project operating costs, and operating mergin or profit.

- B. The Standard Hourly Rates will be adjusted annually (as of March 1) to reflect equitable changes in the compensation payable to ENGINEER.
- To Be Determined for each specific project and described in the associated project Amendment to this Master Agreement.

Page 2 of 2 Pages (Exhibit C1 - Payment)

FEMA PA Guide

When disaster-related damage is discovered during a survey or is evident from other observation, inspection of only the damaged section is eligible. That limited cost may be included in the PW for the damages.

After a facility is determined to be damaged, costs for an engineering evaluation to determine the type and extent of repairs necessary to return the facility to its pre-disaster condition is eligible as part of the costs of permanent repair.

Donated Resources

Third party donaled resources (volunteer labor, donated equipment, and donated materials) are eligible to offset the non-Federal portion of the cost for emergancy work. (See FEMA Policy 9625.2, Donated Resources.) The amount of credit that can be applied to a project is capped at the non-Federal share will not exceed the applicant's actual out-of-pocket costs. Any excess credit can be applied to other emergency work projects of the same applicant.

Donated resources must apply to actual eligible emergency work, such as debrie removal or the filling and placing of sandbags. An example of ineligible donated resources is volunteers helping individuals applying for assistance. The donated services must be documented and must include a record of hours worked, number of workers at the work site, and a description of work.

Volunteer labor will be valued at the same hourly labor rate as a similarly qualified person in the applicant's organization who normally performs similar work. If the applicant does not have employees performing similar work, the rate should be consistent with that for a similarly qualified person ordinarily performing the work in the same labor market.

The value for donated equipment should be determined by using the applicable FEMA equipment rate and multiplying it by the number of hours the piece of equipment was used to perform eligible work.

Donated materials are valued at the current commercial rate. If the materials were donated by a Federal agency, such as sandbags donated by the USACE, the value of the materials cannot be applied as credit.

Engineering and Design Services

The costs of basic engineering and design services normally performed by an architectural-engineering firm on complex construction projects are eligible for reimbursement. Such services include:

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(Appendix 1 to Exhibit C3 – "Engineering and Design Services" from FEMA PA Guide)

- preliminary engineering analysis;
- preliminary design;
- final design; and
- construction inspection.

While a final inspection and reconciliation will be used to determine the actual costs for reimbursement of these services, the costs can be estimated during project formulation using a percentage of the construction cost. Percentages are derived from FEMA engineering and design services cost curves. These curves, which were developed for FEMA from data developed by the American Society of Civil Engineers Committee on Professional Practice in 2005, show a correlation between engineering costs and total construction costs. These curves are shown in Figures 3 and 4. To use the curves, estimate construction costs for a project. Find the construction cost on the horizontal axis and, using the appropriate curve for either force account or contract work, read the associated percentage of engineering and design services from the vertical axis. This percentage can be multiplied by the estimated construction cost to determine an appropriate engineering and design cost estimate.

Curve A applies to projects of above-average complexity and non-standard design. Examples of such projects include:

- airports with extensive terminal facilities:
- water, wastewater, and industrial waste treatment plants;
- hospitals, schools, and office buildings;
- power plants
- large dams and complicated small dams;
- highway and railway tunnels;
- pumping stations;
- incinerators; and
- complicated waterfront and marine terminal facilities.

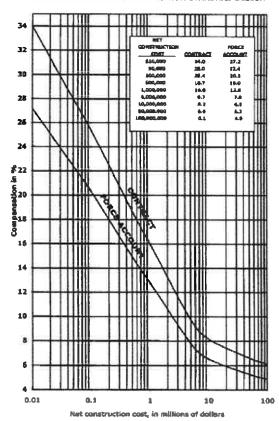
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(Appendix 1 to Exhibit C3 – "Engineering and Design Services" from FEMA PA Guide)

Figure 3: Engineering and Design Services of Above-Average Complexity

CURVE A. COMPENSATION FOR BASIC SERVICES EXPRESSED AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF ABOVE-AVERAGE COMPLEXITY AND NON-STANDARD DESIGN



NOTE: "Contract" and "Force Account" above mean engineering and design services performed by contract or by an applicant's own employees, respectively.

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Curve B applies to projects of average complexity. Examples of such projects include:

- industrial buildings, warehouses, garages, hangars, and comparable structures;
- bridges and other structures of conventional design;
- simple waterfront facilities;
- roads and streets;
- conventional fevees, floodwalls, and retaining walls;
- small dams
- storm sewers and drains;
- sanitary sewers;
- water distribution lines:
- irrigation works, except pumping plants; and
- airports, except as classified for Curve A.

In addition to the basic engineering services, special services may be required for some projects. Such services include engineering surveys, soil investigations, services of a resident engineer, and feasibility studies. Because special services are not required on all projects, they are not included in the percentages on the engineering and design services curves. These services are estimated separately.

If a project requires only basic construction management, a fee not exceeding 3 percent of construction costs may be used for the estimate. Management functions include review of bids, work site inspection visits, checking and approval of material samples, review of shop drawings and change orders, review of contractor's request for payment, and acting as the client's representative. An example of a project requiring only inspection services but no design and engineering would be a building repair project that only included patching and painting damaged interior wall. Another example would be where a contractor is hired to repair local roads back to the pre-disaster condition, using local construction standards.

Estimates for engineering and design services and construction inspection typically are not included in small project estimates or

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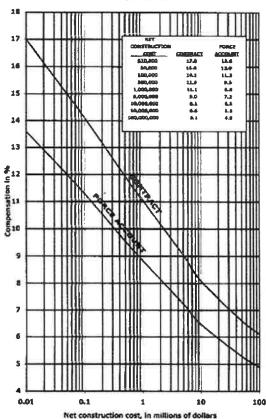
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Figure 4:
Engineering and Design Services of Average Complexity

<u>CURVE 8</u>, COMPENSATION FOR BASIC SERVICES EXPRESSED

AS A PERCENTAGE OF CONSTRUCTION COST FOR PROJECTS OF

AVERAGE COMPLEXITY



NOTE: "Contract" and "Force Account" above mean engineering and design services performed by contract or by an applicant's own employees, respectively.

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(Appendix 1 to Exhibit C3 – "Engineering and Design Services" from FEMA PA Guide)

emergency work project estimates except for complex projects or projects where special services are required.

Actual costs, not estimated costs, for eligible engineering and design services should be claimed in large project final inspection and reconciliation. Costs that exceed the amounts determined by use of these curves will be reviewed for reasonableness and funded accordingly.

Project Supervision and Grant Management Costs

Applicants have several types of eligible supervisory and management costs available that serve different purposes and need to be identified and claimed separately. (See FEMA Policy 9525.6. Project Supervision and Management Costs of Subgrantees.) Commingling of these various costs and claiming them incorrectly may result in loss of eligible reimbursement. Project management costs provided when using the Cost Estimating Format methodology for estimating project costs (see pages 105–106) must not duplicate other requests for reimbursement.

The following items may be eligible project supervision and management costs:

- A. Supervision and Management by Force Account. In general, applicant expenses for administration and management activities not specifically accountable to an eligible work project are ineligible. The regular time salaries of an applicant's permanently employed personnel who supervise or manage emergency work performed by an applicant's employees (or by contractors) are not eligible; only overtime costs are eligible for emergency work. Labor costs of second level supervisors (and above) are ineligible unless the applicant can account for specific time spent on eligible permanent projects. Generally, the labor costs of only first line supervisors of permanent work are eligible.
- B. **Project Management Activities.** Project management is the oversight of an eligible project from the design phase to the completion of work. Eligible project management activities are those activities that the applicant would have performed in the absence of Federal funding, such as:
 - direct management of projects in the concept and design stages that are being designed by an applicant's in-house staff, or by an architectural/engineering firm retained to analyze and design the repair or replacement of damaged facilities;

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(Appendix 1 to Exhibit C3 – "Engineering and Design Services" from FEMA PA Guide)

Duties, Responsibilities, and Limitations of Authority Of Resident Project Representative

Paragraph 1,01C of the Agreement is amended and supplemented to include the following agreement of the parties:

D6.02 Resident Project Representative

- A. ENGINEER shall furnish a Resident Project Representative ("RPR"), assistants, and other field staff to assist ENGINEER in observing progress and quality of the Work. The RPR, assistants, and other field staff under this Exhibit D may provide full time representation or may provide representation to a lesser degree.
- B. Through such additional observations of Contractor's work in progress and field checks of materials and equipment by the RPR and assistants, ENGINEER shall endeavor to provide further protection for OWNER against defects and deficiencies in the Work. However, ENGINEER shall not, during such visits or as a result of such observations of Contractor's work in progress, supervise, direct, or have control over the Contractor's Work nor shall ENGINEER have authority over or responsibility for the means, methods, techniques, sequences, or procedures selected by Contractor, for safety precautions and programs incident to the Contractor's work in progress, for any failure of Contractor to comply with Laws and Regulations applicable to Contractor's performing and furnishing the Work, or responsibility of construction for Contractor's failure to furnish and perform the Work in accordance with the Contract Documents. In addition, the specific limitations set forth in section A.1.05 of Exhibit A of the Agreement are applicable.
- C. The duties and responsibilities of the RPR are limited to those of ENGINEER in the Agreement with the OWNER and in the Contract Documents, and are further limited and described as follows:
 - General: RPR is ENGINEER's agent at the Site, will act as directed by and under the supervision
 of ENGINEER, and will confer with ENGINEER regarding RPR's actions. RPR's dealings in matters
 pertaining to the Contractor's work in progress shall in general be with ENGINEER and
 Contractor, keeping OWNER advised as necessary. RPR's dealings with subcontractors shall only
 be through or with the full knowledge and approval of Contractor. RPR shall generally
 communicate with OWNER with the knowledge of and under the direction of ENGINEER.
 - Schedules: Review the progress schedule, schedule of Shop Drawing and Sample submittals, and schedule of values prepared by Contractor and consult with ENGINEER concerning acceptability.
 - Conferences and Meetings: Attend meetings with Contractor, such as pre-construction conferences, progress meetings, job conferences and other project-related meetings, and prepare and circulate copies of minutes thereof.
 - 4. Liaison
 - Serve as ENGINEER's liaison with Contractor, working principally through Contractor's superintendent and assistant in understanding the intent of the Contract Document.
 - Assist ENGINEER in serving as OWNER's liaison with Contractor when Contractor's operations affect OWNER's on-Site operations.

Page 1 of 4 Pages
(Exhibit D – Resident Project Representative)

- Assist in obtaining from OWNER additional details or information, when required for proper execution of the Work.
- Interpretation of Contract Documents: Report to ENGINEER when clarifications and interpretations of the Contract Documents are needed and transmit to Contractor clarifications and interpretations as issued by ENGINEER.
- 7. Shop Drawings and Samples:
 - a. Record Date of Receipt of Samples and approved Shop Drawings.
 - Receive Samples which are furnished at Site by Contractor, and notify ENGINEER of availability of Samples for examination.
 - c. Advise ENGINEER and Contractor of the commencement of any portion of the Work requiring a Shop Drawing or Sample submittal for which RPR believes that the submittal has not been approved by ENGINEER.
- Modifications: Consider and evaluate Contractor's suggestions for modifications in Drawings or Specifications and report with RPR's recommendations to ENGINEER. Transmit to Contractor in writing decisions as issued by ENGINEER.
- 9. Review of Work and Rejection of Defective Work:
 - Conduct on-Site observations of Contractor's work in progress to assist ENGINEER in determining if the Work is in general proceeding in accordance with the Contract Documents.
 - b. Report to ENGINEER and Contractor whenever RPR believes that any part of Contractor's work in progress will not produce a completed Project that conforms generally to the Contract Documents or will prejudice the integrity of the design concept of the completed Project as a functioning whole as indicated in the Contract Documents, or has been damaged, or does not meet the requirements of any inspection, test or approval required to be made; and advise ENINGEER of that part of work in progress that RPR believes should be corrected or rejected or should be uncovered for observation, or requires special testing, inspection, or approval.
- 10. Inspections, Tests, and System Startups:
 - Consult with ENGINEER in advance of scheduled major inspections, tests, and systems startups of important phases of the Work.
 - b. Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate OWNER's personnel, and that Contractor maintains adequate records thereof.
 - Observe, record, and report to ENGINEER appropriate details relative to the test procedures and systems startups.
 - Accompany visiting inspectors representing public or other agencies having jurisdiction over the Project, record the results of these inspections, and report to ENGINEER.
- 10. Records:

Page 2 of 4 Pages (Exhibit D – Resident Project Representative)

- a. Maintain at the Site orderly files for correspondence, reports for job conferences, reproductions of original Contract Documents including all Change Orders, Field Orders, Work Change Directives, Addenda, additional Drawings issued subsequent to the execution of the Contract, ENGINEER's clarifications and interpretations of the Contract Documents, progress reports, Shop Drawing and Sample submittals received from and delivered to Contractor, and other Project related documents.
- Prepare a daily report or keep a diary or log book, recording Contractor's hours on the Site, weather conditions, data relative to questions of Change Orders, Field Orders, Work Change Directives, or changed conditions, Site visitors, daily activities, decisions, observations in general, and specific observations in more detail as in the case of observing test procedures; and send copies to ENGINEER.
- Record names, addresses, and telephone numbers of all Contractors, subcontractors, and major suppliers of materials and equipment.
- d. Maintain records for use in preparing Project documentation.
- e. Upon completion of the Work, furnish original set of all RPR Project documentation to ENGINEER.

11. Reports:

- Furnish to ENGINEER periodic reports as required of progress of the Work and of Contractor's compliance with the progress schedule and schedule of Shop Drawing and Sample submittals.
- Draft and recommend to ENGINEER proposed Change Orders, Work Change Directives, and Field Orders. Obtain backup material from Contractor.
- Furnish to ENGINEER and OWNER copies of all Inspection, test, and system startup reports.
- d. Report immediately to ENGINEER the occurrence of any Site accidents, any Hazardous Environmental Conditions, emergencies, or acts of God endangering the Work, and property damaged by fire or other causes.
- 12. Payment requests: Review Applications for Payment with Contractor for compliance with the established procedure for their submission and forward with recommendations to ENGINEER, noting particularly the relationship of the payment requested to the schedule of values, Work completed, and materials and equipment delivered at the Site but not incorporated in the Work.
- 13. Certificates, Operation and Maintenance Manuals: During the course of the Work, verify that materials and equipment certificates, operation and maintenance manuals and other data required by the Specifications to be assembled and furnished by Contractor are applicable to the items actually installed and in accordance with the Contract Documents, and have these documents delivered to ENGINEER for review and forwarding to OWNER prior to payment for that part of the Work.

14. Completion:

 Before ENGINEER issues a Certificate of Substantial Completion, submit to Contractor a list of observed items requiring completion or correction.

Page 3 of 4 Pages
(Exhibit D – Resident Project Representative)

- b. Observe whether Contractor has arranged for inspections required by Laws and Regulations, including but not limited to those to be performed by public agencies having jurisdiction over the Work.
- Participate in a final inspection in the company of ENGINEER, OWNER, and Contractor and prepare a final list of items to be completed or corrected.
- d. Observe whether all items on final list have been completed or corrected and make recommendations to ENGINEER concerning acceptance and issuance of the Notice of Acceptability of Work.

D. Resident Project Representative shall not:

- Authorize any deviation from the Contract Documents or substitution of materials or equipment (including "or-equal" items).
- 2. Exceed limitations of ENGINEER's authority as set forth in the Agreement or the Contract Documents.
- Undertake any of the responsibilities of Contractor, subcontractors, suppliers, or Contractor's superintendent.
- 4. Advise on, issue directions relative to or assume control over any aspect of the means, methods, techniques, sequences or procedures of Contractor's work unless such advise or directions are specifically required by the Contract Documents.
- 5. Advise on, issue directions regarding, or assume control over safety precautions and programs in connection with the activities or operations of OWNER or Contractor.
- Participate in specialized field or laboratory tests or inspections conducted off-site by others except as specifically authorized by ENGINEER.
- 7. Accept Shop Drawings or Sample submittals from anyone other than Contractor.
- 8. Authorize OWNER to occupy the Project in whole or parts:

Page 4 of 4 Pages (Exhibit D - Resident Project Representative)

part of the Agreement between		
for Professional Services, dated	Dec. 1	, 2020.

insurar	ice		
Paragrap	h 6.05	of the Agreement is amended and supplemented to inclu	de the following agreement of the parties.
G6.05	insi	urance	
	A.	The limits of liability for the insurance required by para follows:	graph 6.05.A and 6.05.B of the Agreement are a
		1. By ENGINEER:	
		a. Workers' Compensation	Statutory
		b. Employer's Liability -	
		1. Each Accident:	\$ 100,000
		2. Disease, Policy Limit:	\$ 500,000
		3. Disease, Each Employee:	\$ 100,000
		c. General Liability -	
		1. Each Occurrence (Bodily Injury and	
		Property Damage):	\$ 1,000,000
		2. General Aggregate:	\$ 2,000,000
		d. Excess or Umbrella Liability -	
		 Each Occurrence: 	NONE
		2. General Aggregate:	NONE
		e. Automobile Injury -	
		1. Bodily Injury:	
		a. Each Accident	N/A
		2. Property Damage:	
		a. Each Accident (OR)	N/A
		1. Combined Single Limit	
		(Bodily Injury and Property Damage): Each Accident	\$ 1,000,000
		f. Other (specify):	

2. By OWNER:

N/A

1 of 2 Exhibit G - Insurance \$____N/A___

a. Workers' Compensation	Statutory
b. Employer's Liability -	
1. Each Accident:	\$ 500,000
2. Disease, Policy Limit:	\$ 500,000
3. Disease, Each Employee:	\$ 500,000
c. General Liability -	
1. General Aggregate:	\$ 1,000,000
Each Occurrence (Bodily Injury and	
Property Damage):	\$ 2,000,000
d. Excess or Umbrella Liability -	
Each Occurrence:	\$ 1,000,000
2. General Aggregate:	\$ 1,000,000
e. Automobile Injury -	
 Combined Single Limit 	
(Bodily Injury and Property Damage): Each Accident	\$ 1,000,000
f. Other (specify):	
	\$
lditional Insureds	
The following person or entities are to be listed on O	WNER's policies of insurance as additional insureds
provided in paragraph 6.05.B:	
a. Overstreet & Associates	
ENGINEER	
at synthem	
bN/A	
ENGINEER's CONSULTANT	

2 of 2 Exhibit G - Insurance

C. <u>N/A</u> ENGINEER's CONSULTANT

AMENDMENT NUMBER 1 TO MASTER AGREEMENT BETWEEN CITY OF LONG BEACH AND OVERSTREET & ASSOCIATES, INC.

LONG BEACH SMALLCRAFT HARBOR - HURRICANE ZETA PERMANENT REPAIRS (PILING/PIER EVALUATION)

It is agreed to undertake the following work in accordance with the provisions contained in the Master Agreement dated December 1, 2020:

A. DESCRIPTION OF ASSIGNMENT

- Engineer will provide Basic engineering services necessary to evaluate the damages caused by Hurricane Zeta to the structural elements of the piers in the Harbor. These services will include:
 - a. Pile integrity testing of approximately 125 piles.
 - b. Evaluation of other structural elements in the Harbor, including cross-bracing, longitudinal bracing, and whalers.
 - c. Evaluation of the condition of pier stringers and decking.
 - d. Preparation of summary reports presenting the findings and projecting the status & serviceability of the overall structural systems of the piers in the Harbor.

B. PERIOD OF SERVICE

 Engineer shall plan and prosecute the work to result in a completed evaluation and summary report within 60 days of the execution of this Amendment.

C. BASIS OF COMPENSATION

- Fees for the above described services will be in accordance with Exhibit C2 of the referenced Master Agreement, more particularly via the hourly rates included in Appendix 1 to Exhibit C.
 - a. Total of all fees for basic services shall not exceed \$66,000 without City approval.
 - b. The fee is based on the following distribution of compensation:

PILE INTEGRITY TESTING	\$39,000	
(including lump sum costs for ENGINEER's subconsultant)		
PIER STRUCTURAL EVALUATION	\$17,000	
SUMMARY REPORT	\$10,000	
TOTAL	\$66,000	

Page 1 of 2

- 2. Hourly fees where described above will be in accordance with the hourly rates recited on ATTACHMENT 1 to EXHIBIT C to the Master Agreement, subject to future adjustment as provided for in the Master Agreement.
- 3. Fees for services rendered under this Amendment will be made separate from any other project.

OWNER:

ENGINEER:

CITY OF LONG BEACH, MISSISSIPPI

OVERSTREET & ASSOCIATES, P.LL.C.

W Storge Bass: Mayor

F. Jason Overstreet, P.E.; President

Date Signed: 12|15|20&6

Date Signed: 12/11/2020

Page 2 of 2

Alderman Frazer made motion seconded by Alderman Parker and unanimously carried to approve the following contract with Andercorp, LLC for Program Management Services for Hurricane Zeta:



Standard Form of Agreement Between Owner and Program Manager for use in a Multiple Project Program

AGREEMENT made as of the 16th day of December in the year 2020 (In words, indicate day, month and year.)

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

City of Long Beach 201 Jeff Davis Avenue Long Beach, MS 39560

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

AnderCorp, LLC 1404 24th Avenue, Suite 300 Gulfport, MS 39501 (228) 678.7070

for the following Program: (Name, location, and detailed description of the group of buildings and/or site improvement projects included in the Program)

Program Management Services Long Beach, MS

The Owner and Program Manager agree as follows.

ADDITIONS AND DELETIONS:

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form, An Additions and Deletions Report that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text

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

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ARTICLE 1 PROGRAM INFORMATION AND INITIAL INFORMATION

§ 1.1 This Agreement is based on the Program Information and Initial Information set forth in Sections 1.2 and 1.3.

§ 1.2 Program Information

(Insert the requested Program Information below. For information that is not provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.2.1 Preliminary description of the projects comprising the Program:
(Identify proposed use, size, or other known information for each project in the Program.)

TBD

§ 1.2.2 Location of each project in the Program:

Long Beach, MS

§ 1.2.3 Preliminary assessment of the condition of existing facilities or sites, if any: (Identify or describe written reports of the conditions of existing facilities or sites.)

TBD

§ 1.2.4 Funding source:

(Identify anticipated funding sources, and deadlines or schedules related to funding, as well as whether funding is authorized.)

TBD

§ 1.2.5 The Owner's budget for the Program, including the budgets for each project in the Program: (Provide the Owner's total budget for the Program and, if known, a line-item breakdown of all costs described in Section 3.4.1.)

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§ 1.2.6 The Owner's intended procurement or delivery methods for design and construction of the projects in the

(Identify method such as competitive bid, negotiated contract, multiple prime contracts or construction management,)

1

§ 1.2.7 Anticipated scheduling information:

(Include overall Program duration and milestones. If known, include proposed dates for commencement and completion of design, commencement and completion of construction, occupancy, and any other critical scheduling information for each project in the Program.)

- .1 Anticipated dates of Program commencement and completion:
 - Commencement of design, if other than the date of this Agreement:

TBD

Completion of design: .2

TBD

.3 Commencement of construction

TBD

Completion of construction

TBD

Other Program scheduling information:

§ 1.2.8 Other information regarding the Program:

(Identify any other available studies or reports, as well as special characteristics or needs of the Program, such as environmentally responsible design or historic preservation requirements, not provided elsewhere.)

§ 1.3 Initial Information

(Insert the requested Initial Information below. For information that is not to be provided, insert a statement such as "not applicable," "unknown at time of execution" or "to be determined later by mutual agreement.")

§ 1.3.1 The Owner will retain the following consultants and contractors: (List name, discipline, address and other information. If the Owner will retain a consultant or contractor for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

The Owner will retain all design professionals and contractors necessary and appropriate for performance of the projects. The Owner shall, to the extent allowed by law, consult with Project Manager in said selections.

§ 1.3.2 The Program Manager will retain the consultants identified in Sections 1.3.2.1 and 1,3.2.2:

§ 1.3.2.1 Consultants retained under Basic Services:

(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

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§ 1.3.2.2 Consultants retained under Additional Services:

(List name, discipline, address and other information. If the Program Manager will retain a consultant for some, but not all, projects in the program, indicate the project(s) for which the consultant or contractor is retained.)

§ 1.3.3 The Owner identifies the following representative in accordance with Section 5.4: (List name, address and other information.)

Kini Gonsoulin City of Long Beach 201 Jeff Davis Avenue Long Beach, MS 39560 (228) 863-1556

§ 1.3.4 The persons or entities, in addition to the Owner's representative, who are required to review and approve the Program Manager's submittals to the Owner are as follows: (List name, address and other information,)

§ 1.3.5 The Program Manager identifies the following representative in accordance with Section 2.4: (List name, address and other information.)

Hunter Lipscomb AnderCorp 1404 24th Avenue, Suite 300 Gulfport, MS 39501 (228) 678.7070

§ 1.3.6 Other Initial Information on which the Agreement is based:

§ 1.4 The Owner and Program Manager may rely on the Program Information and Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Program Manager shall appropriately adjust the schedules, the Program Manager's services and the Program Manager's compensation.

ARTICLE 2 PROGRAM MANAGER'S RESPONSIBILITIES

§ 2.1 The Program Manager shall provide the services as set forth in this Agreement.

- § 2.2 The Program Manager shall perform its services consistent with the skill and care ordinarily provided by program managers practicing in the same or similar locality under the same or similar circumstances. The Program Manager shall perform its services as expeditiously as is consistent with such skill and care and the orderly progress of the Program. However, it is agreed that Program Manager cannot control the costs for projects nor the performance of designers and construction contractors.
- § 2.3 The Program Manager, as soon as practicable after execution of the Agreement, shall confirm in writing to the Owner the names and qualifications of its proposed key staff members. Within 14 days of receipt of the names and qualifications of the Program Manager's proposed key staff members, the Owner may reply to the Program Manager in writing stating (1) whether the Owner has reasonable objection to a proposed key staff member or (2) that the

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Owner requires additional time to review, Failure of the Owner to reply within the 14 day period shall constitute notice of no reasonable objection. The Program Manager shall not staff any employees on the Program to whom the Owner has made reasonable and timely objection. The Program Manager shall not change its key staff members without the Owner's consent, which shall not unreasonably be withheld or delayed.

- § 2.4 The Program Manager shall identify a representative authorized to act on behalf of the Program Manager with respect to the Program.
- § 2.5 Except with the Owner's knowledge and consent, the Program Manager shall not engage in any activity, or accept any employment, interest or contribution that would reasonably appear to compromise the Program Manager's judgment with respect to the Program.
- § 2.6 The Program Manager shall provide its services in cooperation with the services provided by the Owner and the Owner's consultants and contractors and shall coordinate its services with those services provided by the Owner and the Owner's consultants and contractors. The Owner shall act to obtain reciprocal cooperation and coordination from Owner's consultants and contractors. The Program Manager shall be entitled to rely on the accuracy and completeness of services and information furnished by the Owner and the Owner's consultants and contractors. The Program Manager shall provide prompt written notice to the Owner if the Program Manager becomes aware of any error, omission or inconsistency in such services or information.
- § 2.7 The Program Manager shall maintain the following insurance for the duration of this Agreement, If any of the requirements set forth below exceed the types and limits the Program Manager normally maintains, the Owner shall reimburse the Program Manager for any additional cost as set forth in Section 10.6.3.
- § 2.7.1 Comprehensive General Liability with policy limits of not less than (\$\\$) for each occurrence and in the aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Program Manager's Comprehensive General Liability policy.
- § 2.7.2 Automobile Liability covering owned and rented vehicles operated by the Program Manager with policy limits of not less than (\$) combined single limit and aggregate for bodily injury and property damage. The Owner shall be named as an additional insured on the Program Manager's Automobile Liability policy.
- § 2.7.3 The Program Manager may use umbrella or excess liability insurance to achieve the required coverage for Comprehensive General Liability and Automobile Liability, provided that such umbrella or excess insurance results in the same type of coverage as required for the individual policies. The Owner shall be named as an additional insured on the Program Manager's umbrella or excess insurance policy.
- § 2.7.4 Workers' Compensation at statutory limits and Employers' Liability with a policy limit of not less than (\$).
- § 2.7.5 Professional Liability covering the Program Manager's negligent acts, errors and omissions in its performance of services with policy limits of not less than (\$) per claim and in the aggregate.
- § 2.7.6 The Program Manager shall provide to the Owner certificates of insurance evidencing compliance with the requirements in this Section 2.7. The certificates will show the Owner as an additional insured on the Comprehensive General Liability, Automobile Liability, and umbrella or excess policies. Program Manager's liability for acts and omissions covered by such insurances shall be capped by the amount of insurance proceeds actually paid.

ARTICLE 3 SCOPE OF PROGRAM MANAGER'S BASIC SERVICES

§ 3.1 General

§ 3.1.1 The Program Manager's Basic Services consist of those described in this Article 3. The Program Manager shall have authority to act on behalf of the Owner only to the extent provided in this Agreement. The Program Manager shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs employed in connection with the construction of the projects in the Program, nor shall the Program Manager be responsible for the failure of the Owner's consultants or contractors to perform services for, or the construction of, a project in accordance with the plans, specification or other contract or legal requirements. Subject to Section 2.7.6, the Program Manager shall be responsible for the Program

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Manager's negligent acts or omissions, but shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Owner's consultants or contractors.

- § 3.1.2 The Program Manager shall periodically review the development of the design for each project in the Program and provide recommendations for systems, materials, equipment and techniques that are utilized to achieve the Design Standards established pursuant to Section 3.3.4. The Program Manager shall provide advice on construction feasibility, availability of materials and labor, and procurement and time requirements for installation and
- § 3.1.3 The Program Manager shall determine the need for retaining consultants to provide professional and other services for each project in the Program, and assist the Owner in reviewing qualifications and selecting any such
- § 3.1.4 The Program Manager shall assist the Owner in selecting the services of independent testing laboratories, review their reports and make recommendations to the Owner.
- § 3.1.5 The Program Manager shall assist the Owner in reviewing the qualifications of, and in selecting and retaining contractors for each project in the Program.
- § 3.1.6 The Program Manager shall assist the Owner in establishing building information modeling and digital data protocols for the projects in the Program as appropriate.

§ 3.2 Program Management Plan

§ 3.2.1 In order to ascertain the requirements of the Program, the Program Manager shall review and discuss with the Owner the Program Information and Initial Information, along with any other information listed below to be furnished by the Owner. The Program Manager and the Owner shall discuss the feasibility of incorporating sustainable objectives in the Program.

(List other information to be furnished by the Owner.)

- § 3.2.2 The Program Manager shall develop and document a Program Management Plan reflecting the scope and related requirements of the Program and submit the Program Management Plan to the Owner for approval. The Program Management Plan shall include a description of, and requirements pertaining to, the following:

 1. Program management approach and organization, including executive, management and team staffing
 - plan and responsibilities;
 - .2 Program planning and development activities, including strategic planning, prioritizing, and defining

 - Program planning and development activities, including strategic planning, prioritizing, and defining scope, schedule and budget of the projects in the Program;

 Program management controls, including scope, budget/cost, schedule, and quality management plan;

 Procurement strategies and procedures, including strategy for procurement of design services and construction; procedures for pre-purchase of material, systems, and equipment; evaluating and approving substitutions; and affirmative action or diversity plan;

 Authorization processes and procedures, including administrative approval processes and responsibilities, and key documentation for: professional services and preconstruction services; processes and procedures for project construction procurement, such as award, contracting, notice to proceed, change orders, payment certification; and project closeout;

 Program communication procedures, including systems, meetings, reporting, investigation, and
 - Program communication procedures, including systems, meetings, reporting, investigation, and
 - Development of design process guidelines, including assessment, prioritization, project scope
 - definition, design development, coordination, and permit process:
 Development of construction process guidelines, including preconstruction and construction administration services, construction phase processes and procedures, program coordination, change
 - order management, commissioning, and project closeout procedures; and Project acceptance and turnover guidelines relating to contract completion and closeout management, including record documentation, manuals and warranties.

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§ 3.2.3 The Program Manager shall obtain the Owner's approval of the Program Management Plan, and any subsequent revisions to the Program Management Plan. The Program Manager shall meet with the Owner to discuss the Program Management Plan and any necessary revisions every six months, or at intervals set forth below: (Insert the milestones or intervals for Program Management Plan updates, if other than every six months.)

§ 3.3 Information Management and Standards

- § 3.3.1 Program Management Information System. The Program Manager shall implement and, for the duration of the Program, maintain and upgrade as necessary a web-based Program Management Information System to be used to receive, distribute, and maintain Program Reports, Program Schedules, and other information, reports and documentation as agreed by the Owner and the Program Manager, Activities under the Program will be scheduled and documented through the Program Management Information System. The Program Management Information System shall organize information by project, activity, or relevant categories, as determined by the Program Manager and Owner, The Program Manager shall collect information pertaining to the Program, and update the Program Management Information System on a weekly basis unless otherwise agreed. The Program Management Information System shall contain, at a minimum, current status on contracts, budget, schedule and quality on a Program and project basis.
- § 3.3.2 The Owner shall have access to all information in the Program Management Information System. Other Program and project participants shall have access to specific information only as approved by the Owner, Upon the completion of each project in the Program, the Program Manager shall preserve the documentation and information contained in the Program Management Information System and provide a copy to the Owner.
- § 3.3.3 The Program Manager shall develop protocols and standards for the exchange and use of information in digital form to be integrated into the Program Management Information System, The Program Manager shall provide information to the Owner and the Owner's consultants and contractors, as required for the duration of the Program, regarding the use of the Program Management Information System.
- § 3.3.4 Design Standards. The Program Manager shall assist the Owner, and Owner's Design Manager, if any, in developing and periodically updating Design Standards for the Owner's approval. The Design Standards shall provide a functional, aesthetic, and quality framework for the projects in the Program and shall include the following: planning criteria (including area, volume, equipment, finish, technical services and other relevant functional requirements for typical spaces); specifications and performance requirements (including sustainable design criteria) for materials, systems, components and assemblies organized by classification system as agreed upon with the Owner; drawing, building information modeling, and documentation standards (including requirements for interim and final contract document deliverables); typical design details of selected conditions; and, procurement, contracting and general requirements. The Design Standards shall incorporate any existing Owner design standards.
- § 3.3.5 Prior to the start of the design of each project, the Program Manager shall make the Owner-approved Design Standards available to the Owner's design consultants through the Program Management Information System.
- § 3.3.6 Program Report. On a monthly basis, or as set forth below, the Program Manager shall prepare a Program Report. The Program Report shall include a summary update of Program and project status, an updated Program Schedule, actual and anticipated costs related to the Program, cost and payment reports for each consultant and construction contract, cash flow projections, proposed and approved change orders, and any claims pertaining to the Program Manager, Owner, and the Owner's other consultants and contractors.

 (If the Program Report is required at intervals other than monthly, set forth such intervals below.)

§ 3.4 Program Budget Control

§ 3.4.1 If the Owner has not established a Program Budget, the Program Manager and the Owner shall collaborate to prepare a preliminary Program Budget, which shall include the estimated costs for the Program Manager's services, the estimated costs of the services of the Owner's other consultants, the estimated costs for design and construction of each project in the Program, and additional details necessary for the Owner to prepare a complete Program Budget. The Owner shall review and approve in writing the preliminary Program Budget. The Program Manager shall provide

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monthly reports on the Program Budget, or at intervals otherwise agreed to by the Owner and Program Manager below. The Program Manager shall organize the Program Budget in a manner that will allow costs to be tracked using the Program Management Information System. The Program Budget shall be regularly updated to account for additional or better information, including, but not limited to, updated estimates, the pricing terms of contracts actually secured, and actual costs incurred. It is agreed that all budgets and estimates are only estimates and do not constitute any kind of guarantee.

(If the Program Manager is required to provide Program Budget reports at intervals other than monthly, set forth such intervals below.)

- § 3.4.2 The Program Manager shall develop and implement a system of budget and cost controls to assist the Owner in the management of Program and project costs. The Program Manager shall prepare cash flow projections of costs for
- § 3.4.3 The Program Manager shall review estimates prepared by the Owner's consultants and contractors and produce a report identifying variances from the Program Budget along with recommendations for resolving such
- § 3.4.4 The Program Manager shall share information regarding the Program Budget with the Owner's consultants as authorized by the Owner.
- § 3.4.5 The Program Manager shall assist in identifying Program-wide procurement and cost saving opportunities.
- § 3.4.6 The Program Manager shall report the cost impact on the Program Budget of proposed contracts, change orders, and proposed contract amendments from the Owner and the Owner's consultants and contractors.

- § 3.5 Program Schedule Control
 § 3.5.1 The Program Manager shall prepare a Program Schedule showing priorities, sequences, durations, and responsible parties for major design, pricing, construction and Owner activities; establishing the overall duration of the Program; and identifying critical milestone dates. The Program Manager shall update and expand the level of detail and status of the Program Schedule as the Program progresses. The Program Schedule shall also incorporate or identify

 - dates for approvals and permits; project specific milestones and design and construction schedules, including dates of commencement .2 and completion;
 - components that need to be ordered or procured for the overall Program by the Owner, if any; and the Owner's occupancy requirements and any portions of the Program having occupancy priority.
- § 3.5.2 The Program Manager shall provide recommendations for project sequencing and phasing to meet overall Program objectives:
- § 3.5.3 The Program Manager shall provide recommendations on the milestone dates and durations in the design and construction schedules as they are developed for the projects in the Program.
- § 3.5.4 The Program Manager shall monitor and report on the progress of the Program and indicate to the Owner observed deviations from the Program Schedule or key milestones of the individual project schedules that may impact substantial completion or final completion. The Program Manager shall include the reports in the Program Management Information System. The Program Manager shall consult with the Owner and the Owner's consultants and contractors to develop recovery plans when the schedules or objectives are not being met.

§ 3.6 Program Quality Control
§ 3.6.1 The Program Manager shall establish, and distribute through the Program Management Information System, quality control guidelines that define the obligations of the Program Manager, Owner, and the Owner's consultants and contractors

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- § 3.6.2 The Program Manager shall periodically review the development of the design for each project in the Program for conformance with the Program requirements and Design Standards, The Program Manager shall provide a list of observed deviations from the Design Standards and discuss resolution of the observed deviations with the Owner and, as appropriate, the Owner's consultants and contractors.
- § 3.6.3 The Program Manager shall confirm that each contractor has prepared a safety program and project specific quality control plan.
- § 3.6.4 The Program Manager shall advise the Owner of observations it makes regarding deficiencies in the performance of the Owner's consultants and contractors.

§ 3.7 Other Services

- § 3.7.1 Subject to Sections 4.1.1 and 4.3.1.3, upon the Owner's written request, the Program Manager shall provide reasonable assistance in the areas of community and public relations, in order to enhance and maintain public awareness in furtherance of the interests of the Program and the Owner.
- § 3.7.2 The Program Manager shall schedule and conduct meetings with the necessary Program participants to coordinate the progress of the Program. The Program Manager shall also prepare minutes of such meetings and include them, as appropriate, in the Program Management Information System.
- § 3.7.3 The Program Manager shall develop a strategy, procedure, and schedule to assist the Owner in obtaining the required reviews and approvals of authorities having jurisdiction over each project in the Program,
- § 3.7.4 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of changes or proposed changes in the scope of design or construction for projects in the Program, and the corresponding contracts for design and construction.
- § 3.7.5 The Program Manager shall assist the Owner in developing and implementing protocols for the review and processing of applications for payment for the Program and the projects in the Program.
- § 3.7.6 The Program Manager shall assist the Owner in selecting the dispute resolution procedures to be included in the various agreements between the Owner or the Program Manager and consultants and contractors for disputes arising out of the Program.
- § 3.7.7 Upon the written request of the Owner, the Program Manager shall evaluate and provide input to the Owner on claims arising out of the Program.
- § 3.7.8 The Program Manager shall assist the Owner in establishing a procedure for tracking and submission of records, warranties, guarantees, and documents pertaining to systems verification and project close-out, for projects in the Program.

ARTICLE 4 ADDITIONAL SERVICES

§ 4.1 Additional Services listed below are not included in Basic Services but may be required for the Program. The Program Manager shall provide the listed Additional Services only if specifically designated in the table below as the Program Manager's responsibility, and the Owner shall compensate the Program Manager as provided in Section 10.3.

(Designate the Additional Services the Program Manager shall provide in the second column of the table below. In the third column indicate whether the service description is located in Section 4.2 or in an attached exhibit. If in an exhibit, identify the exhibit. ALA Contract Document numbers are cited, where applicable, to provide a basis for the

	Responsibility	Location of Service Description
	(Program Manager,	(Section 4.2 below or in an
	Owner or not	exhibit uttached to this document
Services	provided)	and identified below)
§ 4.1.1 Community communications not included in		
Section 3.7.1		
§ 4.1.2 Capital campaign support		

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§	4.1.3	Project Specific Construction Management (C132TM-2009)
§	4.1.4	Assistance with sustainability certifications
§	4.1.5	Affirmative action/diversity compliance and outreach
9	4.1.6	Design Management Services (B171™–2013)
§	4.1.7	Existing facilities analysis
§	4.1.8	Site Selection Analysis (B203 [™] –2007)
§	4.1.9	Economic analysis
§	4.1.10	Project Programming (B202™–2009)
§	4.1.11	Master planning
§	4.1.12	Early procurement of materials and equipment
§	4.1.13	FF&E procurement coordination
ş	4.1.14	Detailed cost estimating
§	4.1.15	Life cycle analysis
§	4.1.16	Move management
		Coordination of hazardous material testing or abatement
§	4.1.18	Other project specific services:
9	4.1.19	Other Program specific services,

§ 4.2 Insert a description of each Additional Service designated in Section 4.1 as the Program Manager's responsibility, if not further described in an exhibit attached to this document,

§ 4.3 Additional Services may be provided after execution of this Agreement, without invalidating this Agreement. Except for services required due to the fault of the Program Manager, any Additional Services provided in accordance with this Section 4.3 shall entitle the Program Manager to compensation pursuant to Section 10.4.

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

- Services necessitated by a change in the Program Information or Initial Information; a change to previous instructions or approvals given by the Owner; or a material change in the Program or projects in the Program including, but not limited to, size, quality, complexity, the Owner's Program Schedule or Program Budget, or procurement or delivery methods in addition to those listed in Section 1.2.6; Services necessitated by the enactment or revision of codes, laws or regulations or official interpretations after the date of this Agreement;
- Preparation for, and attendance at, public presentations, meetings or hearings in excess of () total
- Preparation for, and attendance at, a dispute resolution proceeding or legal proceeding, except where
- the Program Manager is party thereto; Services required to assist in the repair or replacement of any elements of construction on projects in the Program, for any cause except the negligence of the Program Manager; or
- Services required by deficiencies in the performance or default of Owner's consultants or contractors.
- § 4.3.2 If the services covered by this Agreement have not been completed within () months of the date of this Agreement, through no fault of the Program Manager, an extension of the Program Manager's services beyond that time shall be compensated as Additional Services.

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ARTICLE 5 OWNER'S RESPONSIBILITIES

- § 5.1 The Owner shall provide and update information regarding requirements for, and limitations on, the Program in a timely manner, including the information in Article 1; other objectives, schedule constraints and criteria, and site requirements; and any other information either described in Article 5 or required for the Program Manager to perform
- § 5.2 The Owner shall collaborate with the Program Manager to establish and periodically update the Program Budget including (1) the Program Manager's costs, (2) design and constructions costs, (3) the Owner's other costs, and (4) reasonable contingencies related to all of these costs, If the Owner significantly increases or decreases the Program Budget, the Owner shall promptly notify the Program Manager, and in consultation with Program Manager and the Owner's other consultants and contractors, agree to corresponding changes in project scopes, features or quality.
- § 5.3 The Owner shall retain all contractors and consultants necessary to carry out the Program except for those consultants retained by the Program Manager as listed in Section 1.3.2. The Owner shall provide the Program Manager with a copy of all executed agreements between the Owner and its consultants and contractors, and any modifications to those agreements. The Owner shall require that its consultants maintain professional liability insurance and other liability insurance as appropriate to the services provided, and require that its contractors maintain commercial general liability insurance and other liability insurance as appropriate to the services or work provided. The Owner shall require all contractors to name the Program Manager and its consultants as Additional Insureds on all insurance policies where available,
- § 5.4 The Owner shall identify a representative authorized to act on the Owner's behalf with respect to the Program, The Owner shall render decisions in a timely manner in order to avoid unreasonable delay in the orderly and sequential progress of the Program Manager's services,
- § 5.5 The Owner shall furnish surveys to describe physical characteristics, legal limitations and utility locations for the sites included within the Program, and written legal descriptions of those sites. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to an appropriate benchmark at each project location.
- § 5.6 The Owner shall furnish services of geotechnical engineers, which may include but are not limited to test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.
- § 5.7 The Owner shall furnish tests, inspections and reports required by law or the Program, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.
- § 5.8 The Owner shall furnish all legal, insurance, financing, and accounting services, including auditing services, that may be reasonably necessary at any time for the Program to meet the Owner's needs and interests.
- § 5.9 The Owner shall provide, and shall require that its consultants and contractors provide, prompt written notice to the Program Manager if they become aware of any fault or defect in the Program, including errors, omissions or inconsistencies in any documents produced by, or services provided by, the Program Manager.
- § 5.10 In the agreements between the Owner and the Owner's consultants or contractors, the Owner shall include a duty that the consultant or contractor cooperate with the Program Manager and provide information and documents reasonably necessary for the Program Manager to prepare and update the Program Management Plan or as otherwise required for the Program Manager to perform its services.
- § 5.11 Except as otherwise provided in this Agreement, or when direct communications have been specially authorized, the Owner shall endeavor to communicate with the Program Manager's consultants through the Program Manager about matters arising out of or relating to the Program. The Owner shall communicate with its own forces,

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consultants, and contractors, and coordinate its own internal information and communications that are necessary for the Program. The Owner shall notify the Program Manager of any such communication that affects the Program. The Owner shall promptly notify the Program Manager of any direct communications that may affect the Program

- § 5.12 The Owner shall provide the Program Manager access to the project sites and other facilities under the Owner's control and associated with the Program. The Owner shall obligate its contractors to provide the Program Manager access to the project sites wherever work is in preparation or progress.
- § 5.13 For each project in the Program, the Owner shall purchase and maintain or require its contractors to purchase and maintain property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial contract sum, plus the value of subsequent contract modifications and cost of materials supplied or installed by others, comprising total value for the entire project at the site on a replacement cost basis without optional deductibles. These policies shall cover reasonable compensation for Program Manager's services and expenses required as a result of such insured loss.

ARTICLE 6 COPYRIGHTS AND LICENSES

- ARTICLE 6 COPYRIGHTS AND LICENSES § 6.1 The Program Manager assigns to the Owner its rights, including copyright, in its Instruments of Service. The Program Manager shall obtain a similar assignment to the Owner from the Program Manager's consultants consistent with this Agreement. For purposes of this Agreement, Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Program Manager, the Owner, and their consultants and contractors under their respective services agreements. Instruments of Service may include, without limitation studies, surveys, models, sketches, drawings, specifications, and other similar materials
- § 6.2 The Program Manager and Owner warrant that in transmitting any information, including Instruments of Service, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the project.
- § 6.3 The Owner shall have exclusive ownership of all data in the Program Management Information System and the Program Management Plan developed or contributed by the Program Manager or the Program Manager's consultants and contractors. Ownership of the data in the Program Management Information System and the Program Management Plan does not include ownership of any proprietary software developed and owned by the Program Management Plan does not include ownership of any proprietary software developed and owned by the Program Manager and used in connection with the collection, manipulation, or publication of the data in the Program
 Management Information System and the Program Management Plan. Unless the Owner pays the licensing fee
 described in Section 10.7, the Owner's right to use any such proprietary software shall terminate at the time of
 termination of this Agreement. The Program Manager shall take all steps reasonably necessary to allow the Owner to
 exercise the Owner's rights to own and utilize the data in the Program Management Information System and the Project Management Plan after termination of the Owner's rights to use any proprietary software. The Program Manager shall include provisions consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consistent with the provisions in this Section 6.3 in the Program Manager's agreements with the Program Manager's consultants. If the Program Manager rightfully terminates this Agreement for cause as provided in Section 8.4, the Program Manager's obligations under, and the Owner's rights to further use of proprietary software granted in, this Section 6.3 shall terminate. Ownership of data obtained from or compiled, developed or contributed by the Owner's consultants or contractors will be controlled by the terms of the Owner's agreements with those consultants or contractors.

ARTICLE 7 CLAIMS AND DISPUTES

- § 7.1 General
 § 7.1.1 The Owner and Program Manager shall commence all claims and causes of action, whether in contract, tort, or otherwise, against the other arising out of or related to this Agreement in accordance with the requirements of the method of binding dispute resolution selected in this Agreement within the period specified by applicable law, but in any case not more than 10 years after the date of substantial completion of the work on the project out of which the claim arises. The Owner and Program Manager waive all claims and causes of action not commenced in accordance with this Section 7.1.1.
- § 7.1.2 To the extent damages are covered by property insurance required under Section 5.13, the Owner and Program Manager waive all rights against each other and against the contractors, consultants, agents and employees of the other

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for damages, except such rights as they may have to the proceeds of such insurance as set forth Section 5.13. The Owner or the Program Manager, as appropriate, shall require of the contractors, consultants, agents and employees of any of them similar waivers in favor of the other parties enumerated herein.

- § 7.1.3 The Program Manager shall indemnify and hold the Owner and the Owner's officers and employees harmless from and against damages, losses and judgments arising from claims by third parties, including reasonable attorneys' fees and expenses recoverable under applicable law, but only to the extent they are caused by the negligent acts or omissions of the Program Manager, its employees and its consultants in the performance of services under this Agreement, The Program Manager's duty to indemnify the Owner under this provision shall be limited to the available proceeds of insurance coverage.
- § 7.1.4 The Program Manager and Owner waive consequential damages for claims, disputes or other matters in question arising out of or relating to this Agreement. This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination of this Agreement, except as specifically provided in Section 8.7.

§ 7.2 Meet and Confer

- § 7.2.1 Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to a meet and confer session as a condition precedent to mediation.
- § 7.2.2 The Owner and Program Manager shall endeavor to resolve claims, disputes and other matters in question during the meet and confer session. The meet and confer session shall be attended by the Owner and Program Manager or their authorized representatives who shall have the authority to bind the parties. The meet and confer session shall take place within thirty (30) days after a request by either party, unless the parties mutually agree otherwise. Prior to the meet and confer session, the parties shall exchange relevant information that will assist in resolving the claim, dispute or controversy.
- § 7.2.3 If the parties reach a mutually acceptable resolution, they shall prepare appropriate documentation memorializing the resolution. If the parties cannot reach a mutually acceptable resolution, they shall proceed to mediation in accordance with Section 7.3.

- § 7.3.1 Any claim, dispute or other matter in question arising out of or related to this Agreement not resolved by the meet and confer session shall be subject to mediation as a condition precedent to binding dispute resolution.
- § 7.3.2 Unless the parties mutually agree otherwise, the mediation shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Agreement, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of a complaint or other appropriate demand for binding dispute resolution but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an arbitration proceeding is stayed pursuant to this section, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.
- § 7.3.3 The parties shall share the mediator's fee and any filing fees equally. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof
- § 7.3.4 If the parties do not resolve a dispute through mediation pursuant to this Section 7.3, the method of binding dispute resolution shall be the following:

(Check the appropriate hox. If the Owner and Program Manager do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, the dispute will be resolved in a court of competent jurisdiction.)

[X] Arbitration pursuant to Section 7.4 of this Agreement

[] Litigation in a court of competent jurisdiction	
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[] Other: (Specify)

§ 7.4 Arbitration

- § 7.4.1 If the parties have selected arbitration as the method for binding dispute resolution in this Agreement any claim, dispute or other matter in question arising out of or related to this Agreement subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to this Agreement, and filed with the person or entity administering the arbitration.
- § 7.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the claim, dispute or other matter in question would be barred by the applicable statute of limitations. For statute of limitations purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the claim, dispute or other matter in question.
- § 7.4.2 The foregoing agreement to arbitrate and other agreements to arbitrate with an additional person or entity duly consented to by the parties to this Agreement shall be specifically enforceable in accordance with applicable law in any court having jurisdiction thereof.
- § 7.4.3 The award rendered by the arbitrator(s) shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction thereof. The prevailing party shall be entitled to recover its attorneys' fees, costs, and expenses.
- § 7.4.3 The Owner shall include in all contracts with consultants and contractors dispute resolution provisions that match the dispute resolution provisions of this Agreement.

§ 7.4.4 Consolidation or Joinder

- § 7.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).
- § 7.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.
- § 7.4.4.3 The Owner and Program Manager grant to any person or entity made a party to an arbitration conducted under this Section 7.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Program Manager under this Agreement.

TERMINATION OR SUSPENSION

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

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- § 8.2 If the Owner suspends the Program, the Program Manager shall be compensated for services performed prior to notice of such suspension. When the Program is resumed, the Program Manager shall be compensated for expenses incurred in the interruption and resumption of the Program Manager's services. The Program Manager's fees for the remaining services and the time schedules shall be equitably adjusted.
- § 8.3 If the Owner suspends the Program for more than 90 cumulative days for reasons other than the fault of the Program Manager, the Program Manager may terminate this Agreement by giving not less than seven days' written notice.
- § 8.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.
- § 8.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Program Manager for the Owner's convenience and without cause.
- § 8.6 In the event of termination not the fault of the Program Manager, the Program Manager shall be compensated for services performed prior to termination, together with Reimbursable Expenses then due and all Termination Expenses as defined in Section 8.7.
- § 8.7 Termination Expenses are in addition to compensation for the Program Manager's services and include expenses directly attributable to termination for which the Program Manager is not otherwise compensated.
- § 8.8 In the event of termination of this Agreement, the Owner's rights to use information and materials provided by the Program Manager are set forth in Article 6.

ARTICLE 9 MISCELLANEOUS PROVISIONS

- § 9.1 This Agreement shall be governed by the law of the jurisdiction identified below. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 7.4. (Identify the jurisdiction whose laws will govern this Agreement.)
- § 9.2 The Owner and Program Manager, respectively, bind themselves, their agents, successors, assigns and legal representatives to this Agreement. Neither the Owner nor the Program Manager shall assign this Agreement without the written consent of the other, except that the Owner may assign this Agreement to a lender providing financing for the Program if the lender agrees to assume the Owner's rights and obligations under this Agreement.
- § 9.3 If the Owner requests the Program Manager to execute certificates, the proposed language of such certificates shall be submitted to the Program Manager for review at least 14 days prior to the requested dates of execution. If the Owner requests the Program Manager to execute consents reasonably required to facilitate assignment to a lender, the Program Manager shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to the Program Manager for review at least 14 days prior to execution. The Program Manager shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of this Agreement.
- § 9.4 Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or Program Manager.
- § 9.5 Unless otherwise required in this Agreement, the Program Manager shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to, hazardous materials or toxic substances in any form at the project sites.
- § 9.6 The Program Manager shall have the right to include photographs of the projects in the Program among the Program Manager's promotional and professional materials. The Program Manager shall be given reasonable access to the projects to take photographs. However, the Program Manager's materials shall not include the Owner's confidential or proprietary information if the Owner has previously advised the Program Manager in writing of the

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specific information considered by the Owner to be confidential or proprietary. The Owner shall provide professional credit for the Program Manager in the Owner's promotional materials for the Program.

- § 9.7 If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party shall keep such information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 9.7.1.
- § 9.7.1 If the Program Manager or Owner receives information specifically designated by the other party as "confidential" or "business proprietary," the receiving party may disclose such information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. The Party receiving such information may also disclose it to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Program, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of such information as set forth in this Section 9.7.
- § 9.8 Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.
- § 9.9 The Owner agrees not to solicit or hire the Program Manager's employees who are involved with the Program prior to one year after completion of the Program. If the Owner hires a Program Manager's employee involved with the Program prior to one year after completion of the Program, the Owner agrees to pay the Program Manager an amount as set forth below.

(Insert stipulated sum or method of calculation for the amount to be paid to the Program Manager.)

ARTICLE 10 COMPENSATION

§ 10.1 For the Program Manager's Basic Services described under Article 3, the Owner shall compensate the Program Manager as follows:

(Insert amount of, or basis for, compensation, including stipulated sums, hourly or monthly billing rates, direct salary expense plus multiple, or monthly fee.)

§ 10.2 The hourly labor cost rates and billing rates for services of the Program Manager and the Program Manager's consultants, if any, are set forth below. The rates shall be adjusted in accordance with the Program Manager's and Program Manager's consultants' normal review practices.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Employee or Category	Rate
Vice President	\$250.00 / hour
Director of Government Affairs & Business Strategy	\$240,00 / hour
Senior Project Manager	\$235.00 / hour
Project Manager	\$215,00 / hour
Subject Matter Expert	\$235,00 / hour
Preconstruction	\$215.00 / hour
Administrative	\$75,00 / hour
Labor Compliance	\$150.00 / hour
Field Supervision	\$200.00 / hour

§ 10.3 For Additional Services designated in Section 4.1, the Owner shall compensate the Program Manager as

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(Insert amount of, or basis for, compensation. If necessary, list specific services to which particular methods of compensation apply.)

§ 10.4 For Additional Services that may arise during the course of the Program, including those under Section 4.3, the Owner shall compensate the Program Manager as follows: (Insert amount of, or basis for, compensation.)

§ 10.5 Compensation for Additional Services of the Program Manager's consultants when not included in Sections 10.3 and 10.4 shall be the amount invoiced to the Program Manager plus ten percent (10 %), or as otherwise stated

§ 10.6 Compensation for Reimbursable Expenses

- § 10.6.1 Reimbursable Expenses are in addition to compensation for Basic and Additional Services and include expenses incurred by the Program Manager and the Program Manager's consultants directly related to the Program, as follows:
 - Transportation and authorized out-of-town travel and subsistence;
 - Long distance services, dedicated data and communication services, teleconferences;
 - Fees paid for securing approval of authorities having jurisdiction over the projects; Fees paid for testing, surveys or other data obtained at the request of the Owner;

 - Printing, reproductions, plots, standard form documents;
 - Postage, handling and delivery;
 - Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;

 - Professional photography and presentation materials requested by the Owner; Program Manager's consultants' expense of professional liability insurance dedicated exclusively to this Program, or the expense of additional insurance coverage or limits if the Owner requests such insurance in excess of that normally carried by the Program Manager's consultants; All taxes levied on professional services and on reimbursable expenses;

 - Site office expenses, if authorized in advance by the Owner; Customization of the Program Management Information System; and .12
 - Other similar Program-related expenditures.
- § 10.6.2 For Reimbursable Expenses the compensation shall be the expenses incurred by the Program Manager and the Program Manager's consultants plus ten percent (10 %) of the expenses incurred-
- § 10.6.3 If the insurance requirements listed in Section 2.7 exceed the types and limits the Program Manager normally maintains and the Program Manager incurs additional costs to satisfy such requirements, the Owner shall reimburse the Program Manager for such costs as set forth below:

§ 10.7 Compensation for Use of Program Manager's Proprietary Software

If the Owner terminates the Program Manager for its convenience under Section 8.5, or the Program Manager terminates this Agreement under Section 8.3, or upon completion of the Program Manager's services under this Agreement, the Owner shall pay a licensing fee, as compensation for the Owner's continued use of the Program Manager's proprietary software developed and owned by the Program Manager in accordance with Section 6.3, as

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§ 10.8 Payments to the Program Manager

§ 10.8.1 An initial payment of (S) shall be made upon execution of this Agreement and is the minimum payment under this Agreement. It shall be credited to the Owner's account in the final invoice.

§ 10.8.2 Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed. Payments are due and payable upon presentation of the Program Manager's invoice. Amounts unpaid fifteen (15) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Program Manager.

(Insert rate of monthly or annual interest agreed upon.)

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

§ 10.8.4 Records of Reimbursable Expenses, expenses pertaining to Additional Services, and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of three years after the termination or completion of this Agreement,

ARTICLE 11 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Agreement are as follows:

ARTICLE 12 SCOPE OF THE AGREEMENT

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

- § 12.2 This Agreement is comprised of the following documents listed below:
 .1 AIA Document C171TM-2013, Standard Form Agreement Between Owner and Program Manager
 - AIA Document E203TM-2013. Building Information Modeling and Digital Data Protocol Exhibit, if completed, or the following:
 - Other documents: (List other documents, if any, including additional scopes of service forming part of the Agreement.)

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

OWNER (Signature)

George Bass - Mayor

PROGRAM MANAGER (Signature)

Roy Anderson, III - President/CEO

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There came on for discussion Tax Abatement Ordinance, whereupon no action was taken.

At the request of Mayor Bass, Alderman Parker made motion seconded by Alderman Frazer and unanimously carried to declare an Executive Session for the transaction of public business, to wit: To discuss with and seek legal advice and counsel of the City Attorney regarding potential litigation.

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The question having received the affirmative voice vote of all of the Aldermen present and voting, the Mayor declared the motion carried, whereupon the Board entered into Executive Session

The meeting resumed in Open Session, whereupon no action was taken. *****

Based on the recommendations of Department Heads and certification by the Civil Service Commission, Alderman Parker made motion seconded by Alderman Frazer and unanimously carried to approve personnel matters, as follows: Police Department:

- ➤ Retirement, Dispatcher 1st Class Donna McArthur, effective December 31, 2020
- > Transfer, Police Officer 2nd Class Danny Gilkerson, Jr. PS-7-B, effective January 1, 2021
- > Step Increase, Dispatcher 1st Class Amy Johnson, PS-3-X, effective January 1, 2021
- Step Increase, Lieutenant Kipper Thomas, PS-12-XVIII, effective January 16, 2021
- Step Increase, Detective Eli Zacharias, PSA-10-III, effective January 1, 2021

Alderman Frazer made motion seconded by Alderman Robertson and unanimously carried to accept the November 2020 Revenue/Expense Report, as submitted.

Alderman Johnson made motion seconded by Alderman Frazer and unanimously carried to schedule interviews with the candidates for School Board Trustee.

There came on for consideration at a duly constituted meeting of the Mayor and Board of Aldermen of the City of Long Beach held on the 15th day of December, 2020, the following Resolution, which was reduced to writing and presented in advance of the meeting for reading and examination:

A RESOLUTION BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, AUTHORIZING AND DIRECTING THE CITY CLERK TO ENTER INTO AN AGREEMENT WITH THE MUNICIPAL PARTY EXECUTIVE COMMITTEES OF THE DEMOCRATIC AND REPUBLICAN PARTIES TO PERFORM CERTAIN DUTIES IN PRIMARY ELECTIONS; AND FOR RELATED PURPOSES.

WHEREAS, pursuant to Mississippi Code Annotated Sections 23-15-263, as amended, the respective Municipal Party Executive Committees of the Democratic and Republican parties are responsible for conducting all Primary Elections (Miss. Code Ann. § 23-15-263 (1972)); and

WHEREAS, during the 2001 Legislative Session, Senate Bill 2523 and House Bill 1220 enabled the Municipal Party Executive Committees to enter into written agreements with Municipal Election Commissions and/or Municipal Clerks to perform certain specified duties in a Primary Election, such agreements being limited to the following six major areas concerning primaries that may be performed by Election Commissions and/or Municipal Clerks following the timely signing of such agreement: (1) appointing poll managers; (2) training of poll managers; (3) distributing ballot boxes; (4) printing ballots; (5) distributing ballots to poll managers; and (6) canvassing and certifying the election. (Miss. Code Ann. §§ 23-15-239; 23-15-265; 23-15-267; 23-15-333;

23-15-335; 23-15-597 (1972))

WHEREAS, it is the desire of the said Municipal Party Executive Committees of the Democratic and Republican parties to enter into such an agreement as contemplated and allowed by law with the City Clerk of the City of Long Beach and the Municipal Election Commission; and

WHEREAS, The Mayor and Board of Aldermen of the City of Long Beach, Mississippi, having made due investigation therefore, do now find, determine, adjudicate and declare that it is in the best interests of the citizens of the City of Long Beach, Mississippi to enter into such an agreements;

NOW THEREFORE, BE IT RESOLVED BY THE MAYOR AND BOARD OF ALDERMEN OF THE CITY OF LONG BEACH, MISSISSIPPI, AS FOLLOWS:

Section 1. That the City Clerk is hereby authorized and directed to enter into an agreement regarding and providing for the administration and holding of municipal primaries in substantially the form as attached hereto with the Municipal Party Executive Committees of the Democratic and Republican parties.

Section 2. That upon execution of same, such agreement be thereafter spread upon the minutes of the Municipality and carried out in accordance with law.

The above and foregoing Resolution was introduced in writing by Alderman Frazer who moved its adoption, seconded by Alderman Robertson, and after discussion, the question being put to a roll call vote by the Mayor, the result was as follows:

Alderman Bernie Parker	voted	Aye
Alderman Ron Robertson	voted	Aye
Alderman Angie Johnson	voted	Aye
Alderman Tricia Bennett	voted	Aye
Alderman Donald Frazer	voted	Aye
Alderman Mark Lishen	voted	Aye
Alderman Timothy McCaffrey	voted	Absent, not voting

The question having received the affirmative vote of all the Aldermen present and voting, the Mayor declared the motion carried adopted this, the 15th day of December, 2020.

APPROVED:

GEORGE L. BASS, MAYOR

ATTEST:

STACEY DAHL CRY CLERK

M.B. 94 12.15.20 Reg

Alderman Parker made motion seconded by Alderman Frazer and unanimously carried to approve the following contract with Overstreet & Associates for Engineering Services on the Trautman Drainage Basin Wastewater Improvements Project:

SHORT FORM OF AGREEMENT BETWEEN OWNER AND ENGINEER FOR PROFESSIONAL SERVICES

THIS IS A	AN AGREEMENT,	effective as of	August 5, 2020	_("Effective Date") between	City of Long
3each	("Owner") and	Overstreet &	Associates, PLLC	("Engineer").		

Engineer agrees to provide the services described below to Owner for the demolition of an existing pump station at the intersection of Klondyke Rd. and Railroad St., and the construction of a new pump station and force main which will discharge at or near the Nicholson Ave. pump station, along with other related miscellaneous sewer system improvements and all associated restoration, all more generally described as the Trautman Drainage Basin Wastewater Improvements Project. ("Project")

Description of Engineer's Services: <u>Provide design services for the Project, including the creation of Bid Documents, coordination with the City during the Bid process, acquisition of any needed permits, assistance to the City for funding agency project administration, and other miscellaneous professional services, including topographical survey, construction administration services, construction inspection services, creation of record drawings, and post-completion certifications as needed to complete the work.</u>

Owner and Engineer further agree as follows:

1.01 Basic Agreement

A. Engineer shall provide, or cause to be provided, the services set forth in this Agreement, and Owner shall pay Engineer for such Services as set forth in Paragraph 9.01.

2.01 Payment Procedures

- A. Preparation of Invoices. Engineer will prepare a monthly invoice in accordance with Engineer's standard invoicing practices and submit the invoice to Owner.
- B. Payment of Invoices. Invoices are due and payable within 45 days of receipt. If Owner fails to make any payment due Engineer for services and expenses within 45 days after receipt of Engineer's invoice, the amounts due Engineer will be increased at the rate of 1.0% per month (or the maximum rate of interest permitted by law) from said forty-fifth day. In addition, Engineer may, without liability, after giving seven days written notice to Owner, suspend services under this Agreement until Engineer has been paid in full all amounts due for services, expenses, and other related charges. Payments will be credited first to interest and then to principal.

3.01 Additional Services

- A. If authorized by Owner, or if required because of changes in the Project, Engineer shall furnish services in addition to those set forth above.
- B. Owner shall pay Engineer for such additional services as follows: For additional services of Engineer's employees engaged directly on the Project an amount equal to the cumulative hours charged to the Project by each class of Engineer's employees times standard hourly rates for each applicable billing class; plus reimbursable expenses and Engineer's consultants' charges, if any. Reimbursable expenses shall be approved by Owner prior to incurrence by Engineer.

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4.01 Termination

- A. The obligation to provide further services under this Agreement may be terminated:
 - 1. For cause,
 - a. By either party upon 30 days written notice in the event of substantial failure by the other party to perform in accordance with the Agreement's terms through no fault of the terminating party.
 - b. By Engineer:
 - upon seven days written notice if Engineer believes that Engineer is being requested by Owner to furnish or perform services contrary to Engineer's responsibilities as a licensed professional; or
 - upon seven days written notice if the Engineer's services for the Project are delayed or suspended for more than 90 days for reasons beyond Engineer's control.
 - Engineer shall have no liability to Owner on account of such termination.
 - c. Notwithstanding the foregoing, this Agreement will not terminate as a result of a substantial failure under paragraph 4.01.A.1.a if the party receiving such notice begins, within seven days of receipt of such notice, to correct its failure and proceeds diligently to cure such failure within no more than 30 days of receipt of notice; provided, however, that if and to the extent such substantial failure cannot be reasonably cured within such 30 day period, and if such party has diligently attempted to cure the same and thereafter continues diligently to cure the same, then the cure period provided for herein shall extend up to, but in no case more than, 60 days after the date of receipt of the notice.
- 2. For convenience, by Owner effective upon the receipt of notice by Engineer.
 B. The terminating party under paragraphs 4.01.A.1 or 4.01.A.2 may set the effective date of termination at a time up to 30 days later than otherwise provided to allow Engineer to demobilize personnel and equipment from the Project site, to complete tasks whose value would otherwise be lost, to prepare notes as to the status of completed and uncompleted tasks, and to assemble Project materials in orderly files.

5.01 Controlling Law

A. This Agreement is to be governed by the law of the state in which the Project is located.

5.01 Successors, Assigns, and Beneficiaries

- A. Owner and Engineer each is hereby bound and the partners, successors, executors, administrators, and legal representatives of Owner and Engineer (and to the extent permitted by paragraph 6.01.B the assigns of Owner and Engineer) are hereby bound to the other party to this Agreement and to the partners, successors, executors, administrators, and legal representatives (and said assigns) of such other party, in respect of all covenants, agreements, and obligations of this Agreement.
- B. Neither Owner nor Engineer may assign, sublet, or transfer any rights under or interest (including, but without limitation, moneys that are due or may become due) in this Agreement without the written consent of the other, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement.

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7.01 General Considerations

- A. The standard of care for all professional engineering and related services performed or furnished by Engineer under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. Engineer makes no warranties, express or implied, under this Agreement or otherwise, in connection with Engineer's services. Engineer and its consultants may use or rely upon the design services of others, including, but not limited to, contractors, manufacturers, and suppliers.
- B. Engineer shall not at any time supervise, direct, or have control over any contractor's work, nor shall Engineer have authority over or responsibility for the means, methods, techniques, sequences, or procedures of construction selected or used by any contractor, for safety precautions and programs incident to a contractor's work progress, nor for any failure of any contractor to comply with laws and regulations applicable to contractor's work.
- C. Engineer neither guarantees the performance of any contractor nor assumes responsibility for any contractor's failure to furnish and perform its work in accordance with the contract between Owner and such contractor.
- D. Engineer shall not be responsible for the acts or omissions of any contractor, subcontractor, or supplier, or of any contractor's agents or employees or any other persons (except Engineer's own employees) at the Project site or otherwise furnishing or performing any of construction work; or for any decision made on interpretations or clarifications of the construction contract given by Owner without consultation and advice of Engineer.
- E. The general conditions for any standard design/bid construction contract documents prepared hereunder are to be the "Standard General Conditions of the Construction Contract" as prepared by the Engineers Joint Contract Documents Committee (No. C-700, 2002 Edition).
- F. All design documents prepared or furnished by Engineer are instruments of service, and Engineer retains an ownership and property interest (including the copyright and the right of reuse) in such documents, whether or not the Project is completed.
- G. To the fullest extent permitted by law, Owner and Engineer (1) waive against each other, and the other's employees, officers, directors, agents, insurers, partners, and consultants, any and all claims for or entitlement to special, incidental, indirect, or consequential damages arising out of, resulting from, or in any way related to the Project, and (2) agree that Engineer's total liability to Owner under this Agreement shall be limited to \$50,000 or the total amount of compensation received by Engineer, whichever is greater.
- H. The parties acknowledge that Engineer's scope of services does not include any services related to a Hazardous Environmental Condition (the presence of asbestos, PCBs, petroleum, hazardous substances or waste, and radioactive materials). If Engineer or any other party encounters a Hazardous Environmental Condition, Engineer may, at its option and without liability for consequential or any other damages, suspend performance of services on the portion of the Project affected thereby until Owner: (i) retains appropriate specialist consultants or contractors to identify and, as appropriate, abate, remediate, or remove the Hazardous Environmental Condition; and (ii) warrants that the Site is in full compliance with applicable Laws and Regulations.

8.01 Total Agreement

A. This Agreement (consisting of pages 1 to 7 inclusive together with any expressly incorporated appendix), constitutes the entire agreement between Owner and Engineer and supersedes all prior written or oral understandings. This Agreement may only be amended, supplemented, modified, or canceled by a duly executed written instrument.

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9.01 Payment

- Using the procedures set forth in paragraph 2.01, Owner shall pay Engineer as follows:
 - Basic Services.
 - Basic Services will be compensated on a lump sum amount of \$48,000, based on the following assumed distribution of compensation:

-		
Preliminary	Design Phase	25%
Final Design	n Phase	35%
Permitting		10%
Bidding and	Negotiating Phase	5%
Construction	n Phase	25%
Total		100%

- 2. Topographical Surveys.
 - For preparation of topographical survey data by ENGINEER's personnel or subconsultants, a lump sum amount of \$8,000.
- 3. Construction Inspection Services.
 - a. Resident Project Representative Services and Post Construction Services. For services of ENGINEER's Resident Project Representative, an amount equal to the cumulative hours charged to the Project by each class of ENGINEER's employees times Standard Hourly Rates for each applicable billing class for all Resident Project Representative services performed on the Project, plus Reimbursable Expenses and ENGINEER's Consultant's charges, if any.
 - Total fees for construction inspection services are currently estimated at \$48,000. This total fee will not be exceeded without prior written authorization.
- Hourly Rates for services billed on the basis of time.
 - 1. The Engineer's Standard Hourly Rates are attached as Appendix 1.
 - Overtime pay (i.e., hours spent on the project in excess of 40 hours per calendar week),
 if any, for non-exempt employees shall be paid at an amount equal to the cumulative
 overtime hours charged times 1.5 multiplied by the standard hourly rates for each
 applicable billing class for all services performed during overtime hours.
 - The Standard Hourly Rates may be adjusted annually (as of September 2019) to reflect equitable changes in the compensation payable to the ENGINEER.
- C. Where Engineer is entitled to compensation for the charges of Engineer's Consultants, those charges shall be the amounts billed by Engineer's Consultants to Engineer times a factor not exceeding 1.1.
- D. The Required Attachments for RESTORE Oil Spill Impact Component Professional Services Contracts (NON-STATE AGENCIES) are hereby made part of this Contract and included as Appendix 2.
- E. Engineer shall prepare and submit invoices to the Owner in accordance with Engineer's standard accounting and invoicing practices.
- F. Engineer's services as defined in the "Description of Engineer's Services" will continue through construction completion and project closeout. Engineer proposes the following estimated schedule for completion of the various phases of the work:

Complete Topo Survey Complete Preliminary Design Complete Final Design 30 days from date of execution of this Contract 90 days from date of execution of this Contract 120 days from date of execution of this Contract

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement, the Effective Date of which is indicated on page 1.

OWNER: City of Long Beach

George Bass

Date Signed: 12 | 15 | 2020

Address for giving notice: P.O. Box 929 Long Beach, MS 39560 ENGINEER: Overstreet & Associates, PLLC.

F. Jason Overstreet, P.E. President

Date Signed: 7/31/2020

License No./State: 18601/MS

Address for giving notice: 161 Lameuse St., Suite 203 Biloxi, MS 39530

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Appendix 1

OVERSTREET & ASSOCIATES STANDARD HOURLY RATES SCHEDULE

EFFECTIVE SEPT. 4, 2018

Position	Billing Rate
Principal	\$150.0
Senior Professional Engineer	\$145.0
Professional Engineer	\$130.00
Engineer Intern	\$95.00
CADD Technician III / Designer	\$90.00
CADD Technician II	\$80.00
CADD Technician I	\$70.00
Inspector III	\$80.00
Inspector II	\$70.00
Inspector I	\$60.00
Project Technician	\$65.00
Professional Land Surveyor	\$100.00
Sr. Survey Crew Chief	\$85.00
Survey Technician II	\$70.00
Survey Technician I	\$55.00
iurvey Crew III	\$175.00
urvey Crew II	\$130.00
urvey Crew I	\$110.00

Appendix 2

Required Attachments for RESTORE Oil Spill Impact Component Professional Services Contracts (NON-STATE ANGECIES)



Required Attachments for RESTORE Oil Spill Impact Component Professional Services Contracts

Non-State Agencies — Template version 08.03.2020

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

The "Required Attachments for RESTORE Oil Spill Impact Component Professional Services Contracts" is not intended to represent all requirements and obligations that may be applicable to this contract. This contract is subject to the terms and conditions of the Sub-Award Agreement between the Mississippi Department of Environmental Quality ("MDEQ") 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, 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, 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
- MDEQ SUB-AWARD TERMS AND CONDITIONS FOR CONTACTED PARTIES
- APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS
- PROCUREMENT OF RECOVERED MATERIALS
- CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN'S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
- SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS
- MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008 (Miss. Code Annotated §§71-11-1, et seq.)
- EXAMPLE OF E-VERIFY CERTIFICATION LETTER
- SUBCONTRACTOR LISTING FORM

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

CERTIFICATIONS RELATED TO RESTORE ACT OIL SPILL IMPACT COMPONENT FUNDING

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

- This project is funded in whole or in part with grant funding from the RESTORE Council
 and the Mississippi Department of Environmental Quality 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 Sub-Award Terms and Conditions for Contracted Parties, 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.
- Any contract awarded will be subject to the laws and regulations of the United States and the State of Mississippi.

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.

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

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RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)



RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

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 (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.

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."

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

.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 Principals 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;
- 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
- 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:

- 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
- 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.
- Dissemination Activities: Describe any activities to disseminate or publicize results of the activity, project, or program, if applicable.
- 5. Monitoring:
 - 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.
- 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.

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.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.
- 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.

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- 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:
 - 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;
 - 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
 - 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.

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.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.).
 - 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."
 - 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.
- 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)² 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).
 - 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.
 - 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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² Department of Treasury's Automated Standard Application for Payment (ASAP) system - 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.
 - 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

- 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).
- All program income must be documented in the Federal financial report submitted to the Council for the period in which the income was earned.

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.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.
 - 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."
 - 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."
 - 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

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cumulative amount of such direct cost transfers exceeds ten percent of the total budget3 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.
 - 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."
- 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. 200.414(c) are met.
 - 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:

 3 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) = {[Σ (negative variances)] / total award budget} x 100.

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- 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
- 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:
 - 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

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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.
 - The Council or pass-through entity must include start and end dates of the period of performance in the Federal award.
 - 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

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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.

INTERNAL CONTROLS D.

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

- 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" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework,"5 issued by the Committee of Sponsoring Organizations of the Treadway Commission
- b. Must comply with Federal statutes, regulations, and the terms and conditions of the Federal award.
- Must evaluate and monitor the non-Federal entity's compliance with statute, regulations and the terms
- d. Must take prompt action when instances of noncompliance are identified including noncompliance
- 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.

PROPERTY STANDARDS

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

⁴ "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.

5 "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.

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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

- 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:
 - 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

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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 property⁶ 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."
- 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.
 - 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.
 - 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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⁶ 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

- Title to intangible⁷ 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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⁷ 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:
 - 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 findings⁸ 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 data⁹ 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

⁸ Published research findings (as defined by 2 C.F.R. § 200.315(e)(2)) means findings are published in a peerreviewed 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.

research findings in support of an agency action that has the force and effect of law.

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.

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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"

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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

- 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:
 - 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;
 - 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);
 - All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients (if applicable);
 - 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;
 - 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.

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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. ¹⁰ 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.
 - 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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 $^{^{10}\} Federal\ Audit\ Clearinghouse\ website\ -\ \underline{http://harvester.census.gov/sac/},\ verified\ on\ 6/5/2015.$

- 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 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:
 - 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.
 - 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.

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DEBTS J.

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).

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 <u>Department of the Treasury's Current Value of Funds Rate (CVFR). 11</u> The CVFR is published by the Department of the Treasury in the <u>Federal Register 12</u> and in the <u>Treasury Financial Manual Bulletin</u>. 13 The assessed rate shall remain fixed for the duration of the
- 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.

https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr home.htm, verified 8/18/2015.

Tederal Register website - http://www.goo.gov/fdsys/browse/collection.action?collectionCode=FR and http://www.federalregister.gov/, verified 8/18/2015.

Treasury Financial Manual Bulletin website - http://tfm.fiscal.treasury.gov/v1/bull.html, verified 8/18/2015.

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¹¹ Department of the Treasury's Current Value of Funds Rate (CVFR) webpage

.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 influence¹⁴ 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.

¹⁴ 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.

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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:
 - 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.
 - 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.
 - 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."

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- 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.
- 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.
- 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.
- 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:
 - By the Council or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal award;
 - By the Council or pass-through entity for cause;
 - 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
 - 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 to the Council or pass through entity may terminate the Federal Federal award was made, the Council or pass-through entity may terminate the Federal award in its entirety.
 - 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:
 - 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.
 - 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 Debarmant. 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 applicable."
- 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:

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- 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 passthrough entity must provide the best information available to describe the Federal award and

 - Subrecipient name (which must match the registered name in DUNS);
 Subrecipient's DUNS number (see 2 C.F.R. § 200.32 "Data Universal Numbering ii. System (DUNS) number");
 - iii.
 - Federal Award Identification Number (FAIN);
 Federal Award Date (see 2 C.F.R. § 200.39 "Federal award date");
 Subaward Period of Performance Start and End Date; iv.

 - 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;
 - Federal award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
 - Name of Federal awarding agency, pass-through entity and contact information for awarding official:
 - 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;
 - Identification of whether the award is for research and development (R&D); and xii.
 - 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").
- 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 target and conditions of the subaward and that subaward 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:
 - 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.

 Issuing a management decision for audit findings pertaining to the Federal award iii. 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:

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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:
 - 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.
 - 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

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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.
- 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 15 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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¹⁵ 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

 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

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

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

- 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

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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.

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,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.

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.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. 16

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.

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

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.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.

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.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 identity 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.

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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.

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. 17 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. 18
- 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.

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

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.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 of the Council's final determination.

.10 Publications, Videos, Signage and Acknowledgment of Sponsorship

- 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).
- 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.
- 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

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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

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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
- This clause applies to the extent that this financial assistance award involves access to exportcontrolled 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

- 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.
- 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 exportcontrolled 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

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International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals

- 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.
 - 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). 15

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;

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.l 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;
 - 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

19 See 2 C.F.R. § 175.15(b) - http://www.gpo.gov/fdsys/pkg/CFR-2012-title2-vol1/pdf/CFR-2012-title2-vol1sec175-15.pdf, verified 8/18/2015.

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- 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.
 - 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
 - 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:
 - Employee means either:
 - An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
 ii. 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 subjection 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;
 - 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).
 - 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)
- 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 <u>USA Spending website</u>. Recipients and subrecipients must include the following required data elements in their application:

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²⁰ USASpending.gov website - www.USASpending.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 of the Compensation of the Compensation of the Compensation of the Compensation of the Compensation. 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. 21

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

- I. Reporting Subawards and Executive Compensation.
- 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).
 - 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).²²
 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.) 2010.)
 - 3. What to report. You must report the information about each obligating action that the submission instructions posted at the FSRS website specify.
 - Reporting Total Compensation of Non-Federal Entity Executives.
 - 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;

 - 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

²¹ 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.
 ²² Federal Funding Accountability and Transparency Act Subaward Reporting System - http://www.fsrs.gov.

verified 8/18/2015.

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- 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.²³)
- 2. Where and when to report. You must report executive total compensation described in paragraph b.1 of this award term:
 - As part of your registration profile in the System for Award Management (SAM),24 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.
- - 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.

 - 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. 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;

²³ U.S. Security and Exchange Commission Executive Compensation "Fast Facts" - http://www.sec.gov/answers/execomp.htm, verified on 8/18/2015.
²⁴ System for Award Management (SAM) - https://www.sam.gov, verified on 8/18/2015.

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- 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.
- 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.
 - 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.

 Subrecipient means an entity that:
- - . 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. 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.
 - 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.

 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.
 - 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
 - 2. Requirement for unique entity identifier. If you are authorized to make subawards under this award, you:
 - 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.
 - 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:
 - 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. 25
 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.
 - 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.
 - 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.

- 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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²⁵ 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.

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MDEQ SUB-AWARD TERMS AND CONDITIONS FOR CONTRACTED PAR	RTIES
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ATTACHMENT F

SUB-AWARD TERMS AND CONDITIONS FOR CONTRACTED PARTIES

1. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The Contracted Party certifies that (a) it is either a 1) state agency, 2) a validly organized business that is authorized to do business in the state of Mississippi, 3) a nongovernmental organization, or 4) political subdivision of the state of Mississippi with valid authority to enter into this agreement and; (b) entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

2. DEBARMENT AND SUSPENSION

Contractor/Contracted Parties certifies to the best of its knowledge and belief, that it:

- A. is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transaction by any federal department or agency or any political subdivision or agency of the State of Mississippi;
- B. has not, within a three-year period preceding this Agreement, been convicted of or had a civil judgment rendered against it for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state, or local) transaction or contract under a public transaction;
- C. has not, within a three-year period preceding this agreement, been convicted of or had a civil judgment rendered against it for a violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- D. is not presently indicted for or otherwise criminally or civilly charged by a governmental entity (federal, state or local) with commission of any of these offenses enumerated in paragraphs two (2) and (3) of this certification; and,
- E. has not, within a three-year period preceding this Agreement, had one or more public transactions (federal, state, or local) terminated for cause or default.

This agreement is subject to 31 C.F.R. Part 19.

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3. INDEMNIFICATION

To the extent allowed by state law, Contracted Party agrees to indemnify and save, release and hold harmless the State of Mississippi, the Commission on Environmental Quality, MDEQ, all of their employees and officers, and the Department's contractors from and against any and all claim, demand, cause of action, liability, loss, damage, injury, suit, judgment, debt and cost, including attorney's fees or expenses on the part of any Contracted Party, their agents or employees or any other parties arising out of or incident to, any and all Work under the terms of this Agreement.

4. RELATIONSHIP STATUS

The Contracted Party acknowledges and agrees that MDEQ is not a party, in any manner whatsoever, to any contract between the SUB-RECIPIENT and the construction contractor(s), engineer(s), attorney(s), equipment supplier(s), contractor(s), or between any other parties of any kind whatsoever (hereinafter collectively referred to as "vendor"). The SUB-RECIPIENT and Contracted Party also acknowledge and agree that any benefit to vendors contracting with the SUB-RECIPIENT or Contracted Parties arising from, or associated with this Agreement is strictly incidental and all such vendors are not, and are not intended to be considered as third party beneficiaries under any agreement between MDEQ and the SUB-RECIPIENT.

Upon execution of any contract between the SUB-RECIPIENT and any other party in regard to the project, MDEQ does not assume any authorities, duties, responsibilities, or liabilities under such contract. The SUB-RECIPIENT and Contracted Party shall not have any authority to bind or otherwise obligate MDEQ, directly or indirectly, under any contract or agreement between the SUB-RECIPIENT and any other party. The SUB-RECIPIENT, Contracted Party and its vendors acknowledge and agree that any action taken by MDEQ in its role of grantor, or in its separate and distinct role as regulator shall not in any way change or alter its position as that of grantor.

MDEQ does not have any authority, duty, responsibility, or liability in contract claims or dispute identification, negotiation, resolution, or any other actions regarding contract claims under the contract(s) between the SUB-RECIPIENT and any other party. The SUB-RECIPIENT and the Contracted Party acknowledge and agree that MDEQ is not obligated to review, comment on, approve, or discuss the merits of any contract claims presented by or to any party. Any MDEQ reviews, approvals, observations, presence at meetings, written communications, verbal communications or other actions are not to be interpreted as addressing the merits of any claims, nor are they to be construed as interpreting the contract between the SUB-RECIPIENT and the Contracted Party or any other parties.

5. ACCESS TO RECORDS

Treasury, the Treasury Office of Inspector General, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have the right of timely and unrestricted access to any of Contracted Party's books, documents, papers, and other records, including electronic records, which are maintained or produced as a result of the agreement and Project for the purpose of making audits, investigations, examinations, excerpts, transcripts, and copies of such documents.

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This right also includes timely and reasonable access to the SUB-RECIPIENT's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.

6. RECORD RETENTION AND RIGHT TO AUDIT

The Contracted Party shall maintain and retain books, documents, papers, financial records, and other records, including electronic records, which are maintained or produced as a result of the agreement and the Project. These records must be retained for a minimum of three years after final payment under the agreement is made. These records shall be made available during the term of the agreement and the subsequent three-year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General and Treasury. If any litigation, claim, investigation, or audit relating to Federal Award No. RDCGR470031-01-00 ("Award") or an activity funded under the Award 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.

7. RIGHT TO INSPECT WORK; SITE ACCESS

Treasury, the Treasury Office of Inspector General, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants, and Departments and Agencies of the State of Mississippi, and any of their duly authorized representatives', shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all work hereunder.

8. CONFLICT OF INTEREST

The Contracted Party covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described Project or any parcels therein, where applicable, or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contracted Party further covenants that, in the performance of this agreement, no person having any such interest shall be employed.

The Contracted Party agrees to establish safeguards to prohibit employees from using positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have a family, business, or other tie.

9. COOPERATION & EVALUATION

Both parties agree to assist and cooperate with the MDEQ or its duly designated representatives in the monitoring of the Project or projects to which the agreement relates, and to provide in form and manner approved by MDEQ such monitoring reports, progress reports, and the like as may be required and to provide such reports at the times specified.

Further, both parties agree to cooperate with MDEQ or its duly designated representatives by providing timely responses to all reasonable requests for information to assist in evaluation of the

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accomplishments of the Project and the agreement for a period of ten (10) years after the date on which the Final Reports are provided.

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APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- (A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 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

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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 §200.322 Procurement of recovered materials.

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PROCUREMENT OF RECOVERED MATERIALS

The prime contractor must comply with federal regulations regarding procurement of recovered materials found at 2 CFR §200.322.

2 CFR §200.322 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.

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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:
 - 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 <u>and</u> women's business enterprises.

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

Prior to contract execution, the prime contractor must submit:

- 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 prime contractor must submit the following for subcontracts proposed to be awarded to MBE/WBE enterprises:

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A certification from each MBE and/or WBE firm declaring its status as a MBE or WBE firm. This can be an MDOT, SBA or MDA 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 prime contractor must 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 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.
- Evidence that each Non-MBE/WBE subcontractor selected for the scope of work, 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 was the same for both the MBE/WBE and Non-MBE/WBE.

The contractor may utilize the following resources to assist in MBE/WBE affirmative outreach:

- MDOT Disadvantaged Business Entity (DBE) Website: http://sp.mdot.ms.gov/Civil%20Rights/Pages/DBE.aspx
- MDA Minority Business Enterprise/Women Business Enterprise (MBE/WBE) Directory: https://minority.mississippi.org/MinorityBusinessDirectory.aspx

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.

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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]:

Our company has been engaged to support the above referenced project. We are soliciting a proposal from you for the services described below:

[DESCRIBE SCOPE OF WORK FOR SERVICES BEING SOLICITED FROM MBE/WBE FIRM]

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: [SCOPE OF WORK]

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MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008

TITLE 71. LABOR AND INDUSTRY CHAPTER 11. EMPLOYMENT PROTECTION ACT

Miss. Code Ann. § 71-11-1

§ 71-11-1. Legislative findings

The Legislature finds that when illegal immigrants have been sheltered and harbored in this state and encouraged to reside in this state through the benefit of work without verifying immigration status, these practices impede and obstruct the enforcement of federal immigration law, undermine the security of our borders, and impermissibly restrict the privileges and immunities of the citizens of Mississippi. The Legislature further finds that illegal immigration is encouraged when public agencies within this state provide public benefits without verifying immigration status. The Legislature further finds that the Tenth Amendment to the United States Constitution reserves to the states those powers not delegated to the United States by the Constitution. Therefore, the Legislature declares that it is a compelling public interest of this state to discourage illegal immigration by requiring all agencies within this state to fully cooperate with federal immigration authorities in the enforcement of federal immigration laws. The Legislature also finds that other measures are necessary to ensure the integrity of various governmental programs and services.

TITLE 71. LABOR AND INDUSTRY CHAPTER 11. EMPLOYMENT PROTECTION ACT

Miss. Code Ann. 8 71-11-3

- \S 71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.
- (1) This chapter shall be known as the "Mississippi Employment Protection Act."
- (2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.
- (3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:
- (a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippl.
- (b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.
- (c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.
- (d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996,

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Public Law 104-208, Division C, Section 403(a); 8 USC, Section 1324a, and operated by the United States Department of Homeland Security, known as the E-Verify Program.

- (e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.
- (f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.
- (g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.
- (4) (a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.
- (b) (i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.
- (ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.
- (iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.
- (c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.
- (d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d) (1), as the job category held by the discharged employee.
- (e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.
- (f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.
- (5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did

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not knowingly and willfully accept false documents from the employee.

- (6) (a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.
- (b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.
- (7) (a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.
- (b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.
- (c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.
 - (d) All employers shall meet verification requirements not later than July 1, 2011.
- (e) (i) Any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.
- (ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.
- (iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.
- (f) The Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee.
- (8) (a) There shall be no liability under this section in the following circumstances:
- (i) An employer who hires an employee through a state or federal work program that
 requires verification of the employee's social security number and provides for verification of
 the employee's lawful presence in the United States in an employment-authorized
 immigration status;
- (ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

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- (iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.
- (b) (i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.
 - (ii) This section shall not be construed as an attempt to preempt federal law.
- (c) (i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to Imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$ 1,000.00) nor more than Ten Thousand Dollars (\$ 10,000.00), or both.
- (ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.

MDEQ Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3.2020)

EXAMPLE OF E-VERIFY CERTIFICATION LETTER	
Date	
TO: Project Owner P. O. Box 12345 Anytown, MS 12345	
RE: Compliance with Mississippi Employment Protection Act of 2008 and the United S Illegal Immigration Reform and Immigration Responsibility Act of 1996 (E-Verify	States
Project Name Project Number	
The purpose of this letter is to inform you that(Contractor and/or Subcontractor's Company Name is in compliance with the Mississippi Employment Protection Act of as described in Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature the United States Illegal Immigration Reform and Immigration Responsibility Act of 1996 E-verify registration number is	e and
Attached, for your review, is a copy of the documentation showing our company's participation in the E-Verify program and upon request, copies of employee's certifications be provided as they are kept in the employee's personnel file.	s will
Our company understands if compliance with the above-mentioned Act is not followed consequences may occur as contemplated in that Act.	
Should you have any questions, please do not hesitate to contact me.	
Sincerely,	
President of Company	
you are not already enrolled you may enroll by going to the E-Verify Wei www.uscis.gov/e-verify follow the directions and tutorial.	b site at
Required Attachments for RESTORE Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT (8.3,2020)	75 of 76

SUBCONTR	ACTOR	LISTING	FORM	6.01.27.2020

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.

lines are needed, this form may be duplicated.				
Subcontractor Name	Subcontractor Address	Subcontractor	MBE	WBE
and Contact Person	and Phone Number	DUNS	(Y/N)	(Y/N)
COMPLETED BY: DATE:				
				-
MDEQ Required Attachments for RESTOR	E Oil Spill Impact Prof. Svc. Contracts - LB-TRAUT	(8.3.2020)		76 of 76

Alderman Frazer made motion seconded by Alderman Johnson and unanimously carried to approve the following Contract Amendment with Overstreet & Associates for the Library HVAC Repairs:

161 Lameuse St., Suite 203 Biloxi, MS 39530 228-967-7137



630 Delmas Ave., Suite B Pascagoula, MS 39567 228-967-7137

December 11, 2020

City of Long Beach P.O. Box 929 Long Beach, MS 39560

RE:

Amendment 2020-2 Library HVAC Repairs City Engineering Services

Ladies and Gentlemen

Per the request of the City, we've prepared to perform engineering services for the repair of the Long Beach Library HVAC systems. This includes several meetings on-site to discuss the condition and configuration of the system and some general "scope of work" discussions with Lawrence Stephens, our proposed sub-consultant for the Mechanical Engineering work.

We've attached Mr. Stephens' letter detailing the general plan for the design work, along with a proposed amendment to the Master Services Agreement which provides for our assistance with design, bidding & award, and construction phase services.

If acceptable, we request your approval of this amendment so that the proposed work may proceed.

Sincerely,

David Ball, P.E.

DB:539 Attachment



December 10, 2020

Long Beach Library HVAC Repairs/Replacement Budgets

Having reviewed the HVAC systems at the library we offer the following budgeting to make repairs. The systems are failing and corrosion is the primary culprit leading to the demise of the systems. We offer the following budgeting to repair/replace the systems in the library based on the walk through with Richard Scott, who has maintained the systems.

 Main Library Book Area System: This 20 ton system uses one dual circuit condensing unit for cooling and hot water preheat for heating located on two 10 ton air handlers on the second floor mechanical room. The outdoor unit has the condensing fins falling off with corrosion and various occaisional compressor issues. Most manufacturers will not warranty this arrangement and require a condensing unit married to a indoor unit. The air handlers are squeezed into the mezzanine and hamper maintenance. Demolition and installation is challenged through a tight door into space. The hot water system is heavily corroded and lacks chemical treatment resulting in internal corrosion as well. Recommendation:

Replace system with heat pump, demolish existing system, remove demising wall between air handlers and water heater room for more space. Eliminate heating water system entirely. Replace domestic water heater with single high efficiency instantaneous heater, close up louvers allowing humidity into building.

TOTAL \$39,400.00 PROFESSIONAL FEE @ 5% \$ 2,600.00

 Upstairs Office/Book Area: This area uses a tightly packed 7.5 ton system that overly cools the southeast corner office and service book stacks on south wall. System needs replacement with similar issues as the main library book area.

Recommendation: In lieu of performing a one to one replacement with the office occupant overcooled we should provide a small system to that office and a 4 ton unit to the book stack. This solution requires some ductwork changes but would resolve humidity and cooling issues.

TOTAL \$15,200.00 PROFESSIONAL FEE @ 5% \$ 1,000.00

3. Horizontal Above Ceiling Unit (sreves upstairs SW corner area): This 4 ton unit can be changed like for like with heat pump but the ceiling above the janitor room will be removed for access as there are no access opportunities. The unit is over 20 years old, the outdoor unit has issues as the rest with corrosion and poor efficiency as a result.

Recommendation: Work would replace indoor and outdoor units with new heat pump. Safety pan, emergency drains, and code related devices would be included.

TOTAL \$10,000.00 PROFESSIONAL FEE @ 5% \$ 660.00

les@stephensmecheng.com

228 - 207 - 3322

925 Tommy Munro Dr. Suite B. Biloxi, Mississippi 39532

4. Rear Annex Area Addition: This area has a 15 ton air handler serviced by two 7.5 ton condensing units and electric strip heat for heat. The air handler is tightly pressed into the rear of the room and trapped by electrical gear. The built up air handler is completely corroded in the base with the bottom failing, the air handler was half way submerged in Hurricane Katrina and the salt has compromised the unit. A new door 6'-0" door will be cut on the north side in way of the air handler for demolition and installation. Door hardware can be simple as usage would be limited.
Recommendation: Cut in door opening, remove existing air handler, install new air handler, install door, and replace dual condensers with single dual stage heat pump.

TOTAL
PROFESSIONAL FEE \$ 28,400.00 \$ 1,900.00

SUBTOTAL: 20% O&H: TOTAL \$ 93,000.00 \$ 18,600.00

\$111,600.00 (LESS FEES)

TOTAL ENGINEERING FEES: \$ 6,160.00

AMENDMENT NUMBER 2020-2 TO MASTER AGREEMENT BETWEEN CITY OF LONG BEACH AND OVERSTREET & ASSOCIATES, PLLC.

LIBRARY HVAC REPAIRS

It is agreed to perform the below described services in accordance with the provisions contained in the Master Agreement dated August 7, 2018:

A. SCOPE

- Perform basic services for the design of the removal and replacement of failing HVAC systems at the Long Beach Library complex, inclusive of Mechanical Engineering design by ENGINEER's subconsultant.
- The work may include limited inspection by ENGINEER or Mechanical Engineer ("MechE") during construction, along with visits to the site, and coordination with OWNER, MechE, and Contractor on construction issues.
- It is now anticipated that the Owner will bid all repairs for the main library as the Base Bid, with repairs to the library annex (children's library) as an Alternate Bid.

B. BASIS OF COMPENSATION & TIME OF COMPLETION

- 1. Hourly rates for services will be per the existing agreement.
- Fees for the above described services will be compensated on an hourly basis as indicated below, not to exceed the total indicated without further authorization by the City. Mechanical Engineering/Design will be performed by ENGINEER's subconsultant on a lump sum basis and will be compensated thus.

MechE Engineering/Design	\$6,160 (lump sum)
Bidding, Negotiation, and Award	\$3,000
Construction Admin	\$1,800
ME Inspection	\$2,500
Total	\$13,460

OWNER:

ENGINEER:

CITY OF LONG BEACH, MISSISSIPPI

OVERSTREET & ASSOCIATES, PLLC.

George Bass

Date Signed: 12/15/2026

F Jason Overstreet, P.E. President

MS PE #18601

Date Signed: 12/11/2020

Page 1 of 1

The Mayor apprised the Board that Recreation Director Bob Paul had received a quote of \$1,420 to replace the 8 oak trees on Jeff Davis Avenue that were destroyed by Hurricane Zeta and that we would be moving forward with their replacement.

Alderman Frazer made motion seconded by Alderman Parker and unanimously carried to table the Assessment of Cleaning Fees for 19132 Pineville Road; Cynthia Saucier until the January 5, 2020 meeting.

The Ma	yor recognized the City	Attorney for his report,	whereupon no action	ı was
required or tak	en.			

There being no further business to come before the Mayor and Board of Aldermen at this time, Alderman Frazer made motion seconded by Alderman Robertson and unanimously carried to adjourn until the next regular meeting in due course.

	APPROVED:
	Alderman Donald Frazer, At-Large
	Alderman Ronald Robertson, Ward 1
	Alderman Bernie Parker, Ward 2
	Alderman Angie Johnson, Ward 3
	Alderman Timothy McCaffrey, Jr., Ward 4
	Alderman Mark E. Lishen, Ward 5
	Alderman Patricia Bennett, Ward 6
ATTEST:	Date
——————————————————————————————————————	Clerk