

**RESOLUTION NO. 19-09-85**

**A RESOLUTION OF THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, APPROVING A SUB-RECIPIENT AGREEMENT WITH MONROE COUNTY, FLORIDA TO IMPLEMENT THE CANAL RESTORATION PROJECT WITH ALLOCATIONS FROM MONROE COUNTY'S RESTORE ACT LOCAL POT FUNDING; AUTHORIZING VILLAGE OFFICIALS TO IMPLEMENT THE TERMS AND CONDITIONS OF THE AGREEMENT; AUTHORIZING THE VILLAGE MANAGER TO EXECUTE THE AGREEMENT; AND PROVIDING FOR AN EFFECTIVE DATE**

**WHEREAS**, in 2016, Monroe County (the "County") developed and submitted a Multiyear Implementation Plan ("MYIP") to the United States Department of Treasury ("Treasury") in recognition of funds of money available to the County through the RESTORE Act; and

**WHEREAS**, the MYIP consisted of three initial projects, one of which was the Islamorada, Village of Islands (the "Village") project, 'Canal Water Quality Improvements and Restoration for Canals'; and

**WHEREAS**, in April 2016, the MYIP was accepted by the Treasury, which authorized the County to apply for financial assistance to be used to fund activities and projects consistent with the MYIP; and

**WHEREAS**, on February 4, 2019, the County was awarded a RESTORE Act allocation of One Hundred Twenty-Eight Thousand Three Hundred and Eight Dollars (\$128,308.00), under Federal Award Identification Number 1RDCGR 170077-01-00 to be utilized for the Village Project; and

**WHEREAS**, the Village has requested funds from the County for the Canal Water Quality Improvements and Restoration for Canals project to be used for the design, permitting, construction,

and post-construction monitoring of a gravity flow injection well in Canal 132 (Plantation Lake Estates subdivision); and

**WHEREAS**, the County, acting as a pass-through entity, and the Village desire to enter into a Subrecipient Agreement (the "Agreement"), as attached hereto as Attachment 2, in accordance with 2 C.F.R. Part 200, to allow the Village to utilize its allocated portion of the County's RESTORE Act funds to carry out the project activities for the Canal 132 project in compliance with the MYIP; and

**WHEREAS**, the Village Council of Islamorada, Village of Islands (the "Village Council") has determined that approval of the Agreement with the County is in the best interest of the Village and its residents.

**NOW THEREFORE, BE IT RESOLVED BY THE VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS, FLORIDA, AS FOLLOWS:**

**Section 1. Recitals.** The above recitals are true and correct and incorporated herein by this reference.

**Section 2. Approval of Agreement.** The Village Council hereby approves and ratifies execution of the Agreement with Monroe County for implementation of the Canal Water Quality Improvements and Restoration for Canals project pursuant to Federal Grant number 1RDCGR 170077-01-00.

**Section 3. Authorization of Village Officials.** The Village Manager and/or his designee and the Village Attorney are hereby authorized to take all actions necessary to implement the terms and conditions of the Agreement.

**Section 4. Execution of Agreement.** The Mayor and/or Village Manager are authorized to execute the Agreement on behalf of the Village, to execute any required agreements and/or documents to implement the terms and conditions of the Agreement and to execute any



extensions and/or amendments to the Agreement, subject to the approval as to form and legality by the Village Attorney.

**Section 5. Effective date.** This Resolution shall take effect immediately upon its adoption.

Motion to adopt by Vice Mayor Mike Forster, seconded by Councilwoman Cheryl Meads.

**FINAL VOTE AT ADOPTION**

**VILLAGE COUNCIL OF ISLAMORADA, VILLAGE OF ISLANDS**

Mayor Deb Gillis	YES
Vice Mayor Mike Forster	YES
Councilman Ken Davis	ABSENT
Councilwoman Cheryl Meads	YES
Councilman Jim Mooney	YES

**PASSED AND ADOPTED ON THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2019.**

  
\_\_\_\_\_  
DEB GILLIS, MAYOR

ATTEST:

  
\_\_\_\_\_  
KELLY TOTH, VILLAGE CLERK

APPROVED AS TO FORM AND LEGALITY  
FOR THE USE AND BENEFIT OF ISLAMORADA,  
VILLAGE OF ISLANDS ONLY

  
\_\_\_\_\_  
ROGET V. BRYAN, VILLAGE ATTORNEY

**SUBAWARD AGREEMENT BETWEEN THE ISLAMORADA, VILLAGE OF ISLANDS AND  
MONROE COUNTY, FLORIDA PERTAINING TO THE DIRECT COMPONENT PORTION OF  
THE RESTORE ACT TRUST FUND MONIES ALLOCATED  
TO MONROE COUNTY WITH GRANT NUMBER RDCGR170077**

**THIS SUBAWARD AGREEMENT** (hereinafter "Agreement") is entered into by and between MONROE COUNTY, a political subdivision of the State of Florida, with an address of 1100 Simonton Street, Key West Florida 33040, by and through its Board of County Commissioners, (hereinafter the "COUNTY"), and the municipality of Islamorada, Village of Islands within Monroe County and the State of Florida, with an address of 86800 Overseas Highway, Islamorada, Florida, 33036, (hereinafter the "SUBRECIPIENT"), and having a DUNS number of 054012807, for the receipt of a subaward of funds made available through a federal award to the COUNTY.

**WITNESSETH:**

**WHEREAS**, the COUNTY, recognizing that substantial funds of money could be made available to the COUNTY through the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 under CFDA #21.015 (hereinafter "the RESTORE Act") which established the Gulf Coast Restoration Trust Fund, developed and submitted a Multiyear Implementation Plan to the United States Department of Treasury (hereinafter "TREASURY") pursuant to all applicable rules and requirements; and

**WHEREAS**, said Multiyear Implementation Plan consisted of three (3) initial projects, one of which is the SUBRECIPIENT's project, "Canal Water Quality Improvements and Restoration for Canals in Monroe County (Islamorada)"; and

**WHEREAS**, the Multiyear Implementation Plan was accepted by the TREASURY in April 2016, which authorized the COUNTY to apply for financial assistance from the Gulf Coast Restoration Trust Fund to be used to fund activities and projects consistent with the Multiyear Implementation Plan; and

**WHEREAS**, the COUNTY has been awarded a RESTORE Act allocation of One Hundred Twenty Eight Thousand Three Hundred Eight Dollars and fifty cents (\$128,308.50), under Federal Award Identification Number RDCGR170077, awarded to the COUNTY on 2/24/2019, by the United States Department of Treasury; and

**WHEREAS**, the SUBRECIPIENT has requested funds from the COUNTY for the planning, design, permitting, construction, implementation, and post-construction monitoring of canal water restoration within the municipality of Islamorada, Village of Islands in Monroe County; and

**WHEREAS**, the COUNTY, acting as a pass-through entity, and the SUBRECIPIENT desire to enter into a Subrecipient Agreement in accordance with 2 C.F.R. Part 200, to allow the SUBRECIPIENT to utilize an allocated sum of the COUNTY'S portion of Gulf Coast Restoration Trust Fund to carry out the project activities for the Canal Water Quality Improvements and Restoration for Canals in Monroe County (Islamorada) project in compliance with the Multiyear Implementation Plan; and

**WHEREAS**, Exhibits A, B, C, D, E, and F which are attached and further explain this Subrecipient Agreement are incorporated by reference and made part of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants, promises, and representations contained herein, the parties hereto agree as follows:

**ARTICLE I**  
**RECITALS**

The WHEREAS clauses set forth above are incorporated herein by reference and made part of this Agreement.

**ARTICLE II**  
**PURPOSE AND INTENT**

The COUNTY has received a Federal Award through the Gulf Coast Restoration Trust Fund (CFDA# 21.015, titled: Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States, in the amount of One Hundred Twenty Eight Thousand Three Hundred Eight Dollars And Fifty Cents (\$128,308.50) as of February 24, 2019 to carry out the projects meeting the requirements of 31 C.F.R. Part 34.

The purpose and intent of this Agreement is to allocate a portion of RESTORE Act funds awarded to the COUNTY to the SUBRECIPIENT for reimbursement of qualified expenditures for Canal Water Quality Improvements and Restoration for Canals in Monroe County (Islamorada) project more specifically described in Exhibits A, B, and C.

The SUBRECIPIENT will not provide matching funds. The Subrecipient does not have and will not apply an indirect cost rate.

The terms and conditions of the Federal Award (Exhibit F) apply to this Agreement, in accordance with 2 Code of Federal Regulations (CFR) 200.101(b)1.

**ARTICLE III**  
**STATEMENT OF WORK**

1. *Project.* The Canal Water Quality Improvements and Restoration for Canals in Monroe County (Islamorada) project more particularly described in Exhibit A is the purpose of this Agreement. The project is intended to remedy the high nutrient loading and low dissolved oxygen impairing the waters by addressing the most significant causes of those conditions: accumulated organics, seaweed loading, and poor flushing and tidal flow, thus improving the canals waters and preventing the continued discharge of poor quality water into the nearshore waters of the Florida Keys National Marine Sanctuary.
2. *Budget.* The COUNTY and the SUBRECIPIENT agree that the budget submitted for the Project as shown as part of SUBRECIPIENT's application for the Allocated Sum, one hundred twenty eight thousand three hundred eight dollars and fifty cents (\$128,308.50), attached hereto and incorporated herein as Exhibit C, herein referred to as "Project Budget," shall be the basis for the Allocated Sum.
3. *Schedule.* The timeframe to provide Project services, herein referred to as "Project Schedule," begins on October 1, 2019 and ends on February 1, 2022, as indicated in Exhibit B. The Project Schedule shall be strictly followed by the SUBRECIPIENT in performing and completing the Project.
4. *Qualified expenditures, eligible expenditures, and eligible expenses* shall mean those expenditures or expenses reasonably necessary to complete the Project.

5. *Indirect Cost Rate for Monroe County.* 2 CFR 200.331(a)(1)(xiii) requires that subawards identify the indirect cost rate for the federal award. The COUNTY'S indirect cost rate is 0%.
6. *Indirect Cost Rate for SUBRECIPIENT:* The Subrecipient's indirect cost rate is 0%.

#### **ARTICLE IV**

#### **PERFORMANCE AND SUBCONTRACTS**

1. **Performance Monitoring.** The COUNTY shall monitor the performance of the SUBRECIPIENT against goals and performance standards as required herein. Substandard performance, as reasonably determined by the COUNTY, will constitute noncompliance of this Agreement. If such substandard performance is not corrected by the SUBRECIPIENT within a period of forty-five (45) days after being notified by the COUNTY, in accordance with Article XVI contract suspension or termination procedures may be initiated and enforced in accordance with regulations set forth in 2 C.F.R. Part 200.
2. **A. SUBRECIPIENT's subcontractors.** The SUBRECIPIENT shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The SUBRECIPIENT may subcontract, as necessary, to perform as required by this Agreement. The COUNTY shall not be liable to any subcontractor(s) for any expenses or liabilities incurred under the SUBRECIPIENT's subcontract(s), and the SUBRECIPIENT shall be solely liable to its subcontractor(s) for all expenses and liabilities incurred under its subcontract(s). The SUBRECIPIENT shall take the necessary steps to ensure that each of its subcontractor(s) will be deemed independent contractor(s) and will not be considered or permitted to be agents, servants, joint ventures or partners of the COUNTY.  
  
**B. SUBRECIPIENT's subawardees.** The SUBRECIPIENT shall be responsible for all work performed and all expenses incurred in connection with this Agreement. The SUBRECIPIENT may subaward, as necessary, to perform as required by this Agreement. The COUNTY shall not be liable to any subawardee(s) for any expenses or liabilities incurred under the SUBRECIPIENT's subaward(s), and the SUBRECIPIENT shall be solely liable to its subaward(s) for all expenses and liabilities incurred under its subaward(s). The SUBRECIPIENT shall take the necessary steps to ensure that each of its subawardee(s) will be deemed independent contractor(s) and will not be considered or permitted to be agents, servants, joint ventures or partners of the COUNTY.
3. **Procurement Standards.** All procurement transactions shall be conducted in a manner to provide full and open competition to the maximum extent practical. SUBRECIPIENT must follow the Federal Procurement Standards set forth in 2 CFR 200.318 – 200.326. Bid packages and advertisements shall be subject to COUNTY review and comment before being published. Documentation concerning the selection process for all contracts or subcontracts shall be forwarded to the COUNTY for review and comment prior to award. Within ten (10) working days from receiving documentation from the SUBRECIPIENT, the COUNTY shall submit all comments to the SUBRECIPIENT for consideration.
4. **Laws.** All contracts, subawards, or subcontracts made by the SUBRECIPIENT to carry out the Project herein shall be made in accordance with all applicable Federal, State, and local laws, rules, and regulations stipulated in this Agreement and in strict accordance with all terms, covenants, and conditions in this Agreement. Any worker's services contracted or subawarded hereunder shall be specified by written contract or agreement and shall be subject to each Article set forth in this Agreement.

5. Subcontract and Subaward Monitoring. The SUBRECIPIENT shall monitor all subcontracted and subawarded services on a regular basis to assure contract compliance. Results of monitoring efforts shall be summarized in written reports and supported with documented evidence of follow-up actions taken to correct areas of noncompliance. Such summaries and documents shall be submitted to the COUNTY with each required periodic report.

6. Compliance with Appendix II to Part 200- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards (attached hereto and incorporated by reference).

## **ARTICLE V**

### **CONTRACT LIABILITY**

The COUNTY shall not be liable to any person, firm, or corporation who contracts with, or provides goods or services to, the SUBRECIPIENT in connection with this Agreement, or for debts or claims accruing to such parties against the SUBRECIPIENT; there is no contractual relationship either expressed or implied between the COUNTY and any other person, firm, or corporation supplying any work, labor, services, goods, or materials to the SUBRECIPIENT as a result of its services to the COUNTY hereunder.

## **ARTICLE VI**

### **REIMBURSEMENT**

The SUBRECIPIENT is allocated a total sum of One Hundred Twenty Eight Thousand Three Hundred Eight Dollars and Fifty Cents (\$128,308.50) (hereinafter the "Allocated Sum") by the COUNTY from its RESTORE Act allocation, to be made available to the SUBRECIPIENT for reimbursement of eligible expenditures, in consideration for performance of the project as described in Exhibit A attached hereto and incorporated herein. The total amount of Federal funding (RESTORE Act allocation) obligated by this Agreement and made available to the SUBRECIPIENT shall not exceed One Hundred Twenty Eight Thousand Three Hundred Eight Dollars and Fifty Cents (\$128,308.50).

## **ARTICLE VII**

### **PAYMENT**

Payment by the COUNTY of the Allocated Sum to the SUBRECIPIENT as reimbursement for performance of the Project shall be as follows:

1. The SUBRECIPIENT shall submit to the COUNTY any and all documents verifying the request for reimbursement, herein "Verifying Documents." Verifying Documents shall be submitted to the COUNTY within Forty-five (45) days after the SUBRECIPIENT has paid for the service or performance or supplies from a vendor based on monthly billing by SUBRECIPIENT. Final request for payment shall be submitted no later than thirty (30) days from Project completion. Verifying Documents may include, but are not limited to:

a. Records of staff time, documented time sheets, with signatures of the staff person and a documented official, all applicable cancelled checks (a bank statement will be required if the cancelled checks are not legible), receipts for material and labor, and any invoices chargeable to the Project.

b. A true and correct copy of the SUBRECIPIENT's invoice for eligible expenses requested for reimbursement.

c. Invoices from subawardees, including details of the amounts being invoiced, and copies of cancelled checks, front and back, which have been processed for payment for items that apply to the reimbursement request from the SUBRECIPIENT.

2. Within ten (10) working days of receipt of Verifying Documents, the COUNTY shall, in its sole discretion, determine if the Verifying Documents, or any portion of them, are acceptable and in strict compliance with the purpose, national objective, and laws stated herein and approve them for payment. If, at the sole discretion of the COUNTY, it is determined there are any errors in the Verifying Documents, the COUNTY shall notify the SUBRECIPIENT within ten (10) working days of receipt of the Verifying Documents. The SUBRECIPIENT shall submit corrected Verifying Documents within ten (10) working days of receipt of notice. Payment shall not be made for any Verifying Documents that contain errors.

3. Upon determination by the COUNTY that Verifying Documents are approved, the COUNTY will initiate the payment process in accordance with Section 218.73-74, Florida Statutes, considered due upon receipt by the Clerk & Comptroller's Office, and paid upon approval by the COUNTY. The COUNTY reserves the right to delay any payment request for Verifying Documents containing errors, until such errors are corrected to the satisfaction of the COUNTY.

4. In no event shall the COUNTY be obligated to reimburse for any Verifying Documents older than ninety (90) days from the date of receipt by the SUBRECIPIENT from a vendor.

5. Payments may be contingent upon certification of the SUBRECIPIENT's financial management system in accordance with the standards specified in 2 CFR, 200, as applicable.

6. If applicable, program income must be disbursed before the SUBRECIPIENT requests funds from the COUNTY. The COUNTY will close out the Award when it determines that all applicable administrative actions and all required work for this Award have been completed. Within thirty (30) days after the end of the period of performance, the SUBRECIPIENT must submit any outstanding reports, as well as any required reporting on subawards. The SUBRECIPIENT must liquidate all obligations incurred under this Award no later than 30 calendar days after the end of the period of performance, unless the SUBRECIPIENT requests and with the approval from the COUNTY and TREASURY, an extension. Within 30 days after receipt of the reports in paragraph (a) of this section, the COUNTY may make upward or downward adjustments to the allowable costs as warranted, and then make prompt payments to the allowable, unreimbursed costs. The closeout of this award does not affect any of the following:

- a. The right of the COUNTY or TREASURY to disallow costs and recover funds on the basis of a later audit or other review;
- b. The obligation of the SUBRECIPIENT to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments; or
- c. The SUBRECIPIENT's obligations regarding audits, property management and disposition (if applicable), and records retention.



**ARTICLE VIII**  
**UNIFORM ADMINISTRATIVE REQUIREMENTS**

The SUBRECIPIENT shall comply with 2 CFR 200.330 and 200.331, and agrees to adhere to accounting principles and procedures required therein, utilize adequate internal controls, and maintain necessary source documentation for all costs incurred. The SUBRECIPIENT shall administer the Project in conformance with 2 CFR 200, as appropriate, to ensure substantial adherence to the applicable accounting principles and procedures required therein, utilization of adequate internal controls, and the maintenance of necessary source documentation for all costs incurred.

**ARTICLE IX**  
**PROGRAM INCOME**

The SUBRECIPIENT shall report monthly all program income, as defined in 2 CFR, 200.80, generated by activities carried out with the Allocated Sum made available under this Agreement. The use of program income by the SUBRECIPIENT shall comply with the requirements set forth in the *RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions*, U.S. Department of the TREASURY. By way of further limitations, the SUBRECIPIENT may use such income during the contract period for activities permitted under this Agreement and shall reduce requests for additional funds by the amount of any such program balances on hand. All unused program income with interest shall be returned to the COUNTY at the end of the contract period.

**ARTICLE X**  
**MAINTENANCE AND REAL PROPERTY PROTECTIONS**

The SUBRECIPIENT shall not mortgage or otherwise encumber title to the property of the Project by utilizing it as collateral for any type of lien, note, mortgage, debt obligation, or security agreement without prior written approval by the COUNTY. The SUBRECIPIENT shall not subject the title to such property to any liens or grants; the making of any Federal loan; the entering into of any cooperative agreement; or to the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement without prior written approval from the COUNTY.

**ARTICLE XI**  
**COUNTY RECOGNITION**

The SUBRECIPIENT shall ensure recognition of the role of the COUNTY and the RESTORE Act in providing funding for the Project. All facilities constructed pursuant to this Agreement shall be permanently labeled as to the funding source. Any announcements, information, press releases, publications, brochures, videos, web pages, programs, etc., created to promote the Project shall acknowledge the COUNTY and the RESTORE Act as providing funding for the Project.

**ARTICLE XII**  
**TERM**

The term of this Agreement shall be in effect from the period of performance of June 19, 2019 to May 29, 2022 upon the effective date as required herein. The SUBRECIPIENT will be required to perform and comply with requests as needed by the COUNTY to complete close-out activities relating to the grant.

**ARTICLE XIII**  
**AUDITS AND MONITORING**

In the event that the SUBRECIPIENT expends Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) or more in Federal awards in its fiscal year, the SUBRECIPIENT must have a single or program-specific audit conducted in accordance with the provisions of 2 CFR 200, as revised. Article II indicates Federal resources awarded through the COUNTY by this Agreement. In determining the Federal awards expended in its fiscal year, the SUBRECIPIENT shall consider all sources of Federal awards, including Federal resources received from the COUNTY. The determination of amounts of Federal awards expended should be in accordance with the guidelines established by 2 CFR 200, as revised. An audit of the SUBRECIPIENT conducted by the Auditor General in accordance with the provision of 2 CFR 200, as revised, will meet the requirements of this part.

a. In connection with the audit requirements addressed in Subsection 1 above, the SUBRECIPIENT shall fulfill the requirements relative to audit responsibilities as provided in 2 CFR 200, as revised.

b. If the SUBRECIPIENT expends less than Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) in Federal awards in its fiscal year, an audit conducted in accordance with the provisions of 2 CFR 200, as revised, is not required. In the event that the SUBRECIPIENT expends less than Seven Hundred Fifty Thousand and 00/100 Dollars (\$750,000.00) in Federal awards in its fiscal year and elects to have an audit conducted in accordance with the provisions of 2 CFR 200, as revised, the cost of the audit must be paid from non-Federal resources.

c. In addition to reviews of audits conducted in accordance with 2 CFR 200, as revised, monitoring procedures may include, but not be limited to, on-site visits by the COUNTY; limited-scope audits as defined by 2 CFR 200, as revised; submittal and review of financial management statements; and/or other procedures. By entering into this Agreement, the SUBRECIPIENT agrees to comply and cooperate with any reasonable monitoring procedures/processes deemed appropriate by the COUNTY. In the event the COUNTY determines that a limited-scope audit of the SUBRECIPIENT is appropriate, the SUBRECIPIENT agrees to comply with any additional instructions provided by the COUNTY to the SUBRECIPIENT regarding such audit. The SUBRECIPIENT further agrees to comply and cooperate with any inspections, reviews, investigations, or audits deemed necessary by the Chief Financial Officer or Auditor General.

**ARTICLE XIV**  
**REPORTING REQUIREMENTS**

The SUBRECIPIENT shall submit to the COUNTY quarterly activity reports as indicated in Exhibit E, attached hereto and incorporated herein. Reports are due by the 15<sup>th</sup> of the month following the end of each quarter and must include information on levels of accomplishment, objectives met for each activity funded, and subcontract monitoring reports as applicable. Within 15 days of completing each project action item in Exhibit B (Project Schedule), the SUBRECIPIENT shall provide via email project photographs, explanations of the photographs, and a summary of progress for each action item, suitable for posting to a project-related web page.

**ARTICLE XV**  
**RECORD RETENTION**



1. Maintenance of Records.

a. The SUBRECIPIENT shall maintain all records required by Federal regulations specified in 2 CFR 200, as appropriate, that are pertinent to the Project herein funded by the Allocated Sum. Such records shall include, but are not limited to:

- i. Application requesting project funding.
- ii. Executed Subrecipient Agreement approving the Project, including any amendments to this Agreement.
- iii. Records providing a full description of each activity undertaken.
- iv. Records demonstrating that the activity meets the national objective herein.
- v. Records determining eligibility of work performed for the Allocated Sum.
- vi. Records documenting the acquisition, improvement, use, or disposition of real property acquired or improved with the Allocated Sum, if applicable.
- vii. Financial records as required by 2 CFR 200.330 and 200.331, and all Financial Management standards as specified in Exhibit B.
- viii. Copy of periodic reports submitted as required herein.

b. Retention of Records. Subject to 2 CFR 200.333 retention requirement for records, the SUBRECIPIENT shall retain all records pertinent to expenditures incurred under this Agreement for a period of three (3) years after the termination of all activities funded under this Agreement and submission by the COUNTY of the final financial report, after the resolution of all Federal audit findings, or until the note and mortgage associated with this Agreement are satisfied, whichever occurs later.

c. Access to Records. The COUNTY and the Comptroller General of the United States, or any of their authorized representatives, shall have the right of access to any pertinent books, documents, papers, or other records of the SUBRECIPIENT which are pertinent to the subaward, in order to make audits, examinations, excerpts, and transcripts. The right of access shall last as long as any record is required to be retained in compliance with 2 CFR 200.333. Access shall be made available during normal business hours and as often as the COUNTY or any authorized representative of the Federal government deems necessary.

d. All original records and documents pertinent to this Agreement shall be retained by the SUBRECIPIENT during the terms of this Agreement. All records, including supporting documentation, shall be sufficient to determine compliance with the requirements of this Agreement and all other applicable laws and regulations. The SUBRECIPIENT, its employees or agents, shall provide access during the contract period to all related records and documents for accounts placed with the SUBRECIPIENT by the COUNTY, at reasonable times to the COUNTY, its employees or agents. "Reasonable" shall be construed according to the circumstances, but ordinarily shall mean during normal business hours of 8:00 a.m. to 5:00 p.m., local time, on Monday through Friday. "Agents" shall include, but not be limited to, auditors retained by the COUNTY. The SUBRECIPIENT shall comply with the requirements of Chapter 119, Florida Statutes, with respect to any documents, papers, and records made or received by the SUBRECIPIENT in connection with this Agreement, including the provisions of public access and for copies at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by the law. The SUBRECIPIENT shall ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

e. The SUBRECIPIENT shall meet all requirements for retaining public records and upon the request of the County, transfer, at no cost to the COUNTY, all public records in possession of the SUBRECIPIENT upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided, upon the County's request, to the COUNTY in a format that is compatible with the information technology systems of the COUNTY.

## **ARTICLE XVI**

### **SUSPENSION AND TERMINATION**

1. **Termination.** Either party may terminate this Agreement without cause, at any time, by giving at least a thirty (30) day written notice to the other party of such termination. Either party may terminate this Agreement with cause immediately.

a. In the event of any termination, all finished or unfinished documents, data, studies, surveys, maps, models, photographs, reports, or other materials prepared by the SUBRECIPIENT under this Agreement, shall, at the option of the COUNTY, become the property of the COUNTY, and the SUBRECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents or materials prior to the termination.

b. Cause shall include, but is not limited to, failure to strictly comply with all applicable Federal, State, and local laws, rules and regulations, or any substandard performance by the SUBRECIPIENT. Substandard performance shall be any performance indicated by Verifying Documents but not reflected in the actual performance of the Project. In the event of substandard performance, the COUNTY shall notify the SUBRECIPIENT in writing of such substandard performance, and the SUBRECIPIENT shall take corrective action within a reasonable time, but in no event later than forty-five (45) days from receipt of the notice from the COUNTY.

c. No delay or omission to exercise any right, power, or remedy accruing to either party upon breach or violation by either party under this Agreement shall impair any such right, power, or remedy of either party; nor shall such delay or omission be construed as a waiver of any such breach or default or any similar breach or default.

2. **Suspension.** In lieu of termination upon a finding of cause, as defined in this article, the COUNTY may suspend this Agreement and withhold any payment of Allocated Sum until such time as the SUBRECIPIENT is found to be in compliance by the COUNTY.

## **ARTICLE XVII**

### **NOTICES**

All notices required or permitted hereunder shall be deemed duly given if sent by certified mail, postage prepaid, addressed to the parties as follows:

**MONROE COUNTY**

**ISLAMORADA, VILLAGE OF ISLANDS**

Sylvia Murphy, Mayor

And

Lisa Tennyson, Legislative Affairs Director  
1100 Simonton Street  
Key West Florida, 33040  
305-292-4441

Deb Gillis, Mayor

And

Roget V. Bryan, Esq., Village Attorney  
86800 Overseas Highway  
Islamorada, Florida 33036

And

Peter Frezza, Environmental Resources Manager  
86800 Overseas Highway  
Islamorada, Florida 33036

Awarding Agency – US Department of the Treasury.

Federal Project Officer  
Mr. John Stutts  
1500 Pennsylvania Ave. N.W.  
Washington D.C. 20220-0001  
202-622-0239

### **ARTICLE XVIII** **INDEPENDENT CONTRACTOR**

Nothing contained in this Agreement is intended to, or shall be construed in any manner, as creating or establishing the relationship of employer/employee between the parties. The SUBRECIPIENT shall, at all times, remain an independent contractor with respect to the services to be performed under this Agreement. The COUNTY shall be exempt from payment of all unemployment compensation, FICA, retirement, life and/or medical insurance, and workers' compensation insurance.

### **ARTICLE XIX** **INDEMNIFICATION**

The SUBRECIPIENT shall defend, hold harmless, and indemnify the COUNTY and all of its officers, agents, and employees from and against any and all claim, liability, loss, damage, cost, attorney's fee, charge, or expense of whatever kind or nature which the COUNTY may sustain, suffer, incur, or be required to pay by reason of the loss of any monies paid to the SUBRECIPIENT resulting out of fraud, defalcation, dishonesty, or failure of the SUBRECIPIENT to comply with this Agreement, or arising out of any act, action, neglect, or omission during the performance of this Agreement, as modified, any part thereof, or work performed hereunder, whether direct or indirect; or by reason or result of injury caused by the SUBRECIPIENT's negligent maintenance or supervision of the property or work performed thereon over which the SUBRECIPIENT has control; or by reason of a judgment over and above the limits provided by the insurance, required under Article XX of this Agreement; or by any defect in the condition or construction of the Project, if the Project was inspected and accepted by the SUBRECIPIENT; whether or not due to, or caused by negligence of the COUNTY, or any of its agents and employees, except that the SUBRECIPIENT will not be liable under this provision for damages arising out of the injury or damage to persons or property directly caused or resulting from the sole

negligence of the COUNTY or any of its agents or employees. The indemnity hereunder shall continue until all provisions of this Agreement, including satisfaction of any mortgage and/or promissory note, have been fully performed by the SUBRECIPIENT.

The SUBRECIPIENT's obligation to indemnify, defend, and pay for the defense or, at the COUNTY's option, to participate and associate with the COUNTY in the defense and trial of any damage claim or suit and any related settlement negotiations, shall arise within seven (7) days of receipt by the SUBRECIPIENT of the COUNTY's notice of claim for indemnification to the SUBRECIPIENT. The notice of claim for indemnification shall be served by certified mail. The SUBRECIPIENT's obligation to defend and indemnify within seven (7) days of receipt of such notice shall not be excused because of the SUBRECIPIENT's inability to evaluate liability, or because the SUBRECIPIENT evaluates liability and determines the SUBRECIPIENT is not liable, or determines the COUNTY is solely negligent. Only a final adjudication judgment finding the COUNTY solely negligent shall excuse performance of this provision by the SUBRECIPIENT. If a judgment finding the COUNTY solely negligent is appealed and the finding of sole negligence is reversed, the SUBRECIPIENT will be obligated to indemnify the COUNTY for the cost of the appeal(s). The SUBRECIPIENT shall pay all costs and fees related to this obligation and its enforcement by the COUNTY.

## **ARTICLE XX**

### **INSURANCE**

1. The SUBRECIPIENT shall procure and maintain for the duration of this Agreement, insurance against claims for injuries to persons or damages to property which may arise from or in connection with the SUBRECIPIENT's performance of the project. The cost of such insurance shall be borne by the SUBRECIPIENT.
2. The SUBRECIPIENT shall not conduct the project until it has obtained all insurance required herein and such insurance has been approved by the COUNTY as provided herein.
3. The SUBRECIPIENT shall furnish certificate(s) of insurance on the form required by the COUNTY to the COUNTY to the attention of the Monroe County Risk Manager. The certificate(s) shall clearly indicate the SUBRECIPIENT has obtained insurance of the type, amount, and classification required for strict compliance with this Agreement and that no reduction in coverage or in limits, suspension, or cancellation of the insurance shall be effective without thirty (30) days prior written notice as provided below. The certificate(s) shall be signed by a person authorized by that insurer to bind coverage on its behalf. The COUNTY reserves the right to require complete, certified copies of all required policies at any time. Each insurance policy required by this Agreement shall be endorsed to state that coverage shall not be suspended, voided, cancelled, reduced in coverage or in limits, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the COUNTY to the attention of the Monroe County Risk Manager. In the event the insurance coverage expires prior to the termination or end of this Agreement, a renewal certificate shall be issued thirty (30) days prior to the expiration date. Compliance with the foregoing requirements shall not relieve the SUBRECIPIENT of the liability and obligations under this Agreement. Neither approval by the COUNTY or a failure to disapprove insurance certificates or policies furnished by the SUBRECIPIENT shall release the SUBRECIPIENT of full responsibility for all liability or its obligations under this Agreement.
4. All insurance policies shall be issued by responsible companies authorized to do business under the laws of the State of Florida, have an "A" policyholders' rating, have a financial rating of at least Class VIII in accordance with the most current Best's Key Rating Guide, and shall be satisfactory to the COUNTY. All policies of insurance required by this Agreement shall be primary insurance with respect to the COUNTY, its officials, agents, and employees. Any insurance or self-insurance maintained by the COUNTY, its officials, agents, or employees shall be in excess of the

SUBRECIPIENT's insurance and shall not contribute with it. All policies of insurance required by this Agreement, except workers' compensation, shall specifically provide that the COUNTY shall be an "additional insured" under the policy and shall contain a severability of interests' provision. All insurance policies required herein and all provisions hereof shall apply to all operations, activities, or use by the SUBRECIPIENT, or by anyone employed by or contracting with the SUBRECIPIENT, and it is the SUBRECIPIENT's responsibility to ensure that any contractor, subcontractor, or anyone directly or indirectly employed by any of them, complies with those insurance provisions and that the COUNTY is an "additional insured" on such policies. Any deductibles or self-insured retentions must be declared to and approved by the COUNTY and are the responsibility of the SUBRECIPIENT. The minimum kinds and limits of coverage to be carried by the SUBRECIPIENT shall be as follows:

- a. Workers' Compensation and Employer's Liability: If the SUBRECIPIENT falls under the State of Florida Workers' Compensation law, the SUBRECIPIENT shall provide coverage for all employees. The coverage shall be for the statutory limits in compliance with the applicable State and Federal laws. The policy must include employer's liability with a limit of One Hundred Thousand and 00/100 Dollars (\$100,000.00) for each accident. The insurer shall agree to waive all rights of subrogation against the COUNTY, its officials, agents, and employees for losses arising from the leased premises.
- b. Comprehensive General Liability: Shall include premises and/or operations, broad form property damage, independent contractor, contractual liability, and fire legal liability, and shall be written on an "occurrence basis." In the event SUBRECIPIENT is only able to secure coverage on a "claims-made basis," the SUBRECIPIENT shall be obligated, by virtue of this Agreement, to maintain tail coverage in effect with no less limits of liability, nor any more restrictive terms and/or conditions, for a period of three (3) years from expiration or termination of this Agreement.
- c. Bodily injury and personal injury, including death:
  - \$1,000,000.00 each person;
  - \$2,000,000.00 aggregate;
  - \$1,000,000.00 each occurrence;
  - \$2,000,000.00 aggregate.

## **ARTICLE XXI**

### **PERSONNEL AND PARTICIPANT CONDITIONS**

#### **1. Civil Rights.**

- a. Compliance. The SUBRECIPIENT shall comply with Title VI of the Civil Rights Act of 1964, as amended; Title VIII of the Civil Rights Act of 1968, as amended; the Americans with Disabilities Act of 1990, as amended; Rehabilitation Act of 1973, as amended; the Age Discrimination Act of 1975, as amended; Executive Order 11063, as amended; and Executive Order 11246, as amended.
- b. Nondiscrimination. The SUBRECIPIENT shall comply with nondiscrimination in employment and contracting opportunities laws, regulations, and executive orders and all other applicable laws, rules, and regulations. SUBRECIPIENT agrees to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VII of the Civil Rights Act of 1964 (PL



88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101-6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 12101 Note), as may be amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Chapter 14, Article II, which prohibits discrimination on the basis of race, color, sex, religion, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; 11) Any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

During the performance of this Agreement, the SUBRECIPIENT, in accordance with *Equal Employment Opportunity* (30 Fed. Reg. 12319, 12935, 3 C.F.R. 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 41C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C, agrees as follows:

- (1) The SUBRECIPIENT will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.
- (2) The SUBRECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the SUBRECIPIENT, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The SUBRECIPIENT will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.

- (4) The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The SUBRECIPIENT will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The SUBRECIPIENT will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the SUBRECIPIENT's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The SUBRECIPIENT will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for non-compliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency the contractor may request the United States to enter into such litigation to protect the interests of the United States.

## 2. Affirmative Action

a. **Approved Plan.** The SUBRECIPIENT agrees that it shall be committed to carry out its activities pursuant to the COUNTY's specifications and to the Affirmative Action program in keeping with principles as provided in the President's Executive Order 11246 of September 24, 1965, as amended. Such information shall be made available to the County for review upon request.

b. **Women and Minority-Owned Businesses.** The SUBRECIPIENT will use affirmative steps such as: (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses and women's business enterprises (4) establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, or women's business enterprises (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 the Commerce; and (6) requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed above in (1) through (5).

To afford women- and minority-owned business enterprises the maximum practical opportunity to participate in the performance of this Agreement. As used in this Agreement, the term "minority and women business enterprise" means a business at least fifty-one (51) percent owned and controlled by minority group members or women. The SUBRECIPIENT may rely on written representations by subcontractors regarding their status as minority and women business enterprises in lieu of an independent investigation.

c. Access to Records. The SUBRECIPIENT shall furnish and cause each of its subcontractors to furnish all information and reports required hereunder and will permit access to its books, records, and accounts by the COUNTY, its agents, or other authorized Federal officials for purposes of investigation to ascertain compliance with the rules, regulations, and provisions stated herein.

d. Notifications. The SUBRECIPIENT will send to each labor union or representative of workers with which it has a collective bargaining Agreement or other contract or understanding, a notice from the SUBRECIPIENT's contracting officer advising the labor union or worker's representative of the SUBRECIPIENT's commitments hereunder, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

e. Equal Employment Opportunity and Affirmative Action Statement. The SUBRECIPIENT shall, in all solicitations or advertisements for employees, placed by or on behalf of the SUBRECIPIENT, state that it is an Equal Opportunity or Affirmative-Action employer.

f. Subcontract Provisions. The SUBRECIPIENT shall include the provisions of Subsection 1, Civil Rights, and Subsection 2, Affirmative Action, in every subcontract or purchase order, specifically or by reference, so that such provisions will be binding upon each subcontractor or vendor.

### 3. Employment Restrictions

a. Prohibited Activities. The SUBRECIPIENT shall not use any portion of the Allocated Sum or personnel employed to carry out this Agreement for political activities, inherently religious activities, and lobbying, political patronage, or nepotism activities.

b. Labor Standards. The SUBRECIPIENT shall comply with the Davis-Bacon Act, as applicable, the provisions for Contract Work Hours and Safety Standards Act (40 U.S.C., 327, et seq.), and all other applicable Federal, State, and local laws and regulations. The SUBRECIPIENT further shall comply with the Copeland "Anti-Kickback" Act (18 U.S.C., 874, et seq.). The SUBRECIPIENT shall maintain documentation demonstrating compliance with the hour and wage requirements of this subsection.

The SUBRECIPIENT agrees that, except with respect to the rehabilitation or construction of residential property designed for residential use for less than eight (8) households, all subcontractors engaged under contracts in excess of Two Thousand and 00/100 Dollars (\$2,000.00) for construction, renovation, or repair of any building, or work financed in whole or part with assistance provided under this Agreement, shall comply with Federal requirements adopted by the COUNTY pertaining to such Agreements; and with the applicable requirements of the regulations of the United States Department of Labor under 29 CFR, Parts 1, 3, 5, 6, and 7, governing the payment



of wages and ratio of apprentices and trainees to journeymen provided, that if wage rates higher than those required under the regulations are imposed by State or local law, nothing hereunder is intended to relieve the SUBRECIPIENT of its obligation, if any, to require payment of the higher wage. The SUBRECIPIENT shall cause or require language to be inserted in full in all such contracts subject to such regulations and provisions, meeting the requirements of this article.

#### 4. Conduct

- a. Hatch Act. The SUBRECIPIENT agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or any extent engaged in the conduct of political activities in violation of Chapter 15 of Title V of the U.S.C.
- b. Conflict of Interest. The SUBRECIPIENT shall not employ or retain any person or entity with a financial interest in the Project. The SUBRECIPIENT shall not employ, retain, or otherwise grant any financial interest in the Project to any person employee, agent, consultant, officer, or elected or appointed official of the COUNTY who may exercise or have exercised any functions or responsibilities with respect to the Project, or who are in a position to participate in a decision-making process or gain inside knowledge to the Project, either for themselves or anyone with whom they have business or immediate family ties.
- c. Lobbying. The SUBRECIPIENT hereby certifies:
  - i. No Federal appropriated funds have been paid by or on behalf of it to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative Agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative Agreement.
  - ii. If any funds other than Federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this Agreement, the SUBRECIPIENT shall complete and submit Standard Form LLL, Disclosure Form to Report Lobbying, in accordance with its instructions.
  - iii. The SUBRECIPIENT shall require that the language of the Anti-Lobbying Certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative Agreements), and shall certify and disclose accordingly.
- d. Copyright. In the event the performance of this Agreement results in any copyrighted material or inventions, the COUNTY reserves the right to royalty-free, nonexclusive, and irrevocable license to reproduce, publish, or otherwise use, and authorize others to use the work or material for governmental purposes.
- e. Religious Activities. The SUBRECIPIENT agrees that funds provided under this Agreement will not be utilized for religious activities, to promote religious interests, or for the benefit of a religious organization.

**ARTICLE XXII**  
**ENVIRONMENTAL CONDITIONS**

1. Air, Water, Species Protection. The SUBRECIPIENT agrees to comply with the following regulations, including the terms and conditions set forth in the Restore Act Standard Conditions and Program Specific Terms and Conditions, insofar as they apply to the performance of this Agreement and to notify the COUNTY if the SUBRECIPIENT becomes aware of any impact on the environment that was not noted in the COUNTY's approved application package:
  - a. Clean Air Act, 42 U.S.C., 7401, et seq.
  - b. Clean Water Act, 33 U.S.C 1251, et seq. and EO 11738
  - c. Environmental Protection Agency Regulations pursuant to 40 CFR 50, as amended.
  - d. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321, et seq.
  - e. Coastal Zone Management Act, as amended, 16 U.S.C 1451, et seq., and implementing regulations 15 CFR Part 930.
  - f. Endangered Species Act of 1973, as amended, 16 U.S.C. 1531, et seq.
  - g. Magnuson-Steven's Fishery Conservation and Management Act, as amended, 16 U.S.C. 1801-1884.
  - h. Marine Mammal Protection Act, as amended, 16 U.S.C. Chapter 31.
  - i. Coastal Barrier Resources Act, as amended (16 U.S.C. § 3501 et seq.).
  - j. Rivers and Harbors Act of 1899 (33 U.S.C § 407).
  - k. Wild and Scenic Rivers Act, as amended, 16 U.S.C. 1271, et seq.
  - l. Safe Drinking Water Act of 1974, as amended, 42 U.S.C. 300f-j, et seq.
  - m. Executive Order 11988, Floodplain Management as amended by EO 13690.
  - n. Executive Order 11990, Wetland Protection, May 24, 1977, as amended by EO12608.
  - o. Executive Order 13089, Coral Reef Protection.
  - p. Executive Order 13112, Invasive Species.
  - q. Executive Order 13186, Responsibilities of Federal Agencies to Protect Migratory Birds.
2. Historic Preservation. The SUBRECIPIENT agrees to comply with the historic preservation requirements set forth in the National Historic Preservation Act of 1966, as amended (54 U.S.C. §300101 formerly cited as 16 U.S.C., 470), and the procedures set forth in 36 CFR 800, Advisory Council on Historic Preservation Procedures, for protection of historic properties insofar as they apply to the performance of this Agreement, and Archeological and Historic Preservation Act, as amended (54 U.S.C. § 312501 et seq.) See also Section U 23 & 24 of the Restore Act Standard Terms and Conditions and Program Specific Terms and Conditions.
3. Environmental Protection. The SUBRECIPIENT agrees to comply with the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. § 6901 et seq.), the Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.), and the Community Environmental Response Facilitation Act (42 U.S.C. § 6901 note) insofar as they apply to the performance of this Agreement.

**ARTICLE XXIII**  
**GENERAL CONDITIONS**

1. The SUBRECIPIENT must comply with the Restore Act Standard Terms and Conditions and Program Specific Terms and Conditions.
2. Assignment. No assignment, delegation, transfer, or novation of this Agreement, or any part hereof, may be made unless in writing and signed by all parties hereto.
3. Headings. All articles and descriptive headings of paragraphs in this Agreement are inserted for convenience only and shall not affect the construction or interpretation hereof.
4. Modification. No modification, addendum, or amendment of any kind whatsoever may be made to this Agreement unless in writing and signed by all parties hereto. This Agreement may be amended from time to time to conform to Federal, State, or local governmental guidelines, policies, or available funding amounts, and such approval shall not be unreasonably withheld.
5. Amendments. Such amendments shall not invalidate this Agreement, nor relieve or release the COUNTY or the SUBRECIPIENT from its obligations under this Agreement, or change the independent contractor status of the SUBRECIPIENT.
6. Entire Agreement. This Agreement represents the entire Agreement between the parties and supersedes any and all prior agreements, written or oral, relating to the matters set forth herein. Prior agreements, negotiations, or understandings shall have no force or effect on this Agreement.
7. Sovereign Immunity. To the extent permitted by law, nothing in this Agreement shall be construed in any way to waive the sovereign immunity of the COUNTY, as provided by the laws of the State of Florida.
8. Laws. This Agreement shall be governed by all applicable Federal laws, rules, and regulations that apply. The SUBRECIPIENT shall perform all acts required by this Agreement in strict conformity with all applicable laws and regulations.
9. Venue. Venue for any litigation arising from this Agreement shall be in the Sixteenth Judicial Circuit of Florida, in and for Monroe County.
10. This Agreement shall take effect the last day all parties hereto have signed.
11. Severability. If any term or provision of this Agreement is found to be illegal and unenforceable, the remainder will remain in full force and effect, and such term or provision shall be deemed stricken.
12. Grant Award No. RDCGR170077 is not a Research and Development Award.

**ARTICLE XXIV**  
**SPECIAL CONDITIONS**

1. The Subrecipient is responsible for meeting Special Conditions 3, 4 and 5 in the Notice of Award. In no instance may the Subrecipient commence construction until it receives expressed, written notice from Monroe County that these Special Conditions have been met, and it has received expressed, written permission from Monroe County that it may commence construction.
  - a. Prior to executing any and all contracts for this project, Islamorada must submit to Monroe County, who must in turn submit to Treasury, documentation satisfactory to Treasury, including copy of RFP (or similar), bid review documentation, signed conflict of interest forms, and a draft contract for each contract procured under this award (per Special Condition 3 in Notice of Award). When Treasury notifies Monroe County that this condition has been met, the County will notify the Subrecipient.
  - b. Prior to commencement of construction, Islamorada must submit to Monroe County, who must in turn submit to Treasury, that the individual projects are based on best available science by providing a response to the best available science question on the application (B6) and project-level details, including specific project locations, reasons for selecting locations, specific methods proposed to address identified issues at selected locations, expected outcomes following restoration, and identify uncertainties and risks

(per Special Condition 4 in Notice of Award). When Treasury notifies Monroe County that this condition has been met, the County will notify the Subrecipient.

- c. Prior to commencement of construction, Islamorada must submit to Monroe County an updated and certified Environmental Checklist. Monroe County must also certify the checklist, and then will submit to Treasury prior with its written request to Treasury for permission to commence construction (per Special Condition 5 in Notice of Award). When Treasury notifies Monroe County that this condition has been met, the County will notify the Subrecipient. When Treasury grants permission for construction to commence, Monroe County will grant permission to the Subrecipient.



IN WITNESS WHEREOF, the parties have caused this Agreement to be executed on the dates indicated below.  
(SEAL)

ATTEST: KEVIN MADOK, CLERK

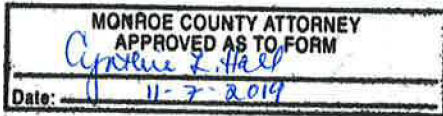
*Kevin Madok*

Deputy Clerk

BOARD OF COUNTY  
COMMISSIONERS OF  
MONROE COUNTY, FLORIDA

*Sylvia J. Murphy*

MONROE BOCC MAYOR SYLVIA MURPHY



ISLAMORADA, VILLAGE OF ISLANDS, A  
MUNICIPALITY WITHIN THE STATE OF FLORIDA

*Kelly S. Toth*

[Signature of SUBRECIPIENT ATTESTOR]

*Deb Gillis*

[Signature of MAYOR SUBRECIPIENT]

*Kelly S Toth, Village Clerk*

[Printed name of SUBRECIPIENT ATTESTOR]

Mayor Deb Gillis

[Printed name]

*9/23/19*

DATE

*9/23/19*

DATE

## EXHIBIT A

### PROJECT DESCRIPTION

#### Description:

The application requests funds for the planning, design, permitting, construction, implementation, and post-construction monitoring of canal water restoration within the municipality of Islamorada, Village of Islands (Islamorada) in Monroe County, Florida. The canal water restoration project is intended to remedy the high nutrient loading and low dissolved oxygen impairing the waters by addressing the most significant causes of those conditions: accumulated organics, seaweed loading, and poor flushing and tidal flow, thus improving the canal waters and preventing the continued discharge of poor quality water into the nearshore waters of the Florida Keys National Marine Sanctuary

#### Need:

The Monroe County Canal Management Master Plan (CMMP) has identified ten canals in Islamorada as having poor water quality. Each of the ten canals exhibits one or more of the above listed contributing factors, and will require the implementation of one or a combination of restoration technologies. Potential improvement activities identified in the CMMP include (1) dredge/removal of sediment from canals, (2) placement of clean backfill to eliminate anoxic zones within canals, (3) installation of culverts to increase flushing, and (4) installation of air curtains to prevent weed wrack from entering canals. The ten canals considered to have "Poor Water Quality" were ranked based on criteria outlined in the CMMP and the Village of Islamorada Selection of Demonstration Canals for Water Quality Improvements document. Islamorada has completed restoration projects in three of the ten canals identified in the CMMP, with seven canals identified for improvements remaining.

#### Purpose:

The primary purpose of this project is to restore degraded water quality in the canals to prevent the discharge of poor water quality into the nearshore waters of the Florida Keys National Marine Sanctuary.

#### Objectives:

RESTORE Act objectives addressed by this project include those related to environmental improvements and tourism promotion.

- Environmental objectives: Canal water restoration will improve water quality in the National Marine Sanctuary benefitting the coral reef and seagrass beds, critical environmental assets encompassing within the unique marine environment of the Florida Keys.
- Economic development objectives: Improve recreational and tourism value of Monroe County's reefs.
- Community resilience objectives: Restoration of canal water will lead to a healthier reef system, greater protection of natural resources, and a stronger economy all of which contribute to the community resilience of the Florida Keys.

**EXHIBIT B**

**PROJECT SCHEDULE**

<b>Action Item</b>	<b>Completion Date</b>
Execute Subrecipient Agreement	October 18, 2019
Provide RFP/Bid Review Documentation to Monroe County (for Treasury review)	November 15, 2019
Project Site Selection (provide specific project location, reason for that project location, specific methods proposed to address the identified issues at the selected location, expected outcomes and any uncertainties.)	November 15, 2019
Final Design and Permitting	May 15, 2020
Proposal Advertisement and Award	July 17, 2020
Contractor Notice to Proceed	August 3, 2020
Start Construction	August 17 , 2020
Complete Construction	November 26 , 2020
Conduct subrecipient monitoring	May 28 , 2021
Final Report to Monroe County	January 17 , 2022
Closeout Subrecipient agreement for Islamorada, Village of Islands with Monroe County	February 1, 2022

**EXHIBIT C**  
**PROJECT BUDGET AND FUNDING SOURCES**

**Budget:**

Canal Water Quality Improvements and Restoration for Canals (Funded by RESTORE)    **\$ 128,308.50**

**Funding Sources:**

RESTORE Funding	\$128,308.50.
-----------------	---------------

<b>Total</b>	<b>\$128,308.50</b>
--------------	---------------------



## EXHIBIT D

### SUBRECIPIENT REQUIREMENTS

The below is for reference only; Please refer to the federal regulation.

Provisions		Citation
1.	Eligible Activity	31 CFR 34.201
2.	Subrecipient determination	2 CFR 200.330
3.	Time of Performance	2 CFR 200.331
4.	Compensation and Method of Payment	2 CFR, 200.305
5.	Program Income	2 CFR 200.80
6.	Record Retention and Access	2 CFR 200.331, .333
7.	Reporting Requirements	2 CFR 200.331
8.	Public Access to Program Records	2 CFR 200.331
9.	Uniform Administrative and Program Management Standards	2 CFR, 200
10.	Other Program Requirements	2 CFR 200.331 2 CFR 200.207
11.	Remedies for Noncompliance	2 CFR 200.338-342
12.	Compliance with Laws/Regulations	2 CFR 200.331
13.	Antidiscrimination/Affirmative Action EEO/Labor Standards	2 CFR 200.331
14.	Financial Management	2 CFR 200.302
15.	Audit Requirements	2 CFR, 200 Subpart F
16.	Monitoring and Management	2 CFR, 200.300-.332
17.	Conflict of Interest	2 CFR, 200.318(c)
18.	Procurement Methods	2 CFR, 200.317-.326
19.	Budget	2 CFR 200.331
20.	Project Schedule/Milestones	2 CFR 200.331
21.	Environmental Review	2 CFR 200.331
22.	Best Available Science	31 CFR, Part 34
23.	Internal Controls	2 CFR 200.303

Special Conditions: Please note special conditions in the Grant Award.



**EXHIBIT E**

**RESTORE ACT SUBRECIPIENT QUARTERLY REPORT**

<b>Reporting Period (check one):</b>		<b>Date Report Submitted:</b>
<b>Quarter 1:</b> <input type="checkbox"/> October 1 – December 31 <b>Quarter 3:</b> <input type="checkbox"/> April 1 – June 30 <b>Quarter 2:</b> <input type="checkbox"/> January 1 – March 31 <b>Quarter 4:</b> <input type="checkbox"/> July 1 – September 30		
1.	<b>Subrecipient Name:</b>	
2.	<b>Project Name:</b>	
3.	<b>Name of Contact Person:</b>	
4.	<b>Contact Email Address:</b>	
5.	<b>Subrecipient Area Code and Phone Number:</b>	
6.	<b>Describe Activities and Outcomes for this Quarter:</b> (Attach additional sheets if necessary.)	

**EXHIBIT F**

**See attached Federal RESTORE ACT Grant Agreement**

1. DATE ISSUED MM/DD/YYYY 02/04/2019		1a. SUPERSEDES AWARD NOTICE dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded	
2. CFDA NO. 21.015 - Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States			
3. ASSISTANCE TYPE Formula Grant			
4. GRANT NO. 1 RDCGR170077-01-00 Formerly		5. TYPE OF AWARD Other	
4a. FAIN RDCGR170077		5a. ACTION TYPE New	
6. PROJECT PERIOD MM/DD/YYYY From 03/01/2019		Through 02/28/2022	
7. BUDGET PERIOD MM/DD/YYYY From 03/01/2019		Through 02/28/2022	
8. TITLE OF PROJECT (OR PROGRAM) Canal WQ Improvements and Restoration for Canals in Monroe County (Islamorada)			

U.S. DEPARTMENT OF THE TREASURY  
Office of the Fiscal Assistant Secretary  
Office of Gulf Coast Restoration

1500 Pennsylvania Ave., N.W.  
Washington, DC 20220-0001

NOTICE OF AWARD

AUTHORIZATION (Legislation/Regulations)  
Resources and Ecosystems Sustainability, Tourist Opportunities, and  
Revived Economies of the Gulf Coast States

9a. GRANTEE NAME AND ADDRESS COUNTY OF MONROE Alternate Name: Monroe County Board of County Commissioners 1100 Simonton St Rm 2-205 Key West, FL 33040-3110	9b. GRANTEE PROJECT DIRECTOR Ms. Lisa Tennyson 1100 Simonton St, Gato Bldg, 2nd Floor Key West, FL 33040 Phone: 305-292-4444
10a. GRANTEE AUTHORIZING OFFICIAL Sylvia Murphy 1100 Simonton St Gato Bldg, 2nd Floor Key West, FL 33040	10b. FEDERAL PROJECT OFFICER Mr. John Sluts 1500 Pennsylvania Ave., N.W. Washington, DC 20220-0001 Phone: 202-622-0239

ALL AMOUNTS ARE SHOWN IN USD

11. APPROVED BUDGET (Excludes Direct Assistance)		12. AWARD COMPUTATION	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from item 11m) 128,308.50	
II Total project costs including grant funds and all other financial participation		b. Less Unobligated Balance From Prior Budget Periods 0.00	
a. Salaries and WageS 0.00		c. Less Cumulative Prior Award(s) This Budget Period 0.00	
b. Fringe Benefits 0.00		d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION 128,308.50	
c. Total Personnel Costs 0.00		13. Total Federal Funds Awarded to Date for Project Period 128,308.50	
d. Equipment 0.00		14. RECOMMENDED FUTURE SUPPORT	
e. Supplies 0.00		(Subject to the availability of funds and satisfactory progress of the project):	
f. Travel 0.00		YEAR TOTAL DIRECT COSTS YEAR TOTAL DIRECT COSTS	
g. Construction 0.00		a. 2 b. 3 c. 4 d. 5 e. 6 f. 7	
h. Other 0.00		15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:	
i. Contractual 128,308.50		a. DEDUCTION b. ADDITIONAL COSTS c. MATCHING d. OTHER RESEARCH (Add / Deduct Option) e. OTHER (See REMARKS)	
j. TOTAL DIRECT COSTS 128,308.50		b	
k. INDIRECT COSTS 0.00		16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:	
l. TOTAL APPROVED BUDGET 128,308.50		a. The grant program legislation b. The grant program regulations c. This award notice including terms and conditions, if any, noted below under REMARKS. d. Federal administrative requirements, cost principles and audit requirements applicable to this grant	
m. Federal Share 128,308.50		In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	
n. Non-Federal Share 0.00			

REMARKS (Other Terms and Conditions Attached - ☒ Yes ☐ No)  
This award is approved by Kristine Conrath, Authorizing Official. Accepting this award in GrantSolutions.gov constitutes acceptance of this award and the Standard Terms and Conditions and Programmatic Terms and Conditions and Special Award Conditions. Award funds will be available to the awardee in an ASAP.gov account.

AUTHORIZING OFFICIAL:

17.OBJ CLASS 410001	18a. VENDOR CODE 1248952	18b. EIN 596000749	19. DUNS 073876757	20. CONG. DIST. 26
FY-ACCOUNT NO.	DOCUMENT NO.	ADMINISTRATIVE CODE	AMT ACTION FIN ASST	APPROPRIATION
21. a. Direct	b. RDCGR170077	c. RDC	d. \$128,308.50	e.
22. a.	b.	c.	d.	e.
23. a.	b.	c.	d.	e.

# NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 3	DATE ISSUED 02/04/2019
GRANT NO. 1 RDCGR170077-01-00	

Federal Financial Report Cycle			
Reporting Period Start Date	Reporting Period End Date	Reporting Type	Reporting Period Due Date
03/01/2019	03/31/2019	Semi-Annual	04/30/2019
04/01/2019	09/30/2019	Semi-Annual	10/30/2019
10/01/2019	03/31/2020	Semi-Annual	04/30/2020
04/01/2020	09/30/2020	Semi-Annual	10/30/2020
10/01/2020	03/31/2021	Semi-Annual	04/30/2021
04/01/2021	09/30/2021	Semi-Annual	10/30/2021
10/01/2021	02/28/2022	Final	05/29/2022

## RESTORE Act - SPECIAL AWARD CONDITIONS

- Special Condition 1:** Monroe County agrees to receive award funds on a reimbursement payment method. Treasury's pre-approval of drawdown requests is not required (see Section H of the RESTORE Act Financial Assistance Standard Terms and Conditions included with this award). Monroe County will remain on the reimbursement payment method until it submits to Treasury evidence, satisfactory to Treasury, that it maintains policies and procedures meeting the requirements of 2 CFR § 200.305 including, but not limited to, providing reasonable assurance that (1) drawdowns of federal cash are only for immediate cash needs; and (2) payments to subrecipients are limited to immediate cash needs.

**Special Condition 2:** Prior to its execution, Monroe County must submit to Treasury for review for compliance with 2 CFR § 200.331, a copy of Monroe County's agreement with Islamorada, Village of Islands, its subrecipient.

**Special Condition 3:** Prior to the execution of all contracts for this project, Monroe County must submit to Treasury documentation, satisfactory to Treasury, including a copy of the RFP (or similar), bid review documentation, signed conflict of interest forms, and draft contract for OGCR review for each contract procured under this award.

**Special Condition 4:** Individual projects selected under the proposed program are subject to best available science review. Upon their selection, Monroe County must explain their determination that the project is based on best available science by providing to Treasury a response to the best available science question on the application (B6) and project-level details, including specific project locations, reasons for selecting locations, specific methods proposed to address identified issues at selected locations, expected outcomes following restoration, and identify uncertainties and risks.

**Special Condition 5:** Monroe County must submit to Treasury an updated Environmental Checklist certified by Monroe County and the subrecipient prior to or with its written request to Treasury for permission to commence construction.

**Special Condition 6:** An ASAP Maximum Draw Limit of \$1.00 is in place for this award. Monroe County may request adjustment of the maximum draw limit after meeting the requirements of Special Conditions 2 and 3. Monroe County may request removal of the maximum draw limit with its written request to Treasury for permission to commence construction, per Condition 6 of Section W of RESTORE Act Financial Assistance Standard Terms and Conditions and Program-Specific Terms and Conditions, after meeting the requirements of Special Condition 2, 3, 4 and 5.

**Special Condition 7:** Within 90 days of the project period start date of this award, Monroe County must submit to Treasury evidence, satisfactory to Treasury, that Monroe County maintains written policies and procedures for:

# NOTICE OF AWARD (Continuation Sheet)

PAGE 3 of 3	DATE ISSUED 02/04/2019
GRANT NO. 1 RDCGR170077-01-00	

- (1) Disclosing in writing any potential conflict of interest to the federal awarding agency and disclosing all violations involving fraud, bribery, or gratuity violations potentially affecting a federal award to the federal awarding agency as required by 2 CFR §§ 200.112 and 200.113.
- (2) Addressing the requirements of 2 CFR §§ 200.318–200.325 and Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts under federal Awards.
- (3) Reconciling the SF-425 to supporting financial data, performing management review of the SF-425 report prior to submittal to the federal awarding agency, submitting performance reports at the required interval, and determining the conditions in which an interim reporting of significant developments would be prepared and submitted to the federal awarding agency.
- (4) Safeguarding personally identifiable information (PII).
- (5) Defining and identifying Allowable Costs as required by 2 CFR § 200.403.
- (6) Defining, tracking, or reporting Direct and Indirect Costs as required by 2 CFR §§ 200.403 and 200.412.
- (7) Meeting the requirements of 2 CFR § 200.331, including but not limited to awarding grant funds to subrecipients; monitoring subrecipients; modifying subawards; providing training and technical assistance to subrecipients; enforcing actions for subrecipient noncompliance; evaluating risk of subrecipient noncompliance with statutes, regulations, and terms and conditions of the subaward; and performing site reviews of subrecipient program operations.

**Special Condition 8:** Within 180 days of the project period start date of this award, Monroe County must submit to Treasury evidence, satisfactory to Treasury, that Monroe County maintains written policies and procedures for:

- (1) Submitting reports annually on the status of real property in which the federal government retains an interest as required by 2 CFR § 200.329.

## RESTORE Act - FUNDING AUTHORIZATION

1.

Total Amount of Federal Funds Awarded to Date for Project Period	Amount of Funding Restriction	Amount of Financial Assistance This Action	Amount Authorized for ASAP Account this Action	Notes
<i>Line 13 of NoA/Amendment</i>		<i>Line 12d of NoA/Amendment</i>		
\$128,308.50	\$0.00	\$128,308.50	\$128,308.50	Initial Authorization, with Special Award Conditions, and an ASAP Maximum Draw Limit of \$1.00 per SAC 6

# **AWARD ATTACHMENTS**

Monroe County Board of County Commissioners

1 RDCGR170077-01-00

---

1. Approved Scope of Work
2. Standard and Program Specific Terms and Conditions - December 2018

## **APPROVED SCOPE OF WORK**

The Approved Scope of Work includes all information provided with the grant application. The attached documents, taken from the grant application, provide a summary of the scope of work approved with this grant award.

## **Scope of Work Summary**

**Applicant:** Monroe County

**Application No:** RDC2018000098

**Application Title:** Canal WQ Improvements and Restoration for Canals in Monroe County (Islamorada)

---

The application requests funds for the planning, design, permitting, construction, implementation, and post-construction monitoring of canal water restoration within the municipality of Islamorada, Village of Islands (Islamorada) in Monroe County, Florida. The canal water restoration project is intended to remedy the high nutrient loading and low dissolved oxygen impairing the waters by addressing the most significant causes of those conditions: accumulated organics, seaweed loading, and poor flushing and tidal flow, thus improving the canal waters and preventing the continued discharge of poor quality water into the nearshore waters of the Florida Keys National Marine Sanctuary

The Monroe County Canal Management Master Plan (CMMP) has identified ten canals in Islamorada as having poor water quality. Each of the ten canals exhibits one or more of the above listed contributing factors, and will require the implementation of one or a combination of restoration technologies. Potential improvement activities identified in the CMMP include (1) dredge/removal of sediment from canals, (2) placement of clean backfill to eliminate anoxic zones within canals, (3) installation of culverts to increase flushing, and (4) installation of air curtains to prevent weed wrack from entering canals. The ten canals considered to have "Poor Water Quality" were ranked based on criteria outlined in the CMMP and the Village of Islamorada Selection of Demonstration Canals for Water Quality Improvements document. Islamorada has completed restoration projects in three of the ten canals identified in the CMMP, with seven canals identified for improvements remaining. Islamorada estimates awarded Direct Component funds will be sufficient to complete restoration projects in one of the remaining seven identified canals, dependent upon final construction costs, and has tentatively selected Canal 132, as identified in the CMMP, for improvements. Additional canals may be selected if funds are available. Monroe County will subaward the full amount of awarded Direct Component funds (\$128,308.50) to Islamorada for the completion of the scope of work and project.

The scope of work includes (1) final canal selection, (2) design and permitting, (3) construction, and (4) post-construction monitoring. Monroe County will determine success of this project based upon the successful improvement of canal water quality, as measured by the increase in dissolved oxygen concentration.

The applicant requests a three-year performance period. The requested budget includes \$128,308.50 for the completion of the canal improvements via subaward. Monroe County will make a sub-award of \$128,308.50 in federal funds to Islamorada for the completion of the scope of work. Islamorada will issue two contracts, one for the construction of canal improvements and another for construction engineering inspection and administration services, including post-construction monitoring.



# **RESTORE ACT**

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

**U.S. Department of the Treasury**

**December 2018**



# TABLE OF CONTENTS

<b>RESTORE ACT FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS AND PROGRAM-SPECIFIC TERMS AND CONDITIONS .....</b>	<b>1</b>
A     PROGRAM-SPECIFIC TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT .....	2
B     PROGRAM-SPECIFIC TERMS AND CONDITIONS - AWARDS UNDER THE CENTERS OF EXCELLENCE RESEARCH GRANTS PROGRAM .....	3
<b>STANDARD TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT AND AWARDS UNDER THE CENTERS OF EXCELLENCE RESEARCH GRANTS PROGRAM</b>	
C     FINANCIAL REQUIREMENTS .....	4
D     RECIPIENT REPORTING AND AUDIT REQUIREMENTS .....	7
E     FINANCIAL MANAGEMENT SYSTEM AND INTERNAL CONTROL REQUIREMENTS .....	9
F     RECORDS RETENTION REQUIREMENTS .....	10
G     THE FEDERAL GOVERNMENT'S RIGHT TO INSPECT, AUDIT, AND INVESTIGATE .....	11
H     AWARD DISBURSEMENT .....	12
I     EFFECT OF A GOVERNMENT SHUTDOWN ON DISBURSEMENTS AND THE AVAILABILITY OF TREASURY PERSONNEL .....	13
J     NOTIFICATIONS AND PRIOR APPROVALS .....	13
K     PROPERTY .....	14
L     AMENDMENTS AND CLOSEOUT .....	15
M     REMEDIES FOR NONCOMPLIANCE .....	16
N     DEBTS .....	17
O     NON-DISCRIMINATION REQUIREMENTS .....	18
P     REQUIREMENT TO CHECK DEBARMENT AND SUSPENSION STATUS OF SUBRECIPIENTS, CONTRACTORS, SUBCONTRACTORS AND VENDORS .....	20
Q     DRUG FREE WORKPLACE .....	20
R     LOBBYING RESTRICTIONS .....	20
S     PROCUREMENT .....	22
T     RESEARCH INVOLVING HUMAN SUBJECTS .....	24
U     ENVIRONMENTAL REQUIREMENTS .....	24
V     MISCELLANEOUS REQUIREMENTS AND PROVISIONS .....	25
<b>SUPPLEMENTAL STANDARD TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT FOR ACQUISITION AND IMPROVEMENTS TO REAL PROPERTY</b>	
W     ACQUISITION AND IMPROVEMENTS TO REAL PROPERTY .....	35

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

## **PREFACE**

The grant agreement is comprised of the following documents:

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

The recipient must comply, and require each of its subrecipients, contractors, and subcontractors employed in the completion of the activity, project, or program to comply with all federal statutes, federal regulations, executive orders (EOs), Office of Management and Budget (OMB) circulars, Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions of this federal financial assistance award ("Award"), as applicable, in addition to the certifications and assurances required at the time of application. This Award is subject to the laws and regulations of the United States.

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

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

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

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

### **1. Administrative Costs**

- a. Administrative costs are defined at 31 C.F.R. § 34.2.
- b. Under no circumstances may the recipient use more than three percent of the Award funds received for administrative costs. Administrative costs do not include indirect costs that are identified specifically with, or readily assignable to facilities, as defined in 2 C.F.R. § 200.414. Costs borne by subrecipients do not count toward the three percent cap.
- c. Up to 100 percent of program income may be used to pay for allowable administrative costs, subject to the three percent cap.

### **2. Oil Spill Liability Trust Fund**

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

### **3. Remedies for Noncompliance**

- a. If Treasury determines that the recipient has expended Direct Component funds to cover the cost of any ineligible activities, in addition to the remedies available in Section M of these Standard Terms and Conditions, per 31 C.F.R. § 34.804, Treasury will make no additional payments to the recipient from the Gulf Coast Restoration Trust Fund (Trust Fund), including no payments from the Trust Fund for activities, projects, or programs until the recipient has either (1) deposited an amount equal to the amount expended for the ineligible activities in the Trust Fund, or (2) Treasury has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the RESTORE Act.
- b. If Treasury determines the recipient has materially violated the terms of this Award, Treasury will make no additional funds available to the recipient from any part of the Trust Fund until the recipient corrects the violation.

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

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

### **1. Allowable Costs**

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

- a. Construction, including the alteration, repair, or rehabilitation of existing structures. Facilities costs are allowable as indirect costs in a federally approved negotiated indirect cost rate.
- b. Acquisition of land or interests in land.

### **2. Notifications**

- a. If the selection of a Center or Centers of Excellence occurs after the start date of this Award, the recipient must promptly inform Treasury of the following:
  - i. Name of the Center of Excellence and the entity selected to administer it, including the names of member organizations if the entity is a consortium;
  - ii. The DUNS Number of the entity;
  - iii. Location of the entity;
  - iv. Discipline or disciplines assigned to the Center of Excellence;
  - v. Description of the actual public input process undertaken, including a summary of any comments received and a description of how they were addressed; and
  - vi. The estimated budget for the Center, including the total allocation of funded dollars for the Center.
- b. The recipient must immediately notify Treasury if it anticipates selecting a new entity or consortium to serve as a Center of Excellence, or making other changes to the initial selection of Center(s) of Excellence described in the scope of work.

### **3. Performance Reports**

In addition to the reporting requirements in Section D, the recipient must submit an annual report to the Gulf Coast Ecosystem Restoration Council ("Council"), in a form prescribed by the Council that includes information on subrecipients, subaward amounts, disciplines addressed, and any other information required by the Council. When the subrecipient is a consortium, the annual report must also identify the consortium members. The recipient must provide a copy of this report to Treasury when it submits the report to the Council.

## STANDARD TERMS AND CONDITIONS

### AWARDS UNDER THE DIRECT COMPONENT AND THE CENTERS OF EXCELLENCE RESEARCH GRANTS PROGRAM

#### C FINANCIAL REQUIREMENTS

##### 1. Applicable Regulations

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

- a. Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200, Subparts A through F, and any Treasury regulations incorporating these requirements.
- b. Treasury's RESTORE Act regulations, 31 C.F.R. Part 34.
- c. Governmentwide Debarment and Suspension, 31 C.F.R. Part 19.
- d. Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- e. New Restrictions on Lobbying, 31 C.F.R. Part 21.
- f. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170.
- g. Award Term related to Trafficking in Persons, 2 C.F.R. Part 175.

##### 2. Scope of Work

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

##### 3. Period of Performance: Pre-award Costs

The recipient must use funds obligated and disbursed under this Award only during the period of performance specified in the Notice of Award, which is the time period during which the recipient may incur new obligations and costs to carry out the work authorized under this Award. The only exception is for costs incurred prior to the effective date of this Award, which are allowable only if:

- a. Treasury specifically authorized these costs in writing on or after the issuance date of this Award;
- b. Incurring these costs was necessary for the efficient and timely performance of the scope of work; and
- c. These costs would have been allowable if incurred after the date of the award.

##### 4. Indirect Costs

- a. The recipient may only charge indirect costs to this Award if these costs are allowable under 2 C.F.R. Part 200, subpart E (*Cost Principles*).

- b. Indirect costs charged must be consistent with an accepted de minimis rate or the indirect cost rate agreement negotiated between the recipient and its cognizant agency (defined as the federal agency that is responsible for reviewing, negotiating, and approving cost allocation plans or indirect cost proposals, see 2 C.F.R. § 200.19) and must be included in the recipient's budget.
- c. Unallowable direct costs are not recoverable as indirect costs.
- d. The maximum dollar amount of allocable indirect costs charged to this Award shall be the lesser of:
  - i. The line item amount for the indirect costs contained in the approved budget, including all budget revisions approved in writing by the Treasury; or,
  - ii. The total indirect costs allocable to this Award based on the indirect cost rate approved by a cognizant or oversight federal agency and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.

5. **Cost Sharing and Budget Limitations**

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

6. **Program Income**

Any program income (defined at 2 C.F.R. § 200.80) generated by the recipient or the subrecipient during the period of performance of the award or subrecipient agreement, as applicable, must be included in the approved budget and be used for the purposes of the Award and under the conditions of these Standard Terms and Conditions and any Special Award Conditions, i.e. solely to accomplish the approved scope of work.

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

The recipient must not incur costs or obligate funds under this Award for any purpose pertaining to the operation of the activity, project, or program beyond the end of the period of performance. The only costs which are authorized for a period up to 90 days following the end of the period of performance are those strictly associated with close-out activities. Close-out activities are normally limited to the preparation of final progress, financial, and required audit reports unless otherwise approved in writing by Treasury. Under extraordinary circumstances, and at Treasury's sole discretion, Treasury may approve the recipient's request for an extension of the 90-day closeout period.

8. **Tax Refunds**

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



## 9. Subawards

- a. If the recipient is permitted to make subawards under this award, the recipient must execute a legally binding written agreement with the subrecipient which includes a budget by federal object class categories or fixed amount (2 CFR 200.332) if approved by Treasury. This agreement must incorporate all the terms and conditions of this Award, including any Special Award Conditions, and must include the information at 2 C.F.R. § 200.331. The recipient must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200.
- b. The recipient must evaluate and document each subrecipient's risk of noncompliance with federal statutes, federal regulations, and the terms and conditions of the subaward for purposes of determining the appropriate subrecipient monitoring strategy, as described in 2 C.F.R. § 200.331(b).
- c. The recipient must monitor the subrecipient's use of federal funds through reporting, site visits, regular contact, or other means to provide reasonable assurance that the subrecipient is administering the subaward in compliance with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and to ensure that performance goals are achieved.
- d. The recipient must provide training and technical assistance to the subrecipient as necessary.
- e. The recipient must, if necessary, take appropriate enforcement actions against non-compliant subrecipients.
- f. If lower tier subawards are authorized by Treasury, the recipient must ensure that a subrecipient who makes a subaward applies the terms and conditions of this Award, including any Special Award Conditions, to all lower tier subawards through a legally binding written agreement, and that a subrecipient who makes a subaward carries out all the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.
- g. The recipient must maintain written standards of conduct governing the performance of its employees involved in executing this Award and administration of subawards.
  - i. No employee, officer, or agent shall participate in the selection, award, or administration of a subaward supported by federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization in which he/she serves as an officer or which employs or is about to employ any of the parties mentioned in this section, has a financial interest or other interest in the organization selected or to be selected for a subaward.
  - ii. The officers, employees, and agents of the recipient shall neither solicit nor accept anything of monetary value from subrecipients.
  - iii. A recipient may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward.
  - iv. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

## **D RECIPIENT REPORTING AND AUDIT REQUIREMENTS**

### **1. Financial Reports**

- a. The recipient must submit a "Federal Financial Report" (SF-425) on a semi-annual basis for the periods ending March 31 and September 30 (or June 30 and December 31, if instructed by Treasury), or any portion thereof, unless otherwise specified in a special award condition. Reports are due no later than 30 days following the end of each reporting period. A final SF-425 must be submitted within 90 days after the end of the period of performance.
- b. In the remarks section of each SF-425 submitted, the recipient must describe by federal budget class category the use of all funds received by the recipient and subrecipient (if applicable).
- c. The report must be signed by an authorized certifying official who is the employee authorized by the recipient organization to submit financial data on its behalf.
- d. The recipient must submit all financial reports via <http://www.GrantSolutions.gov>, unless otherwise specified by Treasury in writing.

### **2. Performance Reports**

- a. The recipient must submit an SF-PPR ("Performance Progress Report"), a "RESTORE Act Status of Performance Report," (standard format provided by Treasury, OMB Approval No. 1505-0250) and an updated "RESTORE Act Milestones Report," (standard format provided by Treasury, OMB Approval No. 1505-0250) on a semi-annual basis for the periods ending March 31 and September 30 (or June 30 and December 31, if instructed by Treasury), or any portion thereof, unless otherwise specified in a Special Award Condition. Reports are due no later than 30 days following the end of each reporting period, except the final report, which is due 90 days following the end of the period of performance.
- b. The recipient must submit all performance reports in (a) above, via <http://www.GrantSolutions.gov>, unless otherwise specified in writing by Treasury, and the recipient must complete these reports according to the following instructions:
  - i. SF-PPR: In the "performance narrative" attachment (section B of the SF-PPR), the recipient must provide the following information:
    - a) In Section B-1:
      - 1) Summarize activities undertaken during the reporting period by the recipient and any subrecipients (if applicable);
      - 2) Summarize any key accomplishments, including milestones completed for the reporting period;
      - 3) List any contracts awarded during the reporting period, along with the name of the contractor and its principal, the DUNS number of the contractor, the value of the contract, the date of award, a brief description of the services to be provided, and whether or not local preference was used in the selection of the contractor; and
      - 4) If the recipient or any subrecipient is authorized to make

subawards, list any subawards executed during the reporting period, along with the name of the entity and its principal, the DUNS number of the entity, the value of the agreement, the date of award, and a brief description of the scope of work.

b) In Section B-2:

- 1) Indicate if any operational, legal, regulatory, budgetary, and/or ecological risks, and/or any public controversies, have materialized. If so, indicate what mitigation strategies have been undertaken to attenuate these risks or controversies; and
- 2) Summarize any challenges that have impeded the recipient's ability to accomplish the approved scope of work on schedule and on budget. If the scope of work is not on schedule, the recipient should propose a revised schedule and update its milestone report.

c) In Section B-3:

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

d) In Section B-4:

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

e) In Section B-5:

- 1) Describe all efforts taken to monitor contractor and/or subrecipient performance, including site visits, during the reporting period.
- 2) For subawards, indicate whether the subrecipient(s) submitted an audit to the recipient, and if so, whether the recipient issued a management decision on any findings; and
- 3) For awards where Davis-Bacon Act provisions are applicable, indicate whether the recipient and/or subrecipient(s) received and reviewed certified weekly payroll records and/or whether the recipient or subrecipient(s) conducted labor interviews.
- 4) Describe any other activities or relevant information not already provided.

f) In Section B-6:

Summarize the activities planned for the next reporting period.

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

3. **Interim Reporting on Significant Developments per 2 C.F.R. § 200.328(d)**

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

become known:

- i. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of this Award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- ii. Favorable developments, which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.

b. The recipient must:

- i. Promptly provide to Treasury and the Treasury Inspector General a copy of all state or local inspector general reports, audit reports other than those prepared under the Single Audit Act, and reports of any other oversight body, if such report pertains to an award under any RESTORE Act component, including the Comprehensive Plan Component and Spill Impact Component.
- ii. Immediately notify Treasury and the Treasury Inspector General of any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds.
- iii. Promptly notify Treasury upon the selection of a contractor or subrecipient performing work under this Award, and include the name and DUNS number for the subrecipient or contractor, and the total amount of the contract or subaward.

#### 4. **Audit Requirements**

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

#### 5. **Operational Self-Assessment**

The recipient must submit a revised *Operational Self-Assessment* form no later than June 30th of each calendar year for the duration of this Award. Only one *Operational Self-Assessment* must be submitted per recipient per year. In completing the form, the recipient must note controls or activities that have changed from its previous submission. The recipient must submit the *Operational Self-Assessment* electronically to [restoreact@treasury.gov](mailto:restoreact@treasury.gov), unless otherwise specified in writing by Treasury. The form may be downloaded at [Direct Component OSA](#) or [Centers of Excellence OSA](#).

### **E FINANCIAL MANAGEMENT SYSTEM AND INTERNAL CONTROL REQUIREMENTS**

1. Recipients that are states must expend and account for Award funds in accordance with the applicable state laws and procedures for expending and accounting for the state's own funds. All other recipients must expend and account for Award funds in accordance with federal laws and procedures. In addition, all recipients' financial management systems must be sufficient to:
  - a. Permit the preparation of accurate, current, and complete SF-425, SF-PPR, RESTORE Act Milestones Report, and RESTORE Act Status of Performance Reports, as well as reporting on subawards, if applicable, and any additional reports required by any Special Award Conditions;

- b. Permit the tracing of funds to a level of expenditures adequate to establish that such funds have been used in accordance with all applicable federal, state, and local requirements, including the RESTORE Act, Treasury RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions.
  - c. Allow for the comparison of actual expenditures with the amount budgeted for each Award made to the recipient by Treasury under the RESTORE Act.
  - d. Identify and track all RESTORE Act awards received and expended by the assigned grant number, which is the Universal Award ID (as provided by Treasury), the year the Award was made, the awarding agency (Treasury), and the program's CFDA title and CFDA number (21.015).
  - e. Record the source and application of funds for all activities funded by this Award, as well as all awards, authorizations, obligations, unobligated balances, assets, expenditures, program income, and interest earned on federal advances, and allow users to tie these records to source documentation such as cancelled checks, paid bills, payroll and attendance records, contract and subaward agreements, etc.
  - f. Ensure effective control over, and accountability for, all federal funds, and all property and assets acquired with federal funds. The recipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.
2. The recipient must establish written procedures to implement the requirements set forth in section H below (Award Disbursement), as well as written procedures to determine the allowability of costs in accordance with 2 C.F.R. Part 200, subpart E (*Cost Principles*) and the terms and conditions of this Award.
  3. The recipient must establish and maintain effective internal controls over this Award in a manner that provides reasonable assurance that the recipient is managing this Award in compliance with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions. These internal controls should be in compliance with guidance in "Standards for Internal Control in the Federal Government" issued by the Comptroller General of the United States or the "Internal Control Integrated Framework", issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO). The recipient must evaluate and monitor its compliance, and the compliance of any subrecipients, with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and any Special Award Conditions, and promptly remedy any identified instances of noncompliance. When and if an instance of noncompliance cannot be remedied by the recipient, the recipient must promptly report the instance of noncompliance to Treasury and the Treasury Inspector General, followed by submitting a proposed mitigation plan to Treasury.
  4. The recipient must take reasonable measures to safeguard protected personally identifiable information (PII) consistent with applicable federal, state, and local laws regarding privacy and obligations of confidentiality.

## **F RECORDS RETENTION REQUIREMENTS**

1. The recipient must retain all records pertinent to this Award for a period of 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:

- a. Copies of all contracts and all documents related to a contract, including the Request for Proposal (RFP), all proposals/bids received, all meeting minutes or other documentation of the evaluation and selection of contractors, any disclosed conflicts of interest regarding a contract, all signed conflict of interest forms, all conflict of interest and other procurement rules governing a particular contract, and any bid protests;
  - b. Copies of all subawards and all documents related to a subaward. For competitively selected subawards, documents may include those relevant to and required by the recipient's or subrecipient's selection process such as the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms;
  - c. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients;
  - d. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of Administrative Costs charged to this Award;
  - e. All supporting documentation for the performance outcome and other information reported on the recipient's SF-425s, SF-PPRs, RESTORE Act Milestones Reports, and RESTORE Act Status of Performance Reports; and
  - f. Any reports, publications, and data sets from any research conducted under this Award.
- 2. If any litigation, claim, investigation, or audit relating to this Award or an activity funded with Award funds is started before the expiration of the three year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.
  - 3. If the recipient is authorized to enter into contracts to complete the approved scope of work, the recipient must include in its legal agreement with the contractor a requirement that the contractor retain all records in compliance with 2 C.F.R. § 200.333.
  - 4. If the recipient is authorized to make subawards, the recipient must include in its legal agreement with the subrecipient a requirement that the subrecipient retain all records in compliance with 2 C.F.R. § 200.333.

## **G THE FEDERAL GOVERNMENT'S RIGHT TO INSPECT, AUDIT, AND INVESTIGATE**

### **1. Access to Records**

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



to this Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained (see Section F above).

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

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

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

## **H AWARD DISBURSEMENT**

1. Unless otherwise specified in a Special Award Condition, Treasury will make advance payments under this Award. However, if one of the following occurs, Treasury will require Award funds to be disbursed on a reimbursement basis either with or without pre-approval of drawdown requests: (1) Treasury determines that the recipient does not meet the financial management system standards (see Section E) included in these Standard Terms and Conditions, (2) Treasury determines that the recipient has not established procedures that will minimize the time elapsing between the transfer of funds and disbursement, or (3) Treasury determines that the recipient is in noncompliance with the RESTORE Act, Treasury's RESTORE Act regulations, other pertinent federal statutes, these Standard Terms and Conditions, Program-Specific Terms and Conditions, and/or any Special Award Conditions, and determines that the appropriate remedy is to require payment on a reimbursement basis.
2. If reimbursement is used, Treasury may require pre-approval of drawdown requests. If Treasury requires pre-approval of drawdown requests, Treasury will provide the recipient with instructions on what billing to submit. Treasury will make payment within 30 calendar days after receipt of the billing, unless Treasury determines the request to be improper, in which case payment will not be made.
3. To the extent available, the recipient must disburse funds available from program income, rebates, refunds, contract settlements, audit recoveries, and interest earned on such funds before requesting additional cash payments of Award funds.
4. Treasury will use the Department of Treasury's Automated Standard Application for Payment (ASAP) system to disburse payments of Award funds. In order to receive payments, the recipient must first enroll in ASAP.gov. Treasury creates and funds account(s) for recipients in ASAP.gov, and recipients access their account(s) online to request funds. All Award funds will be disbursed electronically using the Automated Clearing House (ACH) for next day or future day payments only. Awards paid through ASAP.gov may contain controls or withdrawal limits set by Treasury.
5. Requirements applicable to recipients that are states: Payment methods of state



agencies or instrumentalities must be consistent with Treasury-State agreements under the Cash Management Improvement Act, 31 C.F.R. Part 205 "Rules and Procedures for Efficient Federal-State Funds Transfers," and Treasury Financial Manual (TFM) 4A-2000 Overall Disbursing Rules for All Federal Agencies.

6. Requirements applicable to recipients that are not states: The recipient must minimize the time between the transfer of funds from Treasury and the use of the funds by the recipient. Advance payments to the recipient must be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient in carrying out the purpose of the approved activity, project, or program. The timing and amount of advance payments must be as close as is administratively feasible to the actual disbursements by the parish or county for activity, project, or program costs and the proportionate share of any allowable indirect costs. Advances should not be drawn down more than three business days before expenditure. Advanced funds not disbursed in a timely manner must be promptly returned to Treasury. The recipient must make timely payment to contractors (vendors) in accordance with the contract provisions.
7. Advances of federal funds must be deposited and maintained in United States Government-insured interest-bearing accounts whenever possible. The recipient is not required to maintain a separate depository account for receiving Award funds. If the recipient maintains a single depository account where advances are commingled with funds from other sources, the recipient must maintain on its books a separate subaccount for the Award funds. Consistent with the national goal of expanding opportunities for women-owned and minority-owned business enterprises, the recipient is encouraged to ensure fair consideration of women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).
8. The recipient must maintain advances of federal funds in interest bearing accounts, unless one of the following conditions applies:
  - a. The recipient receives less than \$120,000 in federal awards per year;
  - b. The best reasonably available interest bearing account would not be expected to earn interest in excess of \$500 per year on federal cash balances; or
  - c. The depository would require an average or minimum balance so high that it would not be feasible within the expected federal and non-federal cash resources.
9. On an annual basis, the recipient must remit interest earned on federal advance payments deposited in interest-bearing accounts to the Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to \$500 per year may be retained by the recipient and used for administrative costs.

## **I EFFECT OF A GOVERNMENT SHUTDOWN ON DISBURSEMENTS AND THE AVAILABILITY OF TREASURY PERSONNEL**

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

## **J NOTIFICATIONS AND PRIOR APPROVALS**

### **1. Notifications**

In addition to other notifications required under these Standard Terms and Conditions, the recipient must promptly notify Treasury in writing whenever any of the following is anticipated or occurs:

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

## **2. Prior Approvals**

- a. The recipient must obtain prior written approval from Treasury whenever any of the following actions is anticipated:
  - i. A change in the scope or the objective of the activity, project, or program (even if there is no associated budget revision requiring prior written approval);
  - ii. A need to extend the period of performance;
  - iii. A need for additional federal funds to complete the activity, project, or program;
  - iv. The transfer of funds among direct cost categories or programs, functions, and activities if this Award exceeds the Simplified Acquisition Threshold (defined at 2 C.F.R. § 200.88) and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by Treasury;
  - v. The subawarding, transferring or contracting out of any work under this Award (this provision does not apply to the acquisition of supplies, material, equipment or general support services), unless described in the application and approved in this Award.;
  - vi. Any transfer between the non-construction and construction activities; and
  - vii. The inclusion of costs that require prior approval in accordance with 2 C.F.R. Part 200, Subpart E—Cost Principles, unless described in the application and approved in this Award.
- b. If requesting a no-cost extension to this Award, the request must be made no less than 30 days prior to the end of the period of performance for this Award. Any extension of the period of performance requires prior written approval from Treasury.

## **K PROPERTY**

### **1. General Requirements**

- a. The recipient must comply with the property standards at 2 C.F.R. § 200.310 through § 200.316 for real property, equipment, supplies, and intangible property. The recipient must also comply with the RESTORE Act requirements concerning the acquisition of land and interests in land at 31 C.F.R. § 34.803.
- b. No real property or interest in real property may be acquired under this Award unless authorized in the approved scope of work.

## 2. **Supplies and Equipment**

- a. Requirements that are applicable to recipients that are states:
  - i. Equipment: The recipient must use, manage, and dispose of equipment acquired under this Award in accordance with state laws and procedures.
  - ii. Supplies: If the recipient has a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the activity, project, or program and the supplies are not needed for any other federal award, the recipient must report the value and the retention or sale of such supplies by submitting to Treasury a completed *SF-428 Tangible Personal Property Report* and *SF-428-B Final Report Form* no later than 60 days after the end of the Period of Performance.
- b. Requirements that are applicable to recipients that are not states:
  - i. Equipment and Supplies: During the period of performance, the recipient must seek disposition instructions from Treasury for equipment and/or unused or residual supplies acquired under this Award if the current fair market value of the equipment and/or unused or residual supplies is greater than \$5,000 per unit. The recipient must seek disposition instructions before disposing of the property by submitting a completed *SF-428 Tangible Personal Property Report* and *SF-428-C Disposition Request/Report*. Not later than 60 days after the end of the period of performance, the recipient must submit to Treasury a completed *SF-428 Tangible Personal Property Report* and *SF-428-B Final Report Form* if the recipient retains any equipment with a current fair market value greater than \$5,000 per unit or a residual inventory of unused supplies exceeding \$5,000 in total aggregate value upon termination or completion of the activity, project, or program and the equipment and/or supplies are not needed for any other federal award.

## L **AMENDMENTS AND CLOSEOUT**

### 1. **Amendments**

- a. The terms of this Award may be amended with the written approval of the recipient and Treasury.
- b. Treasury reserves the right to amend the terms of this Award if required by federal law or regulation.
- c. Amendments must be requested in writing, and must include an explanation for the reason this Award should be amended.

### 2. **Closeout**

- a. Treasury will close out this Award when it determines that all applicable administrative actions and all required work of this Award have been completed.
- b. Within 90 calendar days after the end of the period of performance, unless the recipient requests, and Treasury approves, an extension, the recipient must submit any outstanding SF-PPR and RESTORE Act Status of Performance reports, as well as the required reporting on subawards, if applicable, plus a final SF-425 report. In the remarks section of the final SF-425 report, the recipient

must describe by federal budget class category the final use of all funds received by the recipient and subrecipient (if applicable).

- c. The recipient must liquidate all obligations incurred under this Award not later than 90 calendar days after the end of the period of performance, unless the recipient requests, and Treasury approves, an extension.
- d. The recipient must promptly refund any balances of unobligated cash that Treasury paid.
- e. Following receipt of reports in paragraph (a) of this section, Treasury will make upward or downward adjustments to the allowable costs, and then make prompt payment to the recipient for allowable, unreimbursed costs.
- f. The closeout of this Award does not affect any of the following:
  - i. The right of Treasury to disallow costs and recover funds on the basis of a later audit or other review;
  - ii. The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions including final indirect cost rate adjustments;
  - iii. The recipient's obligations regarding audits, property management and disposition (if applicable), and records retention.

## **M REMEDIES FOR NONCOMPLIANCE**

1. If Treasury determines that the recipient has failed to comply with the RESTORE Act, Treasury's RESTORE Act regulations, these Standard Terms and Conditions, Program-Specific Terms and Conditions, or any Special Award Conditions, Treasury may take any of the following actions (in addition to the remedies in Section A.3, above, applicable to Direct Component awards):
  - a. Impose additional Special Award Conditions such as:
    - i. Allowing payment only on a reimbursement basis, with pre-approval of drawdown requests,
    - ii. Requiring additional reporting or more frequent submission of the SF-425, SF-PPR, or RESTORE Act Status of Performance Report,
    - iii. Requiring additional activity, project, or program monitoring,
    - iv. Requiring the recipient or one or more of its subrecipients to obtain technical or management assistance, and/or
    - v. Establishing additional actions that require prior approval;
  - b. Temporarily withhold payments pending correction of the noncompliance;
  - c. Disallow from funding from this Award all or part of the cost of the activity or action not in compliance;
  - d. Wholly or partly suspend or terminate this Award;
  - e. Withhold additional Awards; and/or
  - f. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. Part 180.

Treasury will notify the recipient in writing of Treasury's proposed determination that an instance of noncompliance has occurred, provide details regarding the instance of noncompliance, and indicate the remedy that Treasury proposes to pursue. The recipient

will have 30 calendar days to respond and provide information and documentation contesting Treasury's proposed determination or suggesting an alternative remedy. Treasury will consider any and all information provided by the recipient and issue a final determination in writing, which will state Treasury's final findings regarding noncompliance and the remedy to be imposed.

2. In extraordinary circumstances, Treasury may require that any of the remedies above take effect immediately upon notice in writing to the recipient. In such cases, the recipient may contest Treasury's determination or suggest an alternative remedy in writing to Treasury, and Treasury will issue a final determination.
3. Instead of, or in addition to, the remedies listed above, Treasury may refer the noncompliance to the Treasury Office of Inspector General for investigation or audit. Treasury will refer all allegations of fraud, waste, or abuse to the Treasury Inspector General.
4. Treasury may terminate this Award in accordance with 2 C.F.R. § 200.339. Requests for termination by the recipient must also be in accordance with 2 C.F.R. § 200.339. Such requests must be in writing and must include the reasons for such termination, the effective date, and in the case of partial termination, the portion to be terminated. If Treasury determines that the remaining portion of this Award will not accomplish the purpose of this Award, Treasury may terminate this Award in its entirety.
5. If this Award is terminated, Treasury will update or notify any relevant government-wide systems or entities of any indications of poor performance as required by 41 U.S.C. § 417b and 31 U.S.C. § 3321 and implementing guidance at 2 C.F.R. Part 180.
6. Costs that result from obligations incurred by the recipient during a suspension or after termination are not allowable unless Treasury expressly authorizes them in the notice of suspension or termination or subsequently. However, costs during suspension or after termination are allowable if: (1) the costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, and are not in anticipation of it; and (2) the costs would be allowable if the Award was not suspended or expired normally at the end of the period of performance in which the termination takes effect.

## **N DEBTS**

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

- a. Any funds paid to the recipient in excess of the amount to which the recipient is finally determined to be authorized to retain under the terms of this Award constitute a debt to the federal government.
- b. Any debts determined to be owed the federal government must be paid promptly by the recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made. Interest, penalties, and administrative charges (see paragraphs c, d, and e below) shall be charged on delinquent debts in accordance with 31 U.S.C. § 3717 and 31 C.F.R. § 901.9. Treasury will refer any debt that is more than 180 days delinquent to Treasury's Bureau of the Fiscal Service for debt collection services.
- c. The minimum annual interest rate to be assessed on any debts is the Department of the Treasury's Current Value of Funds Rate (CVFR). The CVFR is available online at [https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm). The assessed rate shall remain fixed for the duration of the indebtedness, based on the beginning date in Treasury's written demand for payment.
- d. Penalties on any debts shall accrue at a rate of not more than 6 percent per year



or such other higher rate as authorized by law.

- e. Administrative charges, that is, the costs of processing and handling a delinquent debt, shall be determined by Treasury.
- f. Funds for payment of a debt must not come from other federally sponsored programs. Verification that other federal funds have not been used will be made, e.g., during on-site visits and audits.

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

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

**O NON-DISCRIMINATION REQUIREMENTS**

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

1. **Statutory Provisions**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d et seq.) prohibits discrimination on the grounds of race, color, or national origin under programs or activities receiving federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) prohibits discrimination on the basis of sex under federally assisted education programs or activities;
- c. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794) prohibits discrimination on the basis of handicap under any program or activity receiving or benefitting from federal assistance;
- d. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 et seq.), prohibits discrimination on the basis of age in programs or activities receiving federal financial assistance;
- e. The Americans with Disabilities Act of 1990, as amended (42 U.S.C. §§ 12101 et seq.) ("ADA"), including the ADA Amendments Act of 2008 (Public Law 110-325, "ADAAA"), prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- f. Any other applicable non-discrimination law(s).

2. **Regulatory Provisions**

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

activities receiving federal financial assistance;

- b. Treasury Title IX regulations, 31 C.F.R. Part 28, implement Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 et seq.) which prohibits discrimination on the basis of sex under federally assisted education programs or activities;
- c. Treasury Age Discrimination regulations, 31 C.F.R. Part 23, implement the Age Discrimination Act of 1975, which prohibits discrimination on the basis of age in programs and activities receiving federal financial assistance.

### **3. Other Provisions**

- a. Parts II and III of EO 11246 (30 Fed. Reg. 12319, 1965), "Equal Employment Opportunity," as amended by EO 11375 (32 Fed. Reg. 14303, 1967) and 12086 (43 Fed. Reg. 46501, 1978), require federally assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of EO 11246 and Department of Labor regulations implementing EO 11246 (41 C.F.R. § 60-1.4(b), 1991).
- b. EO 13166 (August 11, 2000), "Improving Access to Services for Persons With Limited English Proficiency," requires federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.

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

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

### **5. Protections for Whistleblowers**

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

- a. A Member of Congress or a representative of a committee of Congress;
- b. An Inspector General;
- c. The Government Accountability Office;
- d. A Treasury employee responsible for contract or grant oversight or management;
- e. An authorized official of the Department of Justice or other law enforcement



- agency;
- f. A court or grand jury; and/or
- g. A management official or other employee of the recipient, subrecipient, vendor, contractor (vendor), or subcontractor who has the responsibility to investigate, discover, or address misconduct.

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

1. Recipients that are authorized to enter into subawards or contracts to accomplish all or a portion of the approved scope of work must verify that a proposed subrecipient or contractor (if the contract is expected to equal or exceed \$25,000) or its principals, does not appear on the federal government's Excluded Parties List prior to executing an agreement or contract with that entity. Recipients may not enter into a subaward or contract with an entity that appears on the Excluded Parties List. The Excluded Parties List is accessible at <http://www.sam.gov>.
2. The recipient must ensure that any agreements or contracts with subrecipients or contractors (vendors) require that they verify that their contractors (for contracts expected to equal or exceed \$25,000), subcontractors (for subcontracts expected to equal or exceed \$25,000), or principals that the subrecipients or contractors engage to accomplish the scope of work, if applicable, do not appear on the federal government's Excluded Parties List. Subrecipients and contractors may not enter into a contract or subcontract with an entity, or that entity's principals, if that entity or its principals appear on the Excluded Parties List.
3. The recipient must include a term or condition in all lower tier covered transactions (subawards, contracts, and subcontracts described in 31 C.F.R. Part 19, subpart B) that the award is subject to 31 C.F.R. Part 19.

**Q DRUG FREE WORKPLACE**

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

**R LOBBYING RESTRICTIONS**

1. **Lobbying Restrictions**
  - a. Solely for the purposes of Section R of these Standard Terms and Conditions, "recipient" is used as defined at 31 C.F.R. § 21.105(0). Solely for the purposes of Section R of these Standard Terms and Conditions, "award recipient" refers to the recipient of this RESTORE Act award from Treasury.
  - b. All recipients must comply with the provisions of 31 U.S.C. § 1352, as amended, and with regulations at 31 C.F.R. Part 21. No appropriated funds may be expended by the recipient of a Federal grant to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant or the extension, continuation, renewal, amendment, or modification of any Federal grant.

## **2. Certification**

- a. Each person who requests or receives from Treasury a RESTORE Act grant shall file with Treasury a certification, set forth in Appendix A of 31 C.F.R. Part 21, that the person has not made, and will not make, any payment prohibited under 31 U.S.C. § 1352, as amended.
- b. The certification shall be filed pursuant to 31 C.F.R. § 21.100(a) and (b).
- c. Any subrecipient, at any tier, who receives a subaward exceeding \$100,000 under this award, shall file with the tier above them a certification, set forth in appendix A of 31 C.F.R. Part 21, that the subrecipient has not made, and will not make, any payment prohibited by 31 C.F.R. § 21.100(a). Pursuant to 31 C.F.R. 21.100(d), the certification shall be filed to the next tier above.
- d. Any contractor or subcontractor, at any tier, who receives a contract or subcontract exceeding \$100,000 under this award, shall file with the tier above them a certification, set forth in Appendix A of 31 C.F.R. Part 21, that the contractor or subcontractor has not made, and will not make, any payment prohibited by 31 U.S.C. § 1352, as amended. Pursuant to 31 C.F.R. 21.100(d), the certification shall be filed to the next tier above.
- e. Every certification filed shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared with any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification. If a person fails to file a required certification, the United States may pursue all available remedies, including those authorized by 31 U.S.C. § 1352.

## **3. Disclosure of Lobbying Activities**

- a. The award recipient of this RESTORE Act grant from Treasury, if this grant exceeds \$100,000, shall file with Treasury disclosure form SF-LLL, set forth in Appendix B of 31 C.F.R. Part 21, if that award recipient is paid or will pay any funds, other than Federal appropriated funds, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant.
- b. Every recipient of a subaward under this RESTORE Act grant from Treasury, if this grant exceeds \$100,000, shall file with the tier above it the disclosure form SF-LLL, set forth in Appendix B of 31 C.F.R. Part 21, if that recipient has paid or will pay any funds, other than Federal appropriated funds, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant. Each tier who receives the completed and signed SF-LLL disclosure form shall forward it to the tier above it, and the award recipient of this RESTORE Act grant from Treasury will forward it to Treasury.
- c. Every recipient of a contract or subcontract under this RESTORE Act grant from Treasury, if this grant exceeds \$100,000, shall file with the tier above it the disclosure form SF-LLL, set forth in Appendix B of 31 C.F.R. Part 21, if that recipient has paid or will pay any funds, other than Federal appropriated funds, to any person for influencing or attempting to influence an officer or employee

of any agency, a Member of Congress, an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant. Each tier who receives the completed and signed SF-LLL disclosure form shall forward it to the tier above it, and the award recipient of this RESTORE Act grant from Treasury will forward it to Treasury.

- d. Every SF-LLL disclosure form filed shall be treated as a material representation of fact upon which all receiving tiers shall rely. All liability arising from an erroneous representation shall be borne solely by the tier filing that representation and shall not be shared with any tier to which the erroneous representation is forwarded. Submitting an erroneous certification or disclosure constitutes a failure to file the required certification. If a person fails to file a required disclosure, the United States may pursue all available remedies, including those authorized by 31 U.S.C. § 1352,
- e. Pursuant to 31 C.F.R. § 21.110(c), every recipient must file a new disclosure form at the end of each calendar quarter in which a payment, or an agreement to make a payment, is made which would have otherwise required reporting at the time of application. Moreover, if an event occurs during the calendar quarter which materially affects the accuracy of information reported on the disclosure form previously submitted, the submitter must file a new disclosure form. Events which "materially affect" the accuracy of information already reported include:
  - i. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action;
  - ii. A change in the persons(s) influencing or attempting to influence; and/or
  - iii. A change in the Federal official(s) contacted to influence or attempt to influence a covered Federal action,
- f. The award recipient must submit its form SF-LLLs, as well as those received from subrecipients, contractors and subcontractors, to Treasury within 30 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed.
- g. The award recipient must include a statement in all subaward, contracts and subcontracts exceeding \$100,000 in federal funds, that the subaward, contract, or subcontract is subject to 31 U.S.C. § 1352,
- h. The award recipient must require subrecipients, contractors and subcontractors to submit form SF-LLL to the award recipient with 15 calendar days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure from previously filed.

## **S PROCUREMENT**

1. The recipient must comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the

quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

2. 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.
3. The recipient, subrecipient, contractor, and/or subcontractor must not sub-grant or sub-contract any part of the approved project to any agency or employee of Treasury and/or other federal department, agency, or instrumentality without the prior written approval of Treasury. Treasury will notify the recipient in writing of the final determination.
4. Requirements applicable to recipients and subrecipients that are states: When executing procurement actions under this 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.
5. Requirements applicable to recipients and subrecipients 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, and 200.324. 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*.
6. Contracting with small and minority businesses, women's business enterprise, and labor surplus area firms, 2 C.F.R. § 200.321. Recipients and subrecipients that are not states must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible. Affirmative steps must include:
  - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - c. Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;
  - e. Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and,
  - f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in (a) through (e) of this paragraph.

## **T RESEARCH INVOLVING HUMAN SUBJECTS**

1. No research involving human subjects is permitted under this Award unless expressly authorized by a special award condition, or otherwise in writing by Treasury.
2. 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.
3. The recipient and subrecipient, as appropriate, must maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the recipient must submit appropriate documentation to Treasury for approval by the appropriate Treasury officials. This documentation may include:
  - a. 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;
  - b. Documentation to support an exemption for the project;
  - c. Documentation to support deferral for an exemption or IRB review; or
  - d. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
4. No work involving human subjects may be undertaken, conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by Treasury.

## **U ENVIRONMENTAL REQUIREMENTS**

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

1. National Historic Preservation Act, as amended (54 U.S.C. § 300101 et seq.) and Archeological and Historic Preservation Act, as amended (54 U.S.C. § 312501 et seq.)
2. The National Environmental Policy Act of 1969, as amended (42 U.S.C. § 4321 et seq.)
3. Clean Air Act, as amended (42 U.S.C. § 7401 et seq.), Clean Water Act, as amended (33 U.S.C. § 1251 et seq.), and EO 11738
4. The Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4002 et seq.)
5. The Endangered Species Act of 1973, as amended, (16 U.S.C. § 1531 et seq.)
6. The Coastal Zone Management Act, as amended, (16 U.S.C. § 1451 et seq.)
7. The Coastal Barriers Resources Act, as amended, (16 U.S.C. § 3501 et seq.)
8. The Wild and Scenic Rivers Act, as amended, (16 U.S.C. § 1271 et seq.)
9. The Safe Drinking Water Act of 1974, as amended, (42 U.S.C. § 300f-j)



10. The Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. § 6901 et seq.)
11. The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 et seq.) and the Community Environmental Response Facilitation Act (42 U.S.C. § 9601 note)
12. Magnuson-Stevens Fishery Conservation and Management Act, as amended (16 U.S.C. §1801)
13. Marine Mammal Protection Act, as amended (16 U.S.C § 31)
14. Migratory Bird Treaty Act, as amended (16 U.S.C. §§ 703-712)
15. Responsibilities of Federal Agencies to Protect Migratory Birds, EO 13186
16. Bald and Golden Eagle Protection Act, as amended (16 U.S.C. § 668-668d)
17. Marine Protection, Research and Sanctuaries Act (33 U.S.C. §§ 1401-1445 and 16 U.S.C. §§ 1431—1445)
18. National Marine Sanctuaries Act, as amended (16 U.S.C. § 1431 et seq.)
19. Rivers and Harbors Act of 1899 (33 U.S.C § 407)
20. Environmental Justice in Minority Populations and Low Income Populations, EO 12898, as amended
21. Flood Management, EO 11988, as amended by EO 13690, and Protection of Wetland, EO11990, May 24, 177, as amended by EO 12608
22. Farmland Protection Policy Act, as amended (7 U.S.C. § 4201 et. seq.)
23. Coral Reef Protection, EO 13089
24. Invasive Species, EP 13112

## **V MISCELLANEOUS REQUIREMENTS AND PROVISIONS**

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

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

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

### **2. Disclaimer Provisions**

- a. The United States expressly disclaims any and all responsibility or liability to the recipient or third persons for the actions of the recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this Award or any other losses resulting in any way from the performance of this Award or any subaward, contract, or subcontract under this Award.
- b. The acceptance of this Award by the recipient does not in any way constitute an agency relationship between the United States and the recipient.

3. **Prohibited and Criminal Activities**

- a. The Program Fraud Civil Remedies Act of 1986 (31 U.S.C. §§ 3801-3812), provides for the imposition of civil penalties against persons who make false, fictitious, or fraudulent claims to the federal government for money (including money representing grants, loans or other benefits).
- b. False Statements, as amended (18 U.S.C. § 1001) provides that whoever makes or presents any materially false, fictitious, or fraudulent statements to the United States shall be subject to imprisonment of not more than five years.
- c. False, Fictitious, or Fraudulent Claims, as amended (18 U.S.C. § 287) provides that whoever makes or presents a false, fictitious, or fraudulent claim against or to the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided in 18 U.S.C. § 287.
- d. False Claims Act, as amended (31 U.S.C. 18 U.S.C. § 3729 et seq.), provides that suits under this act can be brought by the federal government, or a person on behalf of the federal government, for false claims under federal assistance programs
- e. Copeland "Anti-Kickback" Act, as amended (18 U.S.C. § 874 and 40 U.S.C. § 276c), prohibits a person or organization engaged in a federally supported project from enticing an employee working on the project from giving up a part of his compensation under an employment contract. The Copeland "Anti-Kickback" Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

4. **Political Activities**

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

5. **American-Made Equipment and Products**

The recipient is hereby notified that it is encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.

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

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

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

Pursuant to EOs 13555 and 13270, as amended, Treasury is strongly committed to broadening the participation of MSIs in its financial assistance programs. Treasury's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from federal financial assistance programs. Treasury encourages recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website at <http://www2.ed.gov/about/offices/list/ocr/edlite-minorityinst.html>.



8. **Research Misconduct**

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

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

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

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

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

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

1. You as the recipient, 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 this Award is in effect;
  - ii. Procure a commercial sex act during the period of time that this Award is in effect; or

- iii. Use forced labor in the performance of this Award or subawards under this 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 Section V.10; or
  - ii. Has an employee who is determined by the agency official authorized to terminate this Award to have violated a prohibition in paragraph a.1 of this Section V.10 through conduct that is either—
    - 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 31 C.F.R. Part 19.
- b. *Provision applicable to a recipient other than a private entity.* We as the federal awarding agency may unilaterally terminate this Award, without penalty, if a subrecipient that is a private entity—
  - 1. Is determined to have violated an applicable prohibition in paragraph a.1 of this Section V.10; or
  - 2. Has an employee who is determined by the agency official authorized to terminate this Award to have violated an applicable prohibition in paragraph a.1 of this Section V.10 through conduct that is either—
    - i. Associated with performance under this Award; or
    - 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 31 C.F.R. Part 19.
- c. *Provisions applicable to any recipient.*
  - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this Section V.10.
  - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this Section V.10:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. § 7104(g)), and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this Award.
  - 3. You must include the requirements of paragraph a.1 of this Section V.10 in any subaward you make to a private entity.
- d. *Definitions.* For purposes of this award term:
  - 1. "Employee" means either:
    - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this Award; or

- ii. Another person engaged in the performance of the project or program under this Award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
- 2. "Forced labor" means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of 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.
  - ii. Includes:
    - A. A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).
    - B. A for-profit organization
- 4. "Severe forms of trafficking in persons," "commercial sex act," and "coercion" have the meanings given at § 103 of the TVPA, as amended (22 U.S.C. § 7102).

11. **The Federal Funding Accountability and Transparency Act of 2006, as amended. (Pub. L. No. 109-282, 31 U.S.C. § 6101 note)**

- a. The award term at Appendix A of 2 C.F.R. Part 170 is hereby incorporated by reference.
- b. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on federal awards to be made available to the public via a single, searchable website. This information is available at [www.USASpending.gov](http://www.USASpending.gov). The FFATA Subaward Reporting System (FSRS) is the reporting tool federal prime awardees (*i.e.*, prime contractors and prime grants recipients) use to capture and report subaward and executive compensation data regarding their first-tier subawards to meet the FFATA reporting requirements. Prime grant awardees will report against sub-grants awarded. The subaward information entered in FSRS will then be displayed at <http://www.USASpending.gov>.
- c. Recipients of RESTORE Act funding are subject to FFATA subaward reporting requirements as outlined in the OMB guidance on FFATA issued August 27, 2010. The recipient is required to file a FFATA subaward report by the end of the month following the month in which the recipient makes any subaward greater than or equal to \$25,000. This includes any action that brings the cumulative total award to \$25,000 or more. This report must be filed electronically at <http://www.fsrc.gov>.
- d. The recipient must report total compensation for each of its five most highly compensated executives for the preceding completed fiscal year, by the end of the month following the month in which this Award is made, and annually thereafter if—
  - i. The total federal funding authorized to date under this Award is \$25,000 or more; and



- ii. In the preceding fiscal year, the recipient received—
  - 1) 80 percent or more of annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to FFATA, as defined at 2 C.F.R. § 170.320 (and subawards); and
  - 2) \$25,000,000 or more in annual gross revenues from federal procurement contracts (and subcontracts) and federal financial assistance subject to FFATA, as defined at 2 C.F.R. 170.320 (and subawards); and
- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under § 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or § 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/excomp.htm>.)
- e. The recipient must report on the total compensation of its subrecipients' five most highly compensated executives, as required by FFATA, and must include provisions in every executed contract or agreement with affected subrecipients requiring the subrecipient to provide all information necessary for the recipient to report on subrecipient executive compensation. The recipient must report on subrecipient executive compensation by the end of the month following the month during which the recipient makes the subaward.
- f. The recipient must keep its information current in SAM (System for Award Management, which is the successor to the Central Contractor Registry, (CCR)) at least until submission of the final SF-425 or receipt of the final Award payment, whichever is later. This requires that the recipient review and update the information at least annually after the initial registration, and more frequently if required by changes in the recipient's information. SAM is 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 (currently at <https://www.sam.gov/portal/public/SAM/>).
- g. If the recipient is authorized to make subawards under this Award, the recipient must notify potential subrecipients that the recipient may not make a subaward to any entity unless that entity has provided its Data Universal Numbering System (DUNS) number to the recipient. A DUNS number is the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify business entities.

12. **Recipient Integrity and Performance Matters (80 FR 43301, July 22, 2015) Reporting of Matters Related to Recipient Integrity and Performance**

a. *General Reporting Requirement*

If the total value of the recipient's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the recipient during that period of time must maintain the accuracy of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in paragraph b. of

this award term and condition. This is a statutory requirement under § 872 of Public Law 110-417, as amended (41 U.S.C. § 2313). As required by § 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.

b. *Proceedings About Which The Recipient Must Report*

The recipient must submit the information required about each proceeding that:

- i. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
- ii. Reached its final disposition during the most recent five year period; and
- iii. Is one of the following:
  - 1) A criminal proceeding that resulted in a conviction, as defined in paragraph e. of this award term and condition;
  - 2) A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - 3) An administrative proceeding, as defined in paragraph e. of this award term and condition, that resulted in a finding of fault and liability and your payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - 4) Any other criminal, civil, or administrative proceeding if:
    - a) It could have led to an outcome described in paragraph b.iii. 1), 2), or 3) of this award term and condition;
    - b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on your part; and
    - c) The requirement in this award term and condition to disclose information about the proceeding does not conflict with applicable laws and regulations.

c. *Reporting Procedures*

Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in paragraph b of this award term and condition. The recipient does not need to submit the information a second time under assistance awards that the recipient received if they already provided the information through SAM because they were required to do so under Federal procurement contracts that they were awarded.

d. *Reporting Frequency*

During any period of time when the recipient is subject to the requirement in paragraph 1 of this award term and condition, the recipient must report proceedings information through SAM for the most recent five year period, either to report new information about any proceeding(s) that they have not reported previously or affirm that there is new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.

e. *Definitions*

For purposes of this award term and condition:

- i. Administrative proceeding means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant. It does not include audits, site visits, corrective plans, or inspection of deliverables.
- ii. Conviction, for purposes of this award term and condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
- iii. Total value of currently active grants, cooperative agreements, and procurement contracts includes—
  - 1) Only the Federal share of the funding under any Federal award with a recipient cost share or match; and
  - 2) The value of all expected funding increments under a Federal award and options, even if not yet exercised.

13. **Publications and Signage**

Any publications (except scientific articles or papers appearing in scientific, technical, or professional journals) or signage produced with funds from this Award, or informing the public about the activities funded in whole or in part by this Award, must clearly display the following language: "This project was paid for [in part] with federal funding from the Department of the Treasury under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act)." Publications (except scientific articles or papers appearing in scientific, technical, or professional journals) produced with funds from this Award must display the following additional language: "The statements, findings, conclusions, and recommendations are those of the author(s) and do not necessarily reflect the views of the Department of the Treasury."

14. **Homeland Security Presidential Directive 12**

If the performance of this Award requires the recipient's personnel to have routine access to Treasury-controlled facilities and/or Treasury-controlled information systems (for purpose of this term "routine access" is defined as more than 180 days), such personnel must undergo the personal identity verification credential process. In the case of foreign nationals, Treasury will conduct a check with U.S. Citizenship and Immigration Services' (USCIS) Verification Division, a component of the Department of Homeland Security (DHS), to ensure the individual is in a lawful immigration status and that he or she is eligible for employment within the United States. Any items or services delivered under this Award must comply with Treasury personal identity verification procedures that implement Homeland Security Presidential Directive 12, "Policy for a Common Identification Standard for Federal Employees and Contractors", FIPS PUB 201, as amended, and OMB Memorandum M-05-24, as amended. The recipient must ensure that its subrecipients and contractors (at all tiers) performing work under this Award comply with the requirements contained in this Section V.14. Treasury may delay final payment under this Award if the subrecipient or contractor fails to comply with the requirements listed in the section below. The recipient must insert the following term in all subawards



and contracts when the subrecipient or contractor is required to have routine physical access to a Treasury-controlled facility or routine access to a Treasury-controlled information system:

- a. The subrecipient or contractor must comply with Treasury personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication, FIPS PUB 140-2, as amended, for all employees under this subaward or contract who require routine physical access to a federally controlled facility or routine access to a federally controlled information system.
- b. The subrecipient or contractor must account for all forms of government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor must return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by Treasury:
  - i. When no longer needed for subaward or contract performance;
  - ii. Upon completion of the subrecipient or contractor employee's employment; or
  - iii. Upon subaward or contract completion or termination.

15. **Foreign Travel**

- a. The recipient and subrecipient may not use funds from this Award for travel outside of the United States unless Treasury provides prior written approval.
- b. The recipient and subrecipient must comply with the provisions of the Fly America Act, as amended, (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131–301-10.143.
- c. The Fly America Act requires that federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- d. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow federal funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the GSA website <http://www.gsa.gov/portal/content/103191>. Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the Department of State's website <http://www.state.gov/e/eeb/tra/>.
- e. If a foreign air carrier is anticipated to be used for any portion of travel funded under this Award, the recipient must receive prior approval from the Treasury. When requesting such approval, the recipient must provide a justification in



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

**16. Export Control**

- a. This clause applies to the extent that this Award involves access to export-controlled items.
- b. In performing this financial assistance Award, the recipient may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR) issued by the Department of Commerce (DOC). The recipient is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and re-exports provisions. The recipient shall establish and maintain effective export compliance procedures throughout performance of the Award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.
- c. Definitions:
  - i. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730–774), implemented by the DOC's Bureau of Industry and Security. These are generally known as "dual-use" items, items with a military and commercial application.
  - ii. Deemed Export/Re-export. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the United States. If such a release occurs abroad, it is considered a deemed re-export to the foreign national's home country. Licenses from DOC may be required for deemed exports or re-exports.
- d. The recipient shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable federal statutes, EOs, and/or regulations, including the EAR.
- e. To the extent the recipient wishes to provide foreign nationals with access to export-controlled items, the recipient shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed re-exports.
- f. Nothing in the terms of this Award is intended to change, supersede, or waive the requirements of applicable federal statutes, EOs, and/or regulations.

- g. Compliance with this Section V.15 will not satisfy any legal obligations the recipient may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120–130), including releases of such items to foreign nationals.
- h. The recipient shall include this clause, including this paragraph (i), in all lower tier transactions (subawards, contracts, and subcontracts) under this Award that may involve access to export-controlled items.

## **SUPPLEMENTAL STANDARD TERMS AND CONDITIONS - AWARDS UNDER THE DIRECT COMPONENT FOR ACQUISITION AND IMPROVEMENTS TO REAL PROPERTY**

### **W ACQUISITION AND IMPROVEMENTS TO REAL PROPERTY**

#### **1. Compliance with State, Local and Federal Requirements**

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

#### **2. Title**

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

#### **3. Permitting Requirements**

Prior to receiving Treasury authorization to start construction, the recipient must furnish evidence, satisfactory to Treasury, that recipient has received all federal, state and local permits necessary for the completion of the project.

#### **4. Federal Interest in Real Property**

"Federal interest" refers to real property that is acquired or improved, in whole or in part, with RESTORE Act Direct Component funds, which must be held in trust by the Recipient for the benefit of the project for the Estimated Useful Life of the project, during which period Treasury retains an undivided equitable reversionary interest in the real property (i.e., the "federal interest").

#### **5. Estimated Useful Life**

Property that is acquired or improved, in whole or in part, with federal assistance is held in trust by the recipient for the purpose(s) for which the award was made for the Estimated Useful Life. Estimated Useful Life means the period of years that constitutes the expected useful lifespan of a project, as determined by Treasury, during which Treasury

anticipates obtaining the benefits of the project pursuant to project purposes authorized by the RESTORE Act. For this award the recipient has proposed an Estimated Useful Life from the date of construction completion. Treasury's issuance of the grant agreement represents its concurrence with the recipient's proposed Estimated Useful Life.

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

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

**6. Commencement of Construction**

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

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

**7. Use of Real Property**

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

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

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

To document the federal interest, the recipient agrees to prepare and properly record a "Covenant of Purpose, Use and Ownership" (Covenant), or, where a subrecipient is the title owner, to ensure that the subrecipient prepares and properly records a "Covenant of Purpose, Use and Ownership" (Covenant) on the property acquired or improved with federal assistance funds. See 2 C.F.R. § 200.316. This Covenant does not establish a

traditional mortgage lien in that it does not establish a traditional creditor relationship requiring the periodic repayment of principal and interest, or the ability of Treasury to foreclose on the real property at any time. Rather, pursuant to the Covenant, the recipient and/or the subrecipient, as applicable, acknowledges that it holds title to the real property in trust for the public purposes of the financial assistance award and agrees, among other commitments, that it will repay the federal interest if it disposes of or alienates an interest in the real property, or uses it in a manner inconsistent with the public purposes of the award, during the Estimated Useful Life of the property.

- a. The Covenant must be satisfactory in form and substance to Treasury, must include the name and current address of the recipient and subrecipient (if applicable), the grant award number, amount and date of award and subrecipient agreement (if applicable), date of the purchase of property (if applicable), and the Estimated Useful Life of the project. It must also include statements that the real property will only be used for purposes consistent with the RESTORE Act; that it will not be mortgaged or used as collateral, sold or otherwise transferred to another party, without the written permission of Treasury; and that the federal interest cannot be subordinated, diminished, nullified or released through encumbrance of the property, transfer of the property to another party or any other action the recipient/subrecipient takes without the written permission of Treasury.
- b. The recipient agrees to provide to Treasury an attorney's title opinion as to the title owner of the property, and to properly record, in accordance with applicable law, the Covenant in the real property records in the jurisdiction in which the real property is located in order to provide public record notice to interested parties that there are certain restrictions on the use and disposition of the real property during its Estimated Useful Life, and that Treasury retains an undivided equitable reversionary interest in the real property to the extent of its participation in the project for which funds have been awarded.
- c. Treasury requires an opinion of counsel for the recipient to substantiate that the document has been properly recorded.
- d. Failure to properly and timely file and maintain documentation of the federal interest may result in appropriate enforcement action, including, but not limited to, disallowance of the cost of the acquisition or improvement by Treasury.
- e. The Federal Interest must be perfected and recorded/filed in accordance with state and/or local law concurrent with the acquisition of the real property, where an award includes real property acquisition, and for construction of buildings and projects to improve the real property, no later than the date construction and/or improvement work commences.
- f. When the Estimated Useful Life of the project is ended, the federal interest is extinguished and the federal government has no further interest in the real property.

Exclusions from the requirement that the federal interest on real property be recorded will be at Treasury's sole discretion. The types of projects for which Treasury may agree to this exclusion are those projects for which federal funds will not be used to fund the construction of built structures, improvements to state parks, water and sewer lateral line projects affecting private properties, and shoreline stabilization projects.

9. **Administration, Operation and Maintenance**

The recipient agrees to administer, operate, and maintain the project for its Estimated

Useful Life in the same manner in which it operates and maintains similar facilities and equipment owned by it, and in accordance with state and local standards, laws and regulations. The recipient must not be in breach of its obligations under this award except to the extent the failure to fulfill any obligation is due to an Uncontrollable Force.

"Uncontrollable Force" means an event beyond the reasonable control of, and without the fault or negligence of, the party claiming the Uncontrollable Force that prevents the recipient from honoring its contractual obligations under this Agreement and which, by exercise of the recipient's reasonable care, diligence and foresight, such recipient was unable to avoid. Uncontrollable Forces include, but are not limited to:

- a. Strikes or work stoppage;
- b. Floods, earthquakes, or other natural disasters; terrorist acts; and
- c. Final orders or injunctions issued by a court or regulatory body having competent subject matter jurisdiction which the recipient, claiming the Uncontrollable Force, after diligent efforts, was unable to have stayed, suspended, or set aside pending review by a court of competent subject matter jurisdiction. Neither the unavailability of funds or financing, nor conditions of national or local economies or markets must be considered an Uncontrollable Force.

#### 10. **Reporting Requirement**

The recipient must complete and submit to Treasury a report on the status of the real property or interest in real property in which the federal government retains an interest, using a *SF-429 Real Property Status Report* form annually for the first three years after real property acquisition or completion of construction, and thereafter every five years until the end of the Estimated Useful Life or time of disposition, whichever is less. All reports must be for the period ending December 31, or any portion thereof, beginning with the year of completion of construction or real property acquisition, and are due no later than 30 days following the end of the reporting period.

#### 11. **Insurance**

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

#### 12. **Bonding**

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

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

- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.
- c. A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### 13. Floodplain Requirements

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

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

- a. Floodplain Protection: That the project engineer/architect has certified that the project facility will be adequately protected from damage by floods in this area of apparent potential flood hazard. The evidence must include adequate justification for the Base Flood Elevation designation for the financial assistance award site.
- b. Floodplain Insurance: That the community is participating in the National Flood Insurance Program, and that as required, the recipient will purchase flood insurance.

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

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

- a. The goal for participation of women in each trade area must be as follows:  
From April 1, 1981, until further notice: 6.9 percent;
- b. All changes to this goal, as published in the Federal Register in accordance with the Office of Federal Contract Compliance Programs regulations at 41 C.F.R. § 60-4.6, or any successor regulations, must hereafter be incorporated by reference into these Special Award Conditions; and,
- c. Goals for minority participation must be as prescribed by Appendix B-80, Federal Register, Volume 45, No. 194, October 3, 1980, or subsequent publications. The recipient must include the "Standard Federal Equal



Employment Opportunity Construction Contract Specifications" (or cause them to be included, if appropriate) in all federally assisted contracts and subcontracts. The goals and timetables for minority and female participation may not be less than those published pursuant to 41 C.F.R. § 60-4.6.

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

Davis-Bacon Act-related provisions are applicable for a construction project if it is for the construction of a project that can be defined as a "treatment works" in 33 U.S.C § 1292; or for a construction project regardless of whether it is a "treatment works" project if it is receiving federal assistance from another federal agency operating under an authority that requires the enforcement of Davis-Bacon Act-related provisions. When required, all prime construction contracts in excess of \$2,000 awarded by the non-Federal entity 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 contracts 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 Treasury. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. Part 3, "Contracts 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 or which he or she is otherwise entitled. The non-federal entity must report all suspected or reported violations to Treasury.

16. **Equal Opportunity Clause**

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

**41 C.F.R. § 60-1.4 Equal opportunity clause.**

*During the performance of this contract, the contractor agrees as follows:*

*(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:*

*Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.*

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

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

*(4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.*

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

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

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

*(8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The*

*contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:*

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

*The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.*

*The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and subcontractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.*

*The applicant further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and subcontractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.*

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

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

## **Appendix II to Part 200- Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.**

The SUBRECIPIENT and its subcontractors must follow the provisions, as applicable, as set forth in 2 C.F.R. §200.326 Contract provisions and Appendix II to 2 C.F.R. Part 200, as amended, including but not limited to:

Davis-Bacon Act, as amended (40 U.S.C. §§3141-3148). When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must comply with the Davis-Bacon Act (40 U.S.C. §§3141-3144, and §§3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. If applicable, the COUNTY must place a 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 COUNTY must report all suspected or reported violations to the Federal awarding agency. When required by Federal program legislation, which includes emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program and Transit Security Grant Program (it does not apply to other FEMA grant and cooperative agreement programs, including the Public Assistance Program), the contractors must also comply with the Copeland "Anti-Kickback" Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). As required by the Act, each contractor or subrecipient is 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 COUNTY must report all suspected or reported violations to the Federal awarding agency.

- (1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- (2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as the FEMA may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.
- (3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.

Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, which includes all FEMA grant and cooperative agreement programs, all contracts awarded by the COUNTY in excess of \$100,000 that involve the employment of mechanics or laborers must comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. §3702 of the Act, each contractor must 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.

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.

Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387). Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. §§7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§1251-1387) and will report violations to FEMA and the Regional Office of the Environmental Protection Agency (EPA). The Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended—applies to Contracts and subgrants of amounts in excess of \$150,000.

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.

Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

Compliance with Procurement of recovered materials as set forth in 2 CFR § 200.322. CONTRACTOR must comply with section 6002 of the Solid Waste disposal Act, as amended, by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 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.