

# SUBRECIPIENT POLICY

of  
The Gulf Consortium

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## DEFINITIONS

The following terms defined in this section shall have the meanings set forth below whenever they appear in the Gulf Consortium Policies:

1. “Agreement/Contract” means all types of agreements, regardless of what they may be called, for the purchase or disposal of supplies, services, materials, equipment, or construction and which contain the terms and obligations of the business transaction.
2. “Board” means the Board of Directors of the Gulf Consortium.
3. “Business” means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity.
4. “Consortium” shall mean the Gulf Consortium, created under the Florida Interlocal Cooperation Act (Part I of Chapter 163, Florida Statutes) and the Interlocal Agreement entered into by its members on September 12, 2012.
5. “Council” shall mean the RESTORE Council.
6. “Contractor/Consultant” means any person having a contract with the Consortium.
7. “Data” means recorded information, regardless of form or characteristic.
8. “Designee” means a duly authorized representative of a person holding a superior position.
9. “Finance Manager” shall refer to the staff so designated by the entity contracted to provide accounting and financial management services for the Consortium.
10. “Negotiated Indirect Cost Rate” refers to an indirect cost rate that has been formally established with a federal agency in accordance with 2 CFR 200, Subpart F, Appendix 4, Section C.2.f., which states that provisional and final rates must be negotiated where neither predetermined nor fixed rates are appropriate. Counties may have a Negotiated Indirect Cost Rate (or NICRA) already established due to prior Federal Awards or other federally funded programs. Where counties do not have an established Indirect Cost Rate with a federal agency, a De minimis 10% rate may be used. The 10% De minimis rate may be elected by an organization that has never received a negotiated indirect cost rate. 2 CFR 200, Subpart E, Section 200.414 (f) specifies that any non-Federal entity that has never received a negotiated indirect cost rate may elect to charge a de minimis rate of 10%

of modified total direct costs (MTDC) which may be used indefinitely.

11. “Person” means any business, individual, committee, club, other organization, or group of individuals.
12. “Procurement” means buying, procuring, leasing, or otherwise acquiring any materials, supplies, services, or equipment. It also includes all functions that pertain to the obtaining of any material, supplies, services, construction, and equipment, including description of specifications and requirements, selection and solicitation of resources, preparation, and Award of contract.
13. “Purchase Order” means that document used by the Consortium to request that a contract be entered into for a specified need, and may include, but not be limited to, the technical description of the requested item, delivery schedule, transportation, criteria for evaluation, payment terms, and other specifications.
14. “RESTORE ACT (Pot 3) funds” refers to the 30% of the Gulf Coast Restoration Trust Fund, established by the RESTORE Act, to fund economic and environmental recovery of the Gulf Coast region impacted by the Deepwater Horizon Oil Spill. Pot 3 funds are managed separately by each of the Gulf Coast states. The Gulf Consortium is Florida’s designated agency to administer Pot 3 funds.
15. “Services” means the furnishing of labor, time, or effort by a contractor, not involving the delivery of a specific end product other than those which is not defined as supplies and which are merely incidental to the required performance.
16. “Specification” means any description of the physical or functional characteristics of the nature of a material, supply, service, construction, or equipment item. It may include a description of any requirement for inspection, testing, recycled, or degradable materials content, or preparing a material, supply, service, construction, or equipment item for delivery.
17. “Subrecipient” means a Member County that receives a Subaward of RESTORE Act Funds from the Consortium for the performance of a project, or any portion thereof, described in the Florida State Expenditure Plan.
18. “Subrecipient Agreement” means an agreement entered into between the Consortium and a Member County governing the Subaward of RESTORE Act Funds received by the Consortium pursuant to such Member County.

## **S-1. BACKGROUND**

This Subrecipient Policy is intended to ensure Subrecipient compliance with the Consortium's policies and procedures in order to expedite grant Award and funding activities. For purposes of this policy, the Consortium is the recipient of grant funds and the individual Counties are the Subrecipients. Compliance with federal funding rules, and in particular RESTORE Council policies, is a requirement for all Consortium grant Awards. RESTORE Council requires that Subrecipients must comply, and require each of their Subrecipients, contractors, and subcontractors employed in the completion of the activity, project, or program to comply with all applicable federal rules and regulations. 2 CFR Part 200 is the primary governing regulatory framework for federal grant activity. The Financial Assistance Standard Terms and Conditions are included as an appendix.

## **S-2. SCOPE OF WORK**

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

## **S-3. PERIOD OF PERFORMANCE; PRE-AWARD COSTS**

The Subrecipient must use funds obligated and disbursed under the 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 the Award. The only exception is for costs incurred prior to the effective date of the Award, which are allowable only if:

- a. The Subrecipient has requested in writing and The Consortium has specifically authorized these costs in writing before they are incurred;
- 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.

## **S-4. INDIRECT COSTS**

The Subrecipient may only charge indirect costs to the Award if such costs are allowable under 2 C.F.R. Part 200, subpart E (Cost Principles).

- a. Indirect costs must be consistent with an accepted de minimis rate or the indirect cost rate agreement negotiated between the Subrecipient 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 Subrecipient's budget.

- a. Unallowable direct costs are not recoverable as indirect costs.
- b. The maximum dollar amount of allocable indirect costs charged to an 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 Consortium; or,
  - ii. The total indirect costs allocable to the Award based on the indirect cost rate approved by a cognizant or oversight federal agency, or the de minimis rate, and applicable to the period in which the cost was incurred, provided that the rate is approved on or before the Award end date.

#### **S-5. COST SHARING AND BUDGET LIMITATIONS**

- a. The Subrecipient is not required to contribute any matching funds. However, tracking of matching funds is a performance requirement of any Award that was made with a condition of additional funding. In the event that additional funding is not made available, the Subrecipient may be required to reimburse the Consortium for the Award.
- b. The Subrecipient shall not request or receive additional funding beyond what was included in the approved application for the approved scope of work from any federal or non-federal source without first notifying the Consortium in writing.

#### **S-6. PROGRAM INCOME**

Any program income (defined in 2 C.F.R. § 200.307) 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 and under the conditions of the Award, i.e. solely to accomplish the approved scope of work, or as otherwise authorized in writing by the RESTORE Council.

#### **S-7. INCURRING COSTS OR OBLIGATING FEDERAL FUNDS BEYOND THE EXPIRATION DATE**

The Subrecipient must not incur costs or obligate funds under an 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 the Consortium.

Under extraordinary circumstances, and at the Consortium's sole discretion, The Consortium may approve the Subrecipient's request for an extension of the 90-day closeout period.

#### **S-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 Subrecipient during or after the period of performance must be refunded or credited to the Consortium if such taxes were paid out of RESTORE Act funds in accordance with 2 C.F.R. Part 200, subpart E (Cost Principles). The Subrecipient agrees to contact the Consortium immediately upon receipt of these refunds.

## **S-9. SUBAWARD REQUIREMENTS**

- a. Sub-subawards: Where authorized in an Award, Subrecipients may make sub-subawards to third party entities for the implementation of activities described in an Award. A Subrecipient that wishes to make a sub-subaward shall be responsible for evaluating the qualifications and capability of prospective sub-subrecipients to ensure their ability to successfully implement the SEP project or portion thereof. It is critical that subrecipients with downline subrecipients are prepared to ensure compliance with all award terms and conditions. The Subrecipient shall be responsible for submitting appropriate information and documentation to the Consortium evidencing compliance with this requirement at or prior to submitting a grant application related to any SEP project to the Consortium.
- b. The Consortium is obligated to perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200. As such, all Subrecipient agreements shall incorporate all the terms and conditions required by Council, including any Special Award Conditions, and must include the information contained in 2 C.F.R. §200.331. It is critical that Subrecipients understand the difference between compliance requirements of contractors versus subrecipients, and take appropriate measures to assess and monitor compliance throughout the award period.
- c. The Consortium shall review 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). The Consortium uses a risk assessment tool to evaluate the internal controls and other methods of compliance in place at the Subrecipient level. The tool helps to establish appropriate risk ratings for purposes of monitoring award conditions and grant performance. Subrecipient counties that also have subrecipients are required to have written procedures in place to evaluate subrecipient risk, and monitor performance throughout the performance period.
- d. The Consortium 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, the RESTORE Act Standard

Terms and Conditions, Program-Specific Terms and Conditions, any Special Award Conditions, and the Subrecipient Agreement, and to ensure that performance goals are achieved.

- e. The Consortium shall provide training and technical assistance to the Subrecipient as necessary; Subrecipients are expected to provide sufficiently qualified and experienced personnel to manage their grant obligations.
- f. The Consortium shall, if necessary, take appropriate enforcement actions against non-compliant Subrecipients.
- g. The Consortium maintains a written Conduct policy governing the performance of its employees/consultants involved in executing the Award and administration of subawards.

## **S-10. SUBRECIPIENT REPORTING AND AUDIT REQUIREMENTS**

### **S-10.1 Financial and Milestones Reports**

- a. Subrecipients must submit a Financial Reporting Narrative Supplement and Milestones Report to the Consortium annually by dates provided by the Consortium to align with award-required reporting dates. Reports are due no later than 15 days following the end of each reporting period. Final reports must be submitted within 60 days after the end of the period of performance. Subrecipient agreements may specify more frequent financial reporting based on the project or subrecipient risk.
- b. The subrecipient will submit the SF-425 to the Consortium by the date requested, and in turn, the Consortium Finance Manager will submit the Consortium's SF-425.

**The Subrecipient must submit all financial reports through the online grants management system unless otherwise specified by the Consortium in writing.**

### **S-10.2 Performance Reports**

- 1. The Subrecipient must submit an SF-PPR ("Performance Progress Report"), annually by dates provided by the Consortium to align with award-required reporting dates. Reports are due no later than 15 days following the end of each reporting period, except the final report, which is due 60 days following the end of the period of performance. Subrecipient agreements may specify more frequent performance reporting based on the project or subrecipient risk.
- 2. The Subrecipient must submit all Performance Progress Reports through the online grants management system unless otherwise specified by the Consortium in writing, and the Subrecipient must complete these reports according to the instructions in the "Performance Report Form" available at:

<https://www.gulfconsortium.org/grant-resources>.

## **S-11. SUBRECIPIENT MONITORING**

### **S-11.1 Quarterly Check-in Meetings**

- 1.
2. Quarterly check-ins will be scheduled to review project performance and financial accounting compliance. Subrecipients will be notified in writing by the Consortium to schedule a meeting with Gulf Consortium grant managers and finance managers and should be prepared to report on progress relative to original or amended grant award.

### **S 11.2 Other than Low Risk Financial Oversight**

For County Subrecipients that are identified as other than Low Risk, in addition to more frequent financial reporting, additional financial oversight activities will include interviews and screen share reviews of transactional activity and internal controls to ensure compliance with 2 C.F.R. 200.

### **S 11.3 Other than Low Risk Performance Monitoring**

For County Subrecipients or Grant-Specific Projects that are identified as other than Low Risk, in addition to more frequent reporting, additional performance monitoring activities will be conducted. For Performance Reviews, the schedule anticipates interviews with the County Subrecipients, and their subrecipients as deemed appropriate, to conduct an in-depth review of progress toward milestones, any procurement activity, and compliance with any special terms and conditions.

### **S-11.4 Interim Reporting on Significant Developments per 2 C.F. R. § 200.329(e)**

- a. Events may occur between the scheduled performance reporting dates that have significant impact upon the activity, project, or program. In such cases, the Subrecipient must inform the Consortium 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 the 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 Subrecipient must:
  - 1) Promptly provide to the Consortium 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.

- 2) Immediately notify the Consortium of any indication of fraud, waste, abuse, or potentially criminal activity pertaining to grant funds.

#### **S-11.5 Audit Requirements**

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

#### **S-11.6 Operational Self-Assessment**

The Subrecipient must submit an updated *Operational Self-Assessment form* no later than June 30th of each calendar year. Gulf Consortium requires timely receipt of the OSA in order to complete Risk Assessments which are prerequisite to receipt of funding. Only one *Operational Self-Assessment* must be submitted per Subrecipient per year. In completing the form, the Subrecipient must note controls or activities that have changed from its previous submission. The Subrecipient must submit the *Operational Self-Assessment* electronically to [gulfconsortium@balmoralgroup.us](mailto:gulfconsortium@balmoralgroup.us), unless otherwise specified in writing by the Consortium. The form may be downloaded at [www.gulfconsortium.org](http://www.gulfconsortium.org).

### **S-12. FINANCIAL MANAGEMENT SYSTEM AND INTERNAL CONTROLS REQUIREMENTS**

- a. Subrecipients must expend and account for Award funds in accordance with federal laws and procedures. In addition, all Subrecipients' financial management systems must be sufficient to:
  - i. Permit the preparation of accurate, current, and complete SF-425, SF-PPR, RESTORE Act Milestones Report, Financial Reporting Narrative Supplement and RESTORE Act Status of Performance Reports, as well as any additional reports required by any Special Award Conditions.
  - ii. 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, the Standard Terms and Conditions, Program-Specific Terms and Conditions, any Special Award Conditions and the Subrecipient Agreement.
  - iii. Allow for the comparison of actual expenditures with the amount budgeted for each Award made to the Subrecipient by The Consortium under the RESTORE Act.
  - iv. Identify and track all RESTORE Act Awards received and expended by the assigned grant project number, which will be assigned by the Consortium.
  - v. Record the source and application of funds for all activities funded by a Consortium

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 agreements, etc.

- vi. Ensure effective control over, and accountability for, all federal funds, and all property and assets acquired with federal funds. The Subrecipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.
  - b. The Subrecipient must have in place written procedures to implement the requirements set forth in the 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 the Award.
  - c. The Subrecipient must establish and maintain effective internal controls over the Award in a manner that provides reasonable assurance that the Subrecipient is managing the Award in compliance with the RESTORE Act, Treasury's RESTORE Act regulations, the Standard Terms and Conditions, Program-Specific Terms and Conditions, any Special Award Conditions and Subrecipient Agreement. These internal controls shall 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 Subrecipient must evaluate and monitor its compliance, and the compliance of any Subrecipients, with the RESTORE Act, Standard Terms and Conditions, Program-Specific Terms and Conditions, any Special Award Conditions and Subrecipient Agreement, and promptly remedy any identified instances of noncompliance. When and if an instance of noncompliance cannot be remedied by the Subrecipient, the Subrecipient must promptly report the instance of noncompliance to the Consortium followed by submitting a proposed mitigation plan to the Consortium.
  - d. The Subrecipient 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.
  - e. Procurement by Subrecipients
    - i. All procurements by Subrecipients for work to be performed under an Award shall be conducted in a manner to provide, to the maximum extent practicable, open and free competition in accordance with the requirements of 2 C.F.R. §§ 200.317 through 200.327, "Procurement Standards." The Subrecipient shall be alert to organizational conflicts of interest as well as other practices that

may restrict or eliminate competition.

ii. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or requests for proposals shall be excluded from competing for such procurements. Additionally, contractors that develop or assist with grant applications, planning/feasibility studies, project design, permitting, site investigation and analysis or that otherwise perform work for a Subrecipient that results in such contractor obtaining an unfair competitive advantage as to future stages of the implementation of the project in question shall be prohibited from competing for future procurements related to the project. Examples of situations considered to be restrictive of competition include, but are not limited to, those described in 2 C.F.R. § 200.319(b).

iii. Determination that a contractor has an unfair competitive advantage shall be made on a case by case basis. Initially, the Subrecipient shall submit a certification to the Consortium consistent with paragraph f. below providing its finding as to whether a competitive advantage exists, supporting documentation and explanation, and otherwise certifying that the procurement or prospective procurement complies with 2 C.F.R. §§ 200.317 - 200.327. The certification submitted by the Subrecipient shall be evaluated by the General Manager in coordination with the General Counsel, which may request such additional information from the Subrecipient as deemed necessary prior to rendering a determination. Notwithstanding the General Manager's determination, in the event the Council, Department of the Treasury, or such other Federal entity having jurisdiction finds that funds paid to a contractor under an Award were improper for any reason, including for violation of 2 C.F.R. §§ 200.317 - 200.327, Subrecipient shall be solely liable for any such amounts and shall return the full amount of the funds in question to the Consortium promptly upon demand.

iv. Procurement Process; Certification of Compliance with Procurement Standards. For any new procurements to be conducted by a Subrecipient for work to be performed under an Award, the Subrecipient shall submit a copy of the complete solicitation package to the Consortium for review prior to advertising the solicitation. The Subrecipient shall also submit copies of all ranking/evaluation materials to the Consortium along with a copy of the final executed contract.

Upon the General Manager's request, the Subrecipient shall provide supporting documentation attesting to the Subrecipient's compliance with the requirements of 2 C.F.R. §§ 200.317 - 200.327 and Appendix II to Part 200—Contract

Provisions for Non-Federal Entity Contracts Under Federal Awards; see Form provided by the Consortium at [www.gulfconsortium.org/forms](http://www.gulfconsortium.org/forms). Upon the General Manager's request, the Subrecipient shall also provide such supporting documentation, information, and explanation required to substantiate the Subrecipient's compliance with 2 C.F.R. §§ 200.317 - 200.327 and Appendix II to Part 200—Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

For all subcontracts for work to be performed under an Award, the Subrecipient shall submit a copy to the Consortium of each executed subcontract and documentation of the competitive procurement process pursuant to which the subcontractor was selected (e.g. invitation to bid, request for proposal, etc.). All of the above-described documents and materials must be on file with the Consortium prior to the Subrecipient's submission of any invoices for subcontracted work. Cost analysis. Subrecipient must provide sufficient documentation to support cost analysis of all funded expenditures, in accordance with 2 C.F.R. § 200.400. Costs must be allowable, allocable, necessary and reasonable. Gulf Consortium may request additional documentation to validate reasonableness.

- f. Procurements Conducted Prior to Award. A Subrecipient shall be permitted to utilize a contractor that was procured prior to the Award date for work to be performed under an Award so long as such contractor was procured in a manner that complies with 2 C.F.R. §§ 200.317 - 200.327, and is not otherwise prohibited by state or federal law or regulation or the provisions of the Award. The Subrecipient shall submit the certification described in paragraph f. above attesting to its compliance with the requirements of 2 C.F.R. §§ 200.317 - 200.327 in the selection of such contractor. Subrecipients shall not be permitted to modify the scope of any prior-procured contract to include work to be performed under an Award that was not adequately described in the competitive solicitation pursuant to which the contractor was initially procured, nor may Subrecipients otherwise evade competitive procurement requirements through the use of contracts procured prior to Award.

### **S-13. SUBRECIPIENT PERSONNEL OR STAFF TIME**

- a. If salary and fringe benefits for Subrecipient personnel are included in the budget, subrecipient must record Subrecipient time ( ) in sufficient detail to document all work effort in a given time period, including timesheets. Where an employee works on single or multiple Awards (including federal and non-federal), a distribution of their salaries/wages and fringe benefits must be supported by a detailed job cost timesheet showing hourly work effort for all time in a pay period. All work effort must be clearly linked to each project and/or task in the pay period. Pay stubs reflecting total hours must match timesheets and be included in the documentation. Work effort should be recorded in a manner similar to that shown in the

“Time and Attendance Record – sample form” on <https://www.gulfconsortium.org/forms>.

#### **S-14. RECORDS RETENTION REQUIREMENTS**

- a. The Subrecipient must retain all records pertinent to the Award for a minimum of three years from the date of submission of the final expenditure report, or such other period of time as may be required by applicable state or federal law or the awarding agency. While electronic storage of records (backed up as appropriate) is preferable, the Subrecipient 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:
  - i. 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;
  - ii. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and Subrecipients;
  - iii. All financial and accounting records, including records of disbursements to contractors (vendors) and Subrecipients, and documentation of the allowability of Administrative Costs charged to the Award;
  - iv. All supporting documentation for the performance outcome and other information reported on the Subrecipient’s SF-425s, SF-PPRs, RESTORE Act Milestones Reports, Financial Reporting Narrative Supplement and RESTORE Act Status of Performance Reports; and
  - v. Any reports, publications, and data sets from any research conducted under the Award.
- b. If any litigation, claim, investigation, or audit relating to the 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.
- c. If the Subrecipient is authorized to enter into contracts to complete the approved scope of work, the Subrecipient must include in its agreement with the contractor a requirement that the contractor retain all records in compliance with 2 C.F.R. § 200.334.

#### **S.15. THE FEDERAL GOVERNMENT’S RIGHT TO INSPECT, AUDIT, AND INVESTIGATE**



### **S-15.1 Access to Records**

- a. The Consortium, Council, 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 Subrecipient that are pertinent to the 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.
- b. If the Subrecipient is authorized to enter into contracts to complete the approved scope of work, the Subrecipient must include in its contract a requirement that the contractor make available to the Consortium, Council, 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 the 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.

### **S-15.2 Access to the Subrecipient's Sites**

The Consortium, Council, 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 the Award.

## **S-16. AWARD DISBURSEMENT**

- a. Unless otherwise specified in a Special Award Condition, the Consortium will require Award funds to be disbursed on a reimbursement basis. The Consortium may require pre-approval of drawdown requests. If the Consortium requires pre-approval of drawdown requests, the Consortium will provide the Subrecipient with instructions on what billing to submit. The Consortium will make payment within 30 calendar days after receipt of the billing, unless The Consortium determines the request to be improper or inaccurate, in which case payment will not be made.
- b. To the extent available, the Subrecipient 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.
- c. The Consortium will use the Leon County Clerk of Court's office to disburse payment of Award funds via electronic funds transfer. All Award funds will be disbursed

electronically using the Automated Clearing House (ACH) for next day or future day payments only. Subrecipients shall request their funding request via Form GC-1, which can be obtained at [www.gulfconsortium.org](http://www.gulfconsortium.org). Awards paid through ACH may contain controls or withdrawal limits set by the Consortium.

- d. The Subrecipient must minimize the time between the transfer of funds from the Consortium and the use of the funds by the recipient. The Subrecipient must make timely payment to contractors (vendors) in accordance with the contract provisions.

## **S-17. 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 Council and in turn to the Consortium, who will in turn notify the Subrecipient concerning the expected effects on any Award.

## **S-18. NOTIFICATIONS AND PRIOR APPROVAL**

### **S-18.1 Notifications**

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

### **S-18.2 Prior Approvals**

- a. The Subrecipient must obtain prior written approval from the Consortium whenever any of the following actions are 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. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation;
  - iii. A need to extend the period of performance;
  - iv. A need for additional federal funds to complete the activity, project, or program, and/or the impact to other SEP projects needs to be identified;
  - v. A need for any additional non-federal funds to support the project, which requires a monetary amendment to be submitted to and approved by RESTORE Council;
  - vi. The transfer of funds among direct cost categories or programs, functions, and activities if the 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 the Consortium;
- vii. The subrecipient, transferring or contracting out of any work under the 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 the Award;
  - viii. Any transfer between the non-construction and construction activities; and
  - ix. 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 the Award.
- b. If requesting a no-cost extension to the Award, the request must be made no less than 120 days prior to the end of the period of performance for the Award. Any extension of the period of performance requires prior written approval from the Consortium.

## **S-19. PROPERTY**

### **S-19.1 General Requirements**

- a. The Subrecipient must comply with the property standards at 2 C.F.R. §§ 200.310 - 200.316 for real property, equipment, supplies, and intangible property. The Subrecipient 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 the Award unless authorized in the approved scope of work.

### **S-19.2 Supplies and Equipment Requirements**

- a. During the period of performance, the Subrecipient must seek disposition instructions from Treasury for equipment and/or unused or residual supplies acquired under the Award if the current fair market value of the equipment and/or unused or residual supplies is greater than \$5,000 per unit. The Subrecipient 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 Subrecipient must submit to Treasury a completed SF-428 Tangible Personal Property Report and SF-428-B Final Report Form if the Subrecipient 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.

## **S-20. SUBRECIPIENT AGREEMENT AMENDMENTS AND CLOSEOUT**

### **S-20.1 Agreement Amendments**

- a. The terms of an Award may be amended if requested by a Subrecipient and approved in writing by both the Consortium and the Council. The Consortium reserves the right to unilaterally seek amendment to the terms of any Award if required by state or federal law or regulation.
- b. Subrecipient agreement amendments must be requested in writing and must include an explanation for the reason the agreement should be amended.
- c. Consistent with the Consortium's delegation of authority to the Chairperson to approve and execute subrecipient agreements between the Consortium and the member counties, upon recommendation by the General Manager (in consultation with the General Counsel where requested), the Chairperson shall be authorized to approve and execute amendments to subrecipient agreements as are appropriate to the circumstances of each individual project, so long as such changes are consistent with the terms of the Award and do not affect the substantive rights or remedies of the Consortium. Any proposed substantive or material amendments to a subrecipient agreement shall require approval by the Consortium Board.

### **S-20.2 Closeout**

- a. Within 60 calendar days after the end of the period of performance, the Subrecipient must submit a Final Performance Report, final milestones report and Financial Reporting Narrative Supplement, as well as the required reporting on contracts, if applicable.
- b. The Consortium will close out each Award when it determines that all applicable administrative actions and all required work of the Award have been completed.
- c. The Subrecipient must liquidate all obligations incurred under the Award not later than 60 calendar days after the end of the period of performance, unless the Subrecipient requests, and Treasury approves, an extension.
- d. Within 60 days after receipt of reports in paragraph (a) of this section, The Consortium will make upward or downward adjustments to the allowable costs, and then make prompt payment to the Subrecipient for allowable, unreimbursed costs.
- e. The closeout of the Award does not affect any of the following:

- i. The right of The Consortium or Council to disallow costs and recover funds on the basis of a later audit or other review;
- ii. 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;
- iii. The Subrecipient's obligations regarding audits, property management and disposition (if applicable), and records retention.

## **S-21 STATE EXPENDITURE PLAN (SEP) AMENDMENTS**

### **S-21.1 SEP Amendment Process**

An SEP amendment is required if there is either a change in scope (i.e., new project activity or increased size of project) or there are revisions requiring an increase in funds for a new activity or bigger project.

The following describes the general process for an SEP amendment:

- 1) Subrecipients shall obtain approval from County BOCC for the proposed SEP project changes;
- 2) Subrecipients shall obtain Gulf Consortium approval to proceed with an SEP amendment (to ensure efficiency and reduce frequency of amendments);
- 3) Subrecipients shall prepare the project narrative with sections corresponding to those in the SEP, and identify the projects proposed to be removed from the SEP, along with a brief discussion of the rationale for the change: use SEP Amendment Template at <https://www.gulfconsortium.org/grant-resources>;
- 4) Subrecipients shall submit their draft SEP Amendment to the Gulf Consortium;
- 5) Gulf Consortium shall present the draft SEP amendment to the Gulf Consortium Board with a request for action to make the SEP amendment available for public review;
- 6) Gulf Consortium shall compile and prepare the SEP amendment and provide the SEP amendment to RESTORE Council for preview;
- 7) Make the draft SEP amendment public with a forum to receive comments for a 45-day period;
- 8) Make any needed edits in response to comment period;
- 9) Submit the SEP amendment to RESTORE Council after the 45-day comment period; this will include a statement of public participation and any necessary edits or responses to comments;
- 10) After RESTORE Council reviews and approves the SEP amendment, the applications for funding can be submitted.

### **S-21.2 Costs for SEP Amendments**

Gulf Consortium costs for SEP amendments are grant eligible under SEP project 24-1: Adaptive Management and Compliance Project. If costs for a particular county's SEP amendment are unusually large (greater than \$10,000), costs to that county can be "charged" under either of the following two options.

1) The county directly pays the Consortium for the costs related to the amendment. Under this option, the SEP amendment effort by Consortium contractors is invoiced to the Consortium rather than to RESTORE Council

2) The SEP amendment effort by Consortium contractors is invoiced to RESTORE Council and funded via grant funds, and the county's total SEP project allocation is decreased by an amount equal to the SEP amendment costs.

**S-22. PROGRAM-SPECIFIC TERMS AND CONDITIONS – AWARDS UNDER POT 3**

In addition to all the Standard Terms and Conditions described in Sections 3 to 18 of this document, all Subrecipient Agreements concerning the subaward of funds shall include the following program-specific terms and conditions:

- a. Up to 100 percent of program income may be used to pay for allowable administrative costs, subject to the three percent (3%) cap.
- b. Oil Spill Liability Trust Fund. The Subrecipient and its sub-Subrecipients and contractors must not seek any compensation for the approved program or project from the Oil Spill Liability Trust Fund. The Subrecipient must not use Consortium funds 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.

## **SUBCONSULTANT POLICY APPENDIX - STANDARD TERMS AND CONDITIONS**

The following Financial Assistance Standard Terms and Conditions developed by the RESTORE Council will govern grants Awarded by the Consortium. In addition to these Standard Terms and Conditions, Special Terms and Conditions may apply to each grant as well.

### **1. Statutory and National Policy Requirements**

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

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

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

### **2. Programmatic Requirements**

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

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

## 2.1 Performance (Technical) Reports

- a. Non-Federal entities must use OMB-approved government-wide standard information collections when providing financial and performance information and, as appropriate and in accordance with such information collections, are required to relate financial data to the performance accomplishments of the Federal Award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The Non-Federal entity's performance will be measured in a way that will help the Council and other non-Federal entities to improve program outcomes, share lessons learned and spread the adoption of promising practices. Recipients will be provided with clear performance goals, indicators and milestones as described in 2 C.F.R. § 200.210 “Information contained in a Federal Award.”
- b. Recipients must submit performance (technical) reports, which may be Form SF-PPR “Performance Progress Report” or any successor form, or another format as required by the Council, to the Council- designated grants officer (Grants Officer). Performance reports should be submitted electronically, unless the recipient makes an arrangement with the Grants Officer for submission in hard copy (no more than one original and two copies) in accordance with the Award conditions.
- c. Performance Reports must be submitted with the same frequency as the Federal Financial Report (Form SF-425), unless otherwise authorized by the Grants Officer. If events occur between scheduled performance reporting dates that have significant impact upon the activity, project or program, the recipient must notify the Grants Officer as soon as possible.
- d. Performance (technical) reports shall contain brief information as prescribed in the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (2 C.F.R. part 200, specifically 2 C.F.R. § 200.329) incorporated into the Award, unless otherwise specified in the Award provisions. Specifically, in the “performance narrative” (item 10 on the SF-PPR), the recipient must provide the following information.
  1. Activities and Accomplishments:
    - i. Summarize activities undertaken during the reporting period;
    - ii. Summarize any key accomplishments, including milestones and metrics completed for the period;
    - iii. List any contracts Awarded during the reporting period, along with the name of the contractor and its principal, the Unique Entity Identifier (UEI) of the contractor, the value of the contract, the date of Award, a brief description of the services to be provided, and whether or not local preference was used in the



- selection of the contractor; and
- iv. If the recipient is authorized to make subawards, list any subawards executed during the reporting period, along with the name of the entity and its principal, the UEI of the entity, the value of the agreement, the date of Award, and a brief description of the scope of work.
2. Adaptive Management:
    - i. Indicate if any operational, legal, regulatory, budgetary, and/or ecological risks, and/or any public controversies, have materialized; if so, indicate what mitigation strategies have been undertaken to attenuate these risks or controversies; and
  3. Summarize any challenges that have impeded the recipient's ability to accomplish the approved scope of work on schedule and on budget Findings/Events: Summarize any significant findings or events, if applicable.
  4. Dissemination Activities: Describe any activities to disseminate or publicize results of the activity, project, or program, if applicable.
  5. Monitoring:
    - i. Describe all efforts taken to monitor contractor and/or Subrecipient performance, to include site visits, during the reporting period. For subawards, indicate whether the Subrecipient submitted an audit to the recipient, and if so, whether the recipient issued a management decision on any findings; and
    - ii. Describe any other activities or relevant information not already provided.
  6. Planned Activities: Summarize the activities planned for the next reporting period.
  7. Attachments: List and attach any deliverables completed during the performance period or other materials to be submitted with the report.

## **2.2 Reporting on Real Property**

In accordance with 2 C.F.R. § 200.330, the Federal Awarding agency or pass-through entity must require a non-Federal entity to submit reports at least annually on the status of real property in which the Federal government retains an interest, unless the Federal interest in the real property extends 15 years or longer. If the attached Federal interest is for a period of 15 years or longer, the Council or pass-through entity may, at its option, require the non-Federal entity to report at various multi-year frequencies as specified in the terms of the Award (e.g., every two years or every three years, not to exceed a five-year reporting period; or the Council or pass-through entity may require annual reporting for the first three years of a Federal Award

and thereafter require reporting every five years).

### **2.3 Unsatisfactory Performance**

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

### **2.4 Programmatic Changes**

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

### **2.5 Other Federal Awards with Similar Programmatic Activities**

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

### **2.6 Non-Compliance with Award Provisions**

Failure to comply with any or all of the provisions of the Award may have a negative impact on future funding by the Council and may be considered grounds for any or all of the following actions: withholding of payments pending correction of the deficiency by the non-Federal entity and/or more severe enforcement action by the Council or pass-through entity in accordance with 2 C.F.R. § 200.339; disallowance of (that is, denial of both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance; suspension or termination of all or any portion of the Award; initiation of suspension or debarment proceedings as authorized under 2 C.F.R. part 180 and any Council regulations and policies promulgated pursuant to its authority (or in the case of a pass-through entity, recommendation that such a proceeding be initiated by the Council); withholding of further Awards for the project or program; or enforcement of other remedies that may be legally available. *See also* 2 C.F.R. §§ 200.339 through 200.343.

### **2.7 Prohibition against Assignment by the Non-Federal Entity**

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

### **2.8 Disclaimer Provisions**

- a. The United States expressly disclaims any and all responsibility or liability to the non-Federal entity or third persons for any actions of the non-Federal entity or third persons resulting in death, bodily injury, personal or property damage, or any other damage, loss

or liability in connection with or resulting in any way from the performance of the Award or any subaward or subcontract under the Award.

- b. Acceptance of this Award by the non-Federal entity does not in any way establish or constitute an agency relationship between the United States and the non-Federal entity.

### **3. Financial Requirements**

#### **3.1 Financial Reports**

- a. In accordance with 2 C.F.R. § 200.328, the Consortium Finance Manager shall submit a “Federal Financial Report” (Form SF-425 or any successor form, or another format as required by the Council) on a semi-annual basis. The subrecipient will be expected to provide any additional information the Finance Manager may need to complete the SF-425. Semi-annual reporting periods will be specified in the grant Award for either the periods ending March 31 and September 30, or any portion thereof, or June 30 and December 31, or any portion thereof, unless otherwise specified in a special Award condition. Reports are due no later than 10 days following the end of each reporting period. A final Form SF-425 shall be submitted within 45 days after the expiration of the project period.
- b. The report will be submitted to Council electronically, unless other arrangements are made with Council for submission in hard copy (no more than one original and two copies), in accordance with the Award conditions.
- c. The Finance Manager must report to the Council at the conclusion of the grant period, or other period specified by the Council, on the use of funds pursuant to the Award in accordance with the requirements in 31 C.F.R. § 34.803(e).
- d. The recipient must forecast cash requirements/draws semi-annually, for the periods October 1 to March 31 and April 1 to September 30, throughout the life of the grant. Forecasted cash requirements must be updated with the submission of each “Federal Financial Report.”

#### **3.2 Financial Management**

- a. In accordance with 2 C.F.R. § 200.302(a), each State, including a state’s administrative agents and the Gulf Consortium of Florida counties, must expend and account for the Federal Award in accordance with state laws and procedures for expending and accounting for the state’s own funds. In addition, the state’s and other non-Federal entities’ financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal Award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions – including preparation of accurate, current and complete Performance (Technical) Report, reporting on subawards, and any additional reports required by any additional Award conditions. The financial management system also must

be sufficient to trace funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations – including without limitation the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), Council and Treasury RESTORE Act regulations – and the terms and conditions of the Federal Award. *See also* 2 C.F.R. § 200.450 “Lobbying.”

- b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b) and maintain detailed records sufficient to account for the receipt, obligation and expenditure of grant funds in accordance with the requirements in 31 C.F.R. § 34.803(b). *See also* 2 C.F.R. §§ 200.334 “Retention requirements for records”; 200.335 “Requests for transfer of records”; 200.336 “Methods for collection, transmission and storage of information”; 200.337 “Access to records”; and 200.338 “Restrictions on public access to records.” Specifically, the financial management system must provide for:
  1. Identification and tracking of all Council Awards received and expended by the Catalog of Federal Domestic Assistance (CFDA) title and number, Federal Award identification number and year, name of the Federal agency, and name of the pass-through entity, if any;
  2. Records that adequately identify the source and application of all funds for Federally-funded activities, including information pertaining to Federal Awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest, and are supported by source documentation; and
  3. Effective control over, and accountability for, all Federal funds, and all property and assets acquired with Federal funds. The recipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.
- c. The recipient must establish written procedures to implement the requirements set forth in Subsection, C.03 “Award Payments,” below, as well as written procedures to determine the allowability of costs in accordance with 2 C.F.R. Part 200, subpart E “Cost Principles,” and the terms and conditions of this Award.

### **3.3 Award Payments**

- a. The reimbursement method of payment will be used under this Award, unless otherwise specified in a special Award condition. The Grants Officer will determine the appropriate method of payment. Payments are made through electronic funds transfers directly to the non-Federal entity’s bank account and in accordance with the requirements of the Debt Collection Improvement Act of 1996 (31 U.S.C. § 3701 *et. seq.*) and the Cash Management Improvement Act (31 U.S.C. § 6501 *et. seq.*).
  1. Consistent with 2 C.F.R. § 200.305(a), for States, payments are governed by the Treasury-State Cash Management Improvement Act (CMIA) agreements and default procedures codified at 31

C.F.R. Part 205 “Rules and Procedures for Efficient Federal-State Funds Transfers” and Treasury Financial Manual Volume I, 4A-2000 “Overall Disbursing Rules for All Federal Agencies.”

2. Consistent with 2 C.F.R. § 200.305(b), for non-Federal entities other than States, payment methods must minimize the amount of time elapsing between the transfer of funds from the U.S. Treasury or the pass-through entity and the disbursement by the non-Federal entity.
- b. The Council Award Number must be included on all payment-related correspondence, information, and forms.
  - c. Unless otherwise provided for in the Award terms, payments under this Award will be made using the Department of Treasury’s Automated Standard Application for Payment ([ASAP](#))<sup>2</sup> system. Under the ASAP system, payments will be made through preauthorized electronic funds transfers in accordance with the requirements of the Debt Collection Improvement Act of 1996. Awards paid under the ASAP system will contain a special Award condition, clause or provision describing enrollment requirements and any controls or withdrawal limits set in the ASAP system. Recipients enrolled in the ASAP system are not required to submit a “Request for Advance or Reimbursement” (Form SF-270 or successor form), in order to receive payments relating to their Award. Pre-approval prior to requesting payments may be required for recipients that are determined by the Council to be in a high risk category or noncompliant (*see* 2 C.F.R. § 200.206 “Federal Awarding agency review of risk posed by applicants,” and *see* section 13 “Remedies for Noncompliance” below).
    1. In order to receive payments under ASAP, recipients are required to enroll with the Department of Treasury, Financial Management Service, Regional Financial Centers, which enables them to use the on-line and Voice Response System (VRS) method of withdrawing funds from their ASAP established accounts.
    2. The following information will be required to make withdrawals under ASAP: (i) ASAP account number, i.e., the Federal Award number found on the cover sheet of the Award; (ii) Agency Location Code (ALC); and (iii) Region Code.
  - d. When expressly allowed through a special Award condition, advances shall be limited to the minimum amounts necessary to meet immediate disbursement needs, but in no event shall advances exceed the amount of cash required for a 30-day period. Funds advanced but not disbursed in a timely manner and any accrued interest thereon must be promptly returned to the Council. The Grants Officer may periodically request documentation from the non-Federal entity verifying that the elapsed time between the transfer of funds and disbursement has been minimized. If a non-Federal entity demonstrates an unwillingness or inability to establish procedures that will minimize time elapsing between transfer of funds and disbursement or if the non-Federal entity otherwise fails to continue to qualify

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

for the advance payment method, the Grants Officer may change the method of payment to reimbursement only.

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

### **3.4 Federal and Non-Federal Sharing**

- a. Awards that include Federal and non-Federal sharing incorporate a budget consisting of shared allowable costs. If actual allowable costs are less than the total approved budget, the Federal and non-Federal cost shares shall be calculated by applying the approved Federal and non-Federal cost share ratios to actual allowable costs. If actual allowable costs are greater than the total approved budget, the Federal share shall not exceed the total Federal dollar amount authorized by the Award.
- b. The non-Federal share, whether in cash or in-kind, is to be paid out at the same general rate as the Federal share. Exceptions to this requirement may be granted by the Grants Officer based on sufficient documentation demonstrating previously determined plans for, or later commitment of, cash or in-kind contributions. In any case the non-Federal entity must meet its cost share commitment over the life of the Award. The non-Federal entity must create and maintain sufficient records sufficient to justify all non-Federal sharing requirements and to facilitate questions and audits. *See* Section 9 "Audits" below for audit requirements, and *see* 2 C.F.R. § 200.306 for additional requirements regarding cost sharing.

### **3.5 Program Income**

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

### 3.6 Budget Changes and Transfer of Funds among Categories

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

3. Both Construction and Non-Construction Activities in Award. If a single Award provides support for construction and non-construction work, the recipient must request prior written approval from the Grants Officer before making any fund or budget transfers between the two types of work supported.
- b. In accordance with 2 C.F.R. § 200.308(f), transfers of funds by the recipient among direct cost categories are permitted for Awards in which the Federal share of the project is the Simplified Acquisition Threshold (\$250,000 as of 11/01/20) or less. For Awards in which the Federal share of the project exceeds the Simplified Acquisition Threshold, the recipient must request prior written approval from the Grants Officer for transfers of funds among direct cost categories when the cumulative amount of such direct cost transfers exceeds ten percent of the total budget<sup>3</sup> as last approved by the Grants Officer. The 10% threshold applies to the total Federal funds authorized by the Grants Officer at the time of the transfer request. The same requirements apply to the cumulative amount of transfer of funds among programs, functions, and activities. This transfer authority does not authorize the recipient to create new budget categories within an approved budget without the prior written approval of the Grants Officer. No transfer that enables any Federal appropriation, or part thereof, to be used for an unauthorized purpose will be permitted. The foregoing provision does not prohibit the recipient from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308 (as applicable) for specific requirements concerning budget revisions and transfer of funds between budget categories.
- c. The recipient is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa without the prior written approval of the Grants Officer.

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

- a. Indirect (facilities and administrative [F&A]) costs will not be allowable charges against an Award unless permitted under the Award, specifically included as a line item in the Award's approved budget and consistent with 2 C.F.R. §§ 200.414 "Indirect (F&A) costs" and Subpart E "Cost Principles."
- b. Indirect costs of recipients are subject to the three percent (3%) cap on administrative expenses stated in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204. The three percent cap on administrative expenses applies only to recipients and does not flow down to Subrecipients.
- c. Excess indirect costs may not be used to offset unallowable direct costs.
- d. Indirect costs charged must be consistent with the indirect cost rate agreement negotiated between the non-Federal entity and its cognizant agency (defined as the Federal agency that is responsible for reviewing, negotiating, and approving cost allocation plans or

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



indirect cost proposals, *see* 2 C.F.R. § 200.19) and must be included in the recipient's budget. The Council will accept approved indirect cost rates unless otherwise authorized by a Federal statute or regulation, or requirements at 2 C.F.R. § 200.414(c) are met.

1. If indirect costs are permitted and the non-Federal entity wishes to include indirect costs in its budget, but the non-Federal entity has not previously established an indirect cost rate with a Federal agency, the requirements for determining the relevant cognizant agency and developing and submitting indirect (F&A) cost rate proposals and cost allocation plans are contained in Appendices III – VII to 2 C.F.R. Part 200 as follows:
  - Appendix III to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Institutions of Higher Education (IHEs);
  - Appendix IV to 2 C.F.R. Part 200 – Indirect (F&A) Costs Identification and Assignment, and Rate Determination for Nonprofit Organizations;
  - Appendix V to 2 C.F.R. Part 200 – State/Local Governmentwide Central Service Cost Allocation Plans;
  - Appendix VI to 2 C.F.R. Part 200 – Public Assistance Cost Allocation Plans; and
  - Appendix VII to 2 C.F.R. Part 200 – States and Local Government and Indian Tribe Indirect Cost Proposals.

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

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

Gulf Coast Ecosystem Restoration Council Office  
Attn: Senior Grants Management Officer

500 Poydras Street, Suite 1117  
New Orleans, LA 70130

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

4. The non-Federal entity may use the fixed rate proposed in the indirect cost plan until such time as the Council provides a response to the submitted plan. Actual indirect costs must be calculated annually and adjustments made through the carry-forward provision used in calculating the following year's rate. This calculation of actual indirect costs and the carry-forward provision is subject to audit. Indirect cost rate proposals must be submitted annually. Organizations that have previously established indirect cost rates must submit a new indirect cost proposal to the cognizant agency within six months after the close of each of the recipients' fiscal years.
- e. The maximum dollar amount of allocable indirect costs for which the Council will reimburse the non-Federal entity shall be the lesser of:
  1. The line item amount for the Federal share of indirect costs contained in the approved Award budget, including all budget revisions approved in writing by the Grants Officer; or
  2. The Federal share of the total indirect costs allocable to the Award based on the indirect cost rate approved by a cognizant or oversight Federal Agency for indirect costs and applicable to the period in which the cost was incurred, provided that the rate is approved in writing on or before the Award end date, subject to the three percent (3%) cap on administrative expenses provided in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204.
- f. In addition, a non-Federal entity that is a State, local government, Indian tribe, institution of higher education, or nonprofit organization and has never received a negotiated indirect cost rate may elect to charge a *de minimis* rate of 10% of modified total direct costs. *See also* 2 C.F.R. § 200.414(f).

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

- a. The non-Federal entity shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the period of performance, i.e., the time during which the non-Federal entity may incur new obligations to carry out the work authorized under the Federal Award. *See* 2 C.F.R. §§ 200.77 and 200.309.
  1. The Council or pass-through entity must include start and end dates of the period of performance in the Federal Award.

2. All activities supported through an Award must occur and be completed during the approved period of performance, whether funded directly or through a subaward or subcontract, and all obligated costs must be liquidated within 90 days following the end date of the period of performance.
  3. The only costs which may be authorized for a period of not to exceed 90 days following the end of the project period are those solely associated with close-out activities. Close-out activities are limited to the preparation of final progress, financial, and required project audit reports unless otherwise approved in writing by the Grants Officer. The Grants Officer may approve extensions of the 90-day closeout period upon a request by the non-Federal entity as provided in 2 C.F.R. § 200.343.
- b. Unless otherwise authorized in 2 C.F.R. § 200.344 or a special Award condition, any extension of the project period can only be authorized by the Grants Officer in writing. Verbal or written assurances of funding from anyone other than the Grants Officer shall not constitute authority to obligate funds for programmatic activities beyond the end of the project period.
  - c. Pre-Award Costs. Pre-Award costs are those incurred prior to the effective date of the Federal Award directly pursuant to the negotiation and in anticipation of the Federal Award where such costs are necessary for efficient and timely performance of the scope of work. Such costs are allowable only to the extent that they would have been allowable if incurred after the date of the Federal Award and only with the written approval of the Grants Officer. The recipient must use funds obligated and disbursed under the Award only during the period of performance specified in the Award document. *See* 2 C.F.R. § 200.458.
  - d. The Council has no obligation to provide any additional prospective funding. Any amendment of the Award to increase funding and to extend the project period is at the sole discretion of the Council.

### **3.9 Tax Refunds**

Refunds of Federal Insurance Contributions Act (FICA) (26 U.S.C. §§ 3101-3128) or Federal Unemployment Tax Act (FUTA) (26 U.S.C. §§ 3301-3311) taxes received by the non-Federal entity during or after the period of performance must be refunded or credited to the Council whenever the benefits were financed with Federal funds under the Award. The non-Federal entity shall contact the Grants Officer immediately upon receipt of these refunds. The non-Federal entity shall in addition refund portions of FICA/FUTA taxes determined to belong to the Federal Government, including refunds received after the period of performance ends.

### **4. Internal Controls**

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

1. Must establish and maintain effective internal control over the Federal Award that provides reasonable assurance that the non-Federal entity is managing the Federal Award

in compliance with Federal statutes, regulations, and the terms and conditions of the Federal Award. These internal controls must be in compliance with guidance in “[Standards for Internal Control in the Federal Government](#)”<sup>4</sup> issued by the Comptroller General of the United States or the “[Internal Control Integrated Framework](#),”<sup>5</sup> issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO).

2. Must comply with Federal statutes, regulations, and the terms and conditions of the Federal Award.
3. Must evaluate and monitor the non-Federal entity’s compliance with statute, regulations and the terms and conditions of Federal Award.
4. Must take prompt action when instances of noncompliance are identified including noncompliance identified in audit findings.
5. Must take reasonable measures to safeguard protected personally identifiable information and other information the Council or pass-through entity designates as sensitive or the non-Federal entity considers sensitive consistent with applicable Federal, state and local laws regarding privacy and obligations of confidentiality.

## **5. Property Standards**

### **5.1 Standards**

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

### **5.2 Insurance coverage**

Recipients must provide insurance coverage for real property and equipment acquired or improved with Federal funds equivalent to that provided for property owned by the non-Federal entity. Federally-owned property need not be insured unless required by the terms and conditions of the Federal Award. *See* 2 C.F.R. § 200.310.

### **5.3 Real Property**

- a. Real property or an interest in real property may not be acquired under an Award without prior written approval of the Grants Officer.
- b. Title of real property. Subject to the obligations and conditions set forth in this section, title to real property acquired or improved under a Federal Award will vest upon acquisition in the non-Federal entity.
- c. Use. Except as otherwise provided by Federal statutes or by the Council, real property must be used for the originally authorized purpose as long as needed for that purpose, during which time the non-Federal entity must not dispose of or encumber its title or any other interest therein.
- d. Willing Sellers. Land or interest in land may only be acquired by purchase, exchange or donation from a willing seller in accordance with the requirements in 31 C.F.R. §

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

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

- 34.803(f).
- e. Federal Acquisitions. Funds may not be used to acquire land in fee title by the Federal Government unless the exceptions in 31 C.F.R. § 34.803(g) are met.
  - f. Disposition. When real property is no longer needed for the originally authorized purpose, the non-Federal entity must obtain disposition instructions from the Council or pass-through entity. The instructions will provide that the non-Federal entity do one of the following:
    1. Retain title after compensating the Council. The amount paid to Council will be computed by applying the Council's percentage of participation in the cost of the original purchase (and costs of any improvements) to the fair market value of the property. However, if the non-Federal entity is disposing of real property acquired or improved with a Federal Award and acquiring replacement real property under the same Federal Award, the net proceeds from the disposition may be used as an offset to the cost of the replacement property.
    2. Sell the property and compensate the Council. The amount due to the Council will be calculated by applying the Council's percentage of participation in the cost of the original purchase (and cost of any improvements) to the proceeds of the sale after deduction of any actual and reasonable selling and fixing-up expenses. If the Federal Award has not been closed out, the net proceeds from sale may be offset against the original cost of the property. When the non-Federal entity is directed to sell property, it must utilize sales procedures that provide for competition to the extent practicable and result in the highest possible return.
    3. Transfer title to the Council or to a third party designated or approved by the Council. The non-Federal entity is entitled to be paid an amount calculated by applying the non-Federal entity's percentage of participation in the purchase of the real property (and cost of any improvements) to the current fair market value of the property.
  - g. The Grants Officer may require the non-Federal entity to submit the Tangible Personal Property Report (Form SF-428 or successor form), and/or Real Property Status Report (Form SF-429 or successor form), including applicable attachments to each form, in connection with the reporting of tangible personal property or of real property acquired or improved, in whole or in part, under a Council financial assistance Award. The Grants Officer may also require the non-Federal entity to submit Form SF-428 and/or Form SF-429, or successor forms, in connection with a non-Federal entity's request to acquire, encumber, dispose of, or take any other action pertaining to tangible personal property or to real property acquired or improved, in whole or in part, under a Council financial assistance Award.

#### **5.4 Federally-owned and Exempt Federally-owned Property**

- a. Title to Federally-owned property<sup>6</sup> remains vested in the Federal government. The non-

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<sup>6</sup> Federally-owned property as defined in 2 C.F.R. § 200.312 means property acquired under a Federal Award where the title vests with the Federal government. Exempt Federally-owned property means property acquired under a

Federal entity must submit annually an inventory listing of Federally-owned property in its custody to the Grants Officer. Upon completion of the Federal Award or when the property is no longer needed, the non-Federal entity must report the property to the Grants Officer for further Council utilization. If the Council has no further need for the property, it must declare the property excess and report it for disposal to the appropriate Federal disposal authority, unless the Council has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. § 3710 (i)) to donate research equipment to educational and non-profit organizations in accordance with Executive Order 12999, “Educational Technology: Ensuring Opportunity for All Children in the Next Century.”). The Council will issue appropriate instructions to the non-Federal entity. The Council may exercise this option when statutory authority exists.

- b. Absent statutory authority and specific terms and conditions of the Federal Award, title to exempt Federally-owned property acquired under the Federal Award remains with the Federal government.
- c. The Grants Officer may require the non-Federal entity to submit the Tangible Personal Property Report (Form SF-428 or successor form), and/or Real Property Status Report (Form SF-429 or successor form), including applicable attachments to each form, in connection with the reporting of Federally-owned property that is in the non-Federal entity’s custody pursuant to a Council financial assistance Award or with a non-Federal entity’s request to acquire, encumber, dispose of, or take any other action pertaining to Federally-owned property.

## **5.5 Equipment**

- a. Recipients must comply with the equipment standards provided in 2 C.F.R. §§ 200.313 “Equipment” and 200.439 “Equipment and other capital expenditures.”
- b. American-Made Equipment and Products. Recipients are hereby notified that they are encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this Award.
- c. Use, management, and disposition of equipment acquired.
  - 1. For recipients that are States: The recipient must use, manage and dispose of equipment acquired under this Award in accordance with state laws and procedures.
  - 2. For recipients that are not States: Equipment must be used by the recipient in the program or project for which it was acquired as long as needed, whether or not the project or program continues to be supported by the Federal Award. Before disposing of equipment during the period of performance, the recipient must seek disposition instructions from the Grants Officer for equipment acquired under this Award if the current fair market value of the equipment is greater than \$5,000 per unit. Disposition

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Federal Award where the Federal Awarding agency has chosen to vest title to the property to the non-Federal entity without further obligation to the Federal Government, based upon the explicit terms and conditions of the Federal Award.

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

## **5.6 Supplies**

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

## **5.7 Intangible Property**

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

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

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

### **5.8 Property Trust Relationship**

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

## **6. Procurement Standards**

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

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



Pursuant to 2 C.F.R. § 200.317, when procuring property and services under this Federal Award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with 2 C.F.R. § 200.321 “Contracting with small and minority businesses, women’s business enterprises, and labor surplus area firms”, 2 C.F.R. § 200.322 “Domestic preferences for procurements”, and 2 C.F.R. § 200.323 “Procurement of recovered materials,” and ensure that every purchase order or other contract includes any clauses required by section 2 C.F.R. § 200.327 “Contract provisions.” All other non-Federal entities, including Subrecipients of a State, will follow the requirements of 2 C.F.R. §§ 200.318 “General procurement standards” through 200.327 “Contract provisions.”

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

## **7. Non-Discrimination Requirements**

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The non-Federal entity shall comply with the non-discrimination requirements below:

### **7.1 Statutory Provisions**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibits discrimination on the basis of sex under Federally assisted education programs or activities;
- c. The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 *et seq.*) prohibits discrimination on the basis of disability under programs, activities, and services

- provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.
  - e. Revised ADA Standards for Accessible Design for Construction Awards revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286) which adopted new enforceable accessibility standards called the “2010 ADA Standards for Accessible Design” (2010 Standards). All new construction and alteration projects shall comply with the 2010 Standards.
  - f. The Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101 *et seq.*), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance;
  - g. Any other applicable non-discrimination law(s).

## 7.2 Other Provisions

- a. Parts II and III of EO 11246, “Equal Employment Opportunity,” (30 FR 12319, 1965), as amended by EO 11375 (32 FR 14303, 1967) and EO 12086 (43 FR 46501, 1978), requiring Federally-assisted construction contracts to include the nondiscrimination provisions of §§ 202 and 203 of that EO and Department of Labor regulations implementing EO 11246 (41 C.F.R. § 60-1.4(b), 1991).
- b. EO 13166 (August 11, 2000), “Improving Access to Services for Persons With Limited English Proficiency,” requiring Federal agencies to examine the services provided, identify any need for services to those with limited English proficiency (LEP), and develop and implement a system to provide those services so LEP persons can have meaningful access to them.
- c. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council Awards, subawards, or contracts under Awards issued beginning July 1, 2013 through January 1, 2017. The following provision implements that law:

In accordance with 41 U.S.C. § 4712, an employee of a non-Federal entity or contractor under a Federal Award or subaward may not be discharged, demoted, or otherwise discriminated against as a reprisal for disclosing to a person or body information that the employee reasonably believes is evidence of gross mismanagement of a Federal Award, subaward, or a contract under a Federal Award or subaward, a gross waste of Federal

funds, an abuse of authority relating to a Federal Award or subaward or contract under a Federal Award or subaward, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a Federal Award, subaward, or contract under a Federal Award or subaward. These persons or bodies include:

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

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

### **7.3 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.

## **8. Records Retention**

The recipient must retain all records pertinent to this Award for a period of no less than three years, beginning on a date as described in 2 C.F.R. § 200.334, or such longer retention period as may be required by state or federal law. 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 (if applicable), all conflict of interest and other procurement rules governing a particular contract, and any bid protests;

- b. Copies of all subawards, including the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of Subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms (if applicable);
- c. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and Subrecipients (if applicable);
- 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 Financial Reports and Performance (Technical) Reports; and
- f. Any reports, publications, and data sets from any research conducted under this Award.
- g. 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.

## **9. Audits**

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

### **9.1 Organization-Wide, Program-Specific, and Project Audits**

- a. Organization-wide or program-specific audits must be performed in accordance with the

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

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

- b. Except for the provisions for biennial audits provided in paragraphs (1) and (2) of this section, audits required must be performed annually. Any biennial audit must cover both years within the biennial period.
  1. A State, local government, or Indian tribe that is required by constitution or statute, in effect on January 1, 1987, to undergo its audits less frequently than annually, is permitted to undergo its audits pursuant to this part biennially. This requirement must still be in effect for the biennial period.
  2. Any nonprofit organization that had biennial audits for all biennial periods ending between July 1, 1992, and January 1, 1995, is permitted to undergo its audits pursuant to this part biennially.
- c. Council programs may have specific audit guidelines that will be incorporated into the Award. When the Council does not have a program-specific audit guide available for the program, the auditor will follow the requirements for a program-specific audit as described in 2 C.F.R. § 200.507. The non-Federal entity may include a line item in the budget for the cost of the audit for approval. A copy of the program-specific audit shall be submitted to the Grants Officer and to the OIG at [OIGCounsel@oig.treas.gov](mailto:OIGCounsel@oig.treas.gov) or if e-mail is unavailable, submission to the OIG can be made at the following address:

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

## **9.2 Audit Resolution Process**

- a. An audit of the Award may result in the disallowance of costs incurred by the non-Federal entity and the establishment of a debt (account receivable) due the Council. For this reason, the non-Federal entity should take seriously its responsibility to respond to all audit findings and recommendations with adequate explanations and supporting

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

## **10. Debts**

### **10.1 Payment of Debts Owed the Federal Government**

- a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Council debt collection procedures are set out in 2 C.F.R. part 200, Subpart D. In accordance with 2 C.F.R. § 200.346, delinquent debt includes any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal Award, constituting a debt to the Federal government (this includes a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 2 C.F.R. § 200.346, failure to pay a debt by the due date, or if there is no due date, within 90 calendar days after demand, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. parts 900 through 999. The Council will transfer any debt that is more than 180 days delinquent to

the Bureau of the Fiscal Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and any Council regulations and policies promulgated pursuant to its authority, and may result in the Council taking further action as specified in Section B.06 “Non- Compliance With Award Provisions” Above. Funds for payment of a debt shall not come from other Federally-sponsored programs. Verification that other Federal funds have not been used will be made (e.g., during on-site visits and audits).

- b. If a non-Federal entity fails to repay a debt within 90 calendar days after the demand, the Council may reduce the debt by: (1) Making an administrative offset against other requests for reimbursements; (2) Withholding advance payments otherwise due to the non-Federal entity; or (3) Other action permitted by Federal statute. *See* 2 C.F.R. § 200.346(a).

### **10.2 Late Payment Charges**

- a. Interest shall be assessed on the delinquent debt in accordance with section 3717(a) of the Debt Collection Act of 1982, as amended (31 U.S.C. § 3701 *et seq.*). The minimum annual interest rate to be assessed is the [Department of the Treasury’s Current Value of Funds Rate \(CVFR\)](#).<sup>10</sup> The CVFR is published by the Department of the Treasury in the [Federal Register](#)<sup>11</sup> and in the [Treasury Financial Manual Bulletin](#).<sup>12</sup> The assessed rate shall remain fixed for the duration of the indebtedness.
- b. Penalties shall accrue at a rate of not more than six percent (6%) per year or such higher rate as authorized by law.
- c. Administrative charges, that is, the costs of processing and handling a delinquent debt, are determined by the Council.

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

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

## **11. Government-wide Debarment and Suspension**

The non-Federal entity shall comply with the provisions of 2 C.F.R. Part 180, “OMB Guidelines To Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” which generally prohibit entities, and their principals, that have been

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<sup>10</sup> Department of the Treasury’s Current Value of Funds Rate (CVFR) webpage - [https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr\\_home.htm](https://www.fiscal.treasury.gov/fsreports/rpt/cvfr/cvfr_home.htm), verified 8/18/2015.

<sup>11</sup> Federal Register website - <http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR> and <http://www.federalregister.gov/>, verified 8/18/2015.

<sup>12</sup> Treasury Financial Manual Bulletin website - <http://tfm.fiscal.treasury.gov/v1/bull.html>, verified 8/18/2015.

debarred, suspended, or voluntarily excluded from participating in Federal nonprocurement transactions either through primary or lower tier covered transactions, and which sets forth the responsibilities of recipients of Federal financial assistance regarding transactions with other persons, including Subrecipients and contractors.

## **12. Lobbying Restrictions**

### **12.1 Statutory Provisions**

The non-Federal entity shall comply with 2 C.F.R. § 200.450 (“Lobbying”), which incorporates the provisions of 31 U.S.C. § 1352, the “New Restrictions on Lobbying” published at 55 FR 6736 (February 26, 1990), and OMB guidance and notices on lobbying restrictions. In addition, non-Federal entities must comply with any Council regulations and policies promulgated pursuant to its authority. These provisions prohibit the use of Federal funds for lobbying the executive or legislative branches of the Federal Government in connection with the Award, and require the disclosure of the use of non-Federal funds for lobbying. Executive lobbying costs, i.e., costs incurred in attempting to improperly influence<sup>13</sup> either directly or indirectly an employee or officer of the executive branch of the Federal government to give consideration or to act regarding a Federal Award or a regulatory matter, are unallowable costs. *See* 2 C.F.R. § 200.450(b) and (c).

### **12.2 Disclosure of Lobbying Activities**

The non-Federal entity receiving in excess of \$100,000 in Federal funding shall submit a completed Form SF-LLL or any successor form, “Disclosure of Lobbying Activities,” regarding the use of non-Federal funds for lobbying. The Form SF-LLL shall be submitted within 30 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The non-Federal entity must submit any required Forms SF-LLL, including those received from Subrecipients, contractors, and subcontractors, to the Grants Officer. *See* 31 U.S.C. § 1352.

## **13. Remedies for Non Compliance**

- a. If a non-Federal entity fails to comply with Federal statutes, regulations or the terms and conditions of a Federal Award, the Council or pass-through entity may impose additional conditions, as described in 2 C.F.R. § 200.208 “Specific conditions” (e.g., requiring additional reporting or more frequent submission of the Financial or Performance (Technical) Reports; requiring additional activity, project, or program monitoring; requiring the recipient or one or more of its Subrecipients to obtain technical or management assistance; or establishing additional actions that require prior approval). If the Council or pass-through entity determines that noncompliance cannot be remedied by imposing additional conditions, pursuant to 2 C.F.R. § 200.339, the Council or pass-

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<sup>13</sup> To improperly influence means any influence that induces or tends to induce a Federal employee or officer to give consideration or to act regarding a Federal Award or regulatory matter on any basis other than the merits of the matter.



through entity may take one or more of the following actions, as appropriate in the circumstances:

1. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action by the Council or pass-through entity.
2. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
3. Wholly or partly suspend or terminate the Federal Award.
4. Initiate suspension or debarment proceedings as authorized under 2 C.F.R. part 180 and Council regulations (or in the case of a pass-through entity, recommend such a proceeding be initiated by the Council).
5. Withhold further Federal Awards for the project or program.
6. Take other remedies that may be legally available.

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

b. RESTORE Act-Specific Remedy for Non-compliance

1. If the Council determines that the recipient has expended funds to cover the cost of any ineligible activities, in addition to the remedies available in this section, the Council, in coordination with the U.S. Department of Treasury ("Treasury"), will make no additional payments to the recipient from the RESTORE Trust Fund, including no payments from the RESTORE Trust Fund for activities, projects, or programs under any other RESTORE Act Component until the recipient has either (a) deposited an amount equal to the amount expended for the ineligible activities in the RESTORE Trust Fund, or (b) the Council, in coordination with Treasury, has authorized the recipient to expend an equal amount from the recipient's own funds for an activity that meets the requirements of the RESTORE Act. *See* 33 U.S.C. § 1321(t)(1)(G) and (H), and *see* 31 C.F.R. § 34.804 "Noncompliance."
2. If the Council determines that the recipient has materially violated the terms of the Award, the Council, in coordination with Treasury, will make no additional funds available to the recipient from any part of the RESTORE Trust Fund until the recipient corrects the violation.

- c. In extraordinary circumstances, the Council may require that any of the remedies above take effect immediately upon notice in writing to the recipient. In such cases, the recipient may contest the Council’s determination or suggest an alternative remedy in writing to the Council, and the Council will issue a final determination.
  - d. Instead of, or in addition to, the remedies listed above, the Council may refer the noncompliance to the Treasury OIG for investigation or audit, pursuant to 31 C.F.R. § 34.805 “Treasury Inspector General.” The Council will refer all allegations of fraud, waste, or abuse to the Treasury OIG.
  - e. Termination. In accordance with 2 C.F.R. § 200.340, when a Federal Award is terminated or partially terminated, both the Council or pass-through entity and the non-Federal entity remain responsible for compliance with the requirements in 2 C.F.R. §§ 200.344 “Closeout” and 200.345 “Post-closeout adjustments and continuing responsibilities.”
1. The Federal Award may be terminated in whole or in part as follows:
    - i. By the Council or pass-through entity, if a non-Federal entity fails to comply with the terms and conditions of a Federal Award;
    - ii. By the Council or pass-through entity for cause;
    - iii. By the Council or pass-through entity with the consent of the non-Federal entity, in which case the two parties will agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
    - iv. By the non-Federal entity upon sending to the Council or pass-through entity written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Council or pass-through entity determines in the case of partial termination that the reduced or modified portion of the Federal Award or subaward will not accomplish the purposes for which the Federal Award was made, the Council or pass-through entity may terminate the Federal Award in its entirety.
  2. The Council or pass-through entity is required to provide a notice of termination to the non-federal entity, pursuant to 2 C.F.R. § 200.341:
    - i. If the Federal Award is terminated for the non-Federal entity’s failure to comply with the Federal statutes, regulations, or terms and conditions of the Federal Award, the notification must state that the termination decision may be considered in evaluating future applications received from the non-Federal entity.
    - ii. Upon termination of a Federal Award, the Council will provide the information required under FFATA to the Federal Web site established to

fulfill the requirements of FFATA, and update or notify any other relevant governmentwide systems or entities of any indications of poor performance as required by 41 U.S.C. § 417b and 31 U.S.C. § 3321 and implementing guidance at 2 C.F.R. part 77. See also 2 C.F.R. part 180 for the requirements for Suspension and Debarment.

## **14. Codes of Conduct and Subaward, Contract and Subcontract Provisions**

### **14.1 Code of Conduct for Recipients**

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

### **14.2 Applicability of Award Provisions to Subrecipients**

- a. The non-Federal entity shall require all Subrecipients, including lower tier Subrecipients, under the Award to comply with the provisions of the Award, including applicable cost principles, administrative provisions, audit requirements, and all associated terms and conditions. *See* 2 C.F.R. part 200, Subpart D, “Subrecipient Monitoring and Management” *and see* 2 C.F.R. § 200.101(b)(2). Additionally, the non-Federal entity must perform all responsibilities required of a pass-through entity, as specified in 2 C.F.R. Part 200,

including evaluating and documenting a Subrecipient’s risk of noncompliance; providing training and technical assistance necessary to complete the subaward activities; monitoring the performance of the Subrecipient; and taking any necessary enforcement actions against a noncompliant Subrecipient. *See* 2 C.F.R. § 200.332 “Requirements for pass through entities.”

- b. Prior to dispersing funds to a Subrecipient, the recipient must execute a legally-binding written agreement with the entity receiving the subaward in accordance with the requirements in 31 C.F.R. § 34.803(c). The written agreement shall extend all applicable program requirements to the Subrecipient. The written agreement must include a requirement that the contractor or Subrecipient retain all records in compliance with 2 C.F.R. § 200.334.
- c. A non-Federal entity is responsible for Subrecipient monitoring, including the following:
  1. Federal Award Identification. The non-Federal entity must ensure that each subaward includes the following information and applicable compliance requirements at the time of the subaward. If any of these data elements change, the pass through entity must include the changes in a subsequent subaward modification. When some of this information is not available, the pass-through entity must provide the best information available to describe the Federal Award and subaward.
    - i. Subrecipient name (which must match the registered name in SAM.gov);
    - ii. Subrecipient’s Unique Entity Identifier (UEI) ( see 2 CFR Part 25 -- Universal Identifier and System for Award Management
    - iii. Federal Award Identification Number (FAIN);
    - iv. Federal Award Date (*see* 2 C.F.R. § 200.39 “Federal Award date”);
    - v. Subaward Period of Performance Start and End Date;
    - vi. Amount of Federal Funds Obligated by this action;
    - vii. Total Amount of Federal Funds Obligated to the Subrecipient;
    - viii. Total Amount of the Federal Award;
    - ix. Federal Award project description, as required to be responsive to the Federal Funding Accountability and Transparency Act (FFATA);
    - x. Name of Federal Awarding agency, pass-through entity and contact information for Awarding official;
    - xi. CFDA Number and Name; the pass-through entity must identify the dollar amount made available under each Federal Award and the CFDA number at time of disbursement;
    - xii. Identification of whether the Award is for research and development (R&D); and
    - xiii. Indirect cost rate for the Federal Award (including whether the *de minimis* rate is charged per 2 C.F.R. § 200.414 “Indirect (F&A) costs”).
  2. Award Monitoring. The non-Federal entity is responsible for oversight of the operations of the Federal Award supported activities. The non-Federal entity must

monitor its activities under Federal Awards to assure that compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the non-Federal entity must cover each program, function or activity. *See* 2 C.F.R. §§ 200.329 “Monitoring and reporting program performance,” and 200.332 “Requirements for pass-through entities.” The non-Federal entity shall monitor activities of the Subrecipient through reporting, site visits, regular contact, or other means, as necessary to ensure that the subaward is used solely for authorized purposes, in compliance with Federal statutes, regulations and the terms and conditions of the subaward; and that subaward performance goals are achieved. Pass-through entity monitoring of the Subrecipient must include:

- i. Reviewing financial and programmatic reports required by the pass-through entity.
  - ii. Following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal Award provided to the Subrecipient from the pass-through entity detected through audits, on-site reviews, and other means.
  - iii. Issuing a management decision for audit findings pertaining to the Federal Award provided to the Subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 “Management decision.”
3. Subrecipient Audits. The non-Federal entity is responsible for ensuring that Subrecipients expending \$750,000 or more in Federal Awards during the Subrecipient’s fiscal year have met the audit requirements of 2 C.F.R. part 200, Subpart F, “Audit Requirements,” and that the required audits are completed within nine (9) months after the end of the Subrecipient’s audit period. In addition, the non-Federal entity is required to issue a management decision on audit findings within six (6) months after receipt of the Subrecipient’s audit report, and to ensure that the Subrecipient takes timely and appropriate corrective action on all audit findings. Pursuant to 2 C.F.R. § 200.505, in cases of continued inability or unwillingness to have an audit conducted in accordance with this part, Federal agencies and pass-through entities must take appropriate action as provided in 2 C.F.R. § 200.339 “Remedies for noncompliance.”

### **14.3 Competition and Codes of Conduct for Subawards**

- a. Unless otherwise approved in writing in advance by the Grants Officer, all subawards will be made in a manner to provide, to the maximum extent practicable, open and free competition in accordance with the requirements of 2 C.F.R. §§ 200.318 through 200.327 “Procurement Standards.” The non-Federal entity must be alert to organizational conflicts of interest as well as other practices among Subrecipients that may restrict or eliminate competition. In order to ensure objective Subrecipient performance and eliminate unfair competitive advantage, Subrecipients that develop or draft work requirements, statements

- of work, or requests for proposals shall be excluded from competing for such subawards.
- b. The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees engaged in the selection, Award and administration of contracts. No employee, officer, or agent must participate in the selection, Award, or administration of a contract supported by a Federal Award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to or planning to employ any of the foregoing parties, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity shall neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards of conduct for circumstances in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. Such standards must provide for disciplinary actions to be taken for violations of the standards of conduct by officers, employees or agents of the non-Federal entity.
  - c. If the non-Federal entity has a parent, affiliate or subsidiary organization that is not a State, local government or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest, wherein relationships with a parent company, affiliate or subsidiary organization cause the non-Federal entity to be or appear to be unable to be impartial in conducting a procurement action involving such related organization.
  - d. A financial interest may include employment, stock ownership, a creditor or debtor relationship, or prospective employment with the organization selected or to be selected for a subaward. An appearance of impairment of objectivity may result from an organizational conflict where, because of other activities or relationships with other persons or entities, a person is unable or potentially unable to render impartial assistance or advice. It may also result from non-financial gain to the individual, such as benefit to reputation or prestige in a professional field.

#### **14.4 Applicability of Provisions to Subawards, Contracts, and Subcontracts**

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

*Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a Council official) are subject to 2 C.F.R. Part 180, "OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)." In addition, applicants or bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, "New Restrictions on Lobbying," published at 55 FR 6736 (February 26, 1990), including definitions, and*

*the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying,” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).*

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

- b. Pursuant to 2 C.F.R. Appendix II to part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards,” and in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal Award must contain provisions covering the following, as applicable:
  1. Contracts for more than the Simplified Acquisition Threshold (\$150,000 as of 12-26-2013), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, must address administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
  3. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “Federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with EO 11246, “Equal Employment Opportunity” (30 F.R. 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
  4. Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 Awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to Award a contract or

subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Council. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Council.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708). Where applicable, all contracts Awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity or Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity or Subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the Awarding agency.
7. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
8. Debarment and Suspension (Executive Orders 12549 and 12689). A contract Award



(see 2 C.F.R. § 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in [SAM](#)<sup>14</sup> contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

9. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an Award of \$100,000 or more must file the required certification, a “Disclosure of Lobbying Activities” (Form SF-LLL or successor form). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other Award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal Award. Such disclosures are forwarded from tier-to-tier up to the Federal Award recipient. The Form SF- LLL must be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The non-Federal entity must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.
10. Procurement of recovered materials (section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act). A state agency or agency of a political subdivision of a State and its contractors must comply with requirements of Section 6002 including procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
11. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council Awards, subawards, or

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<sup>14</sup> System for Award Management (SAM) website - <https://www.sam.gov>, verified 8/18/2015.

contracts under Awards issued beginning July 1, 2013 through January 1, 2017. Non-Federal entities and contractors under Federal Awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce. *See* section 7.2 (c) of this document.

- c. The recipient must include in its legal agreement or contract with the Subrecipient a requirement that the Subrecipient make available to the Council, the Treasury OIG, and the GAO any documents, papers or other records, including electronic records, of the Subrecipient, that are pertinent to the Award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the Subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.
- d. The recipient and any Subrecipients, contractors, or subcontractors must comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), as applicable, which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
- e. When contracting, the non-Federal entity must take all necessary affirmative steps, as prescribed in 2 C.F.R. § 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

#### **14.5 Subaward and/or Contract to a Federal Agency**

- a. The non-Federal entity, Subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of the Council and/or other Federal department, agency, or instrumentality without the prior written approval of the Grants Officer.
- b. Requests for approval of such action must be submitted in writing to the Grants Officer. The Grants Officer will notify the non-Federal entity in writing of the final determination.

#### **15. Amendments and Closeout**

- a. Amendments to an Award must be requested in writing and require the written approval of the Grants Officer. The recipient must provide an explanation for the reason an amendment is requested. The Council reserves the right to amend the terms of the Award when required by law or regulation.
- b. The non-Federal entity must comply with the closeout requirements as stipulated in 2 C.F.R. § 200.344. Closeout of the Award does not affect any of the post-closeout adjustments and continuing responsibilities under 2 C.F.R. § 200.345.

#### **16. Environmental Compliance**

Environmental impacts must be considered by Federal decision-makers in deciding whether or not to approve: (1) a proposal for Federal assistance; (2) such proposal with mitigation; or

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

If a recipient is permitted to make any subawards, the recipient must include all of the environmental statutes, regulations and EOs listed below in any agreement or contract with a Subrecipient, and require the Subrecipient to comply with all of these and to notify the recipient if the Subrecipient becomes aware of any impact on the environment that was not noted in the recipient's approved application package.

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

Council approval of financial assistance Awards may be subject to the environmental review requirements of the National Environmental Policy Act (NEPA). In such cases, recipients of financial assistance Awards may be required to assist the Council in complying with NEPA. For example, applicants may be required to assist the Council by providing information on a proposal's potential environmental impacts, or drafting or supplementing an environmental assessment or environmental impact statement if the Council determines such documentation is required. Independent of the Council's responsibility to comply with NEPA, where appropriate, projects or programs funded by the Council may trigger Federal agency NEPA compliance duties involving a separate Federal action, such as the issuance of a Federal permit.

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

Council approval of financial assistance for project implementation is subject to compliance with section 7 of the Endangered Species Act (ESA). Recipients must identify any impact or activities that may involve a Federally-listed threatened or endangered species, or their designated critical habitat. Section 7 of the ESA requires every Federal agency to ensure that any action it authorizes, funds or carries out, in the United States or upon the high seas, is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of designated critical habitat. Federal agencies have the responsibility

for ensuring that a protected species or habitat does not incur adverse effects from actions taken under Federal assistance Awards, and for conducting the required consultations with the National Marine Fisheries Service (NMFS) and the U.S. Fish and Wildlife Service under the Endangered Species Act, as applicable.

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

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

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

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

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

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

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

Council approval of financial assistance Awards may be subject to Section 106 of the National Historic Preservation Act (NHPA). In such cases, recipients of financial assistance Awards may be requested to assist the Council in identifying any adverse effects the Award may have on properties included on or eligible for inclusion on the National Register of Historic Places.

Pursuant to 36 C.F.R. § 800.2(c)(4), applicants and recipients may also be requested to assist the Council in initiating consultation with State or Tribal Historic Preservation Officers, Indian tribes, Native Hawaiian Organizations or other applicable interested parties as necessary to the Council's responsibilities to identify historic properties, assess adverse effects to them, and determine ways to avoid, minimize or mitigate adverse effects on historic properties.

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

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

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

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

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

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

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

***16.10 Executive Order 13112 (“Invasive Species”)***

Federal agencies must identify actions that may affect the status of invasive species and use

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

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

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

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

Only in certain circumstances may Federal funding be provided for actions within a Coastal Barrier System. The Coastal Barriers Resources Act generally prohibits new Federal expenditures, including Federal grants, within specific units of the Coastal Barrier Resources System (CBRS). Although the Act restricts Federal expenditures for coastal barrier development, Section 6(a)(6)(A) contains an exemption for projects relating to the study, management, protection, or enhancement of fish and wildlife resources and habitats, including recreational projects. Section 6(a)(6)(G) also exempts nonstructural projects for shoreline stabilization that are designed to mimic, enhance or restore natural stabilization systems.

However, care must be taken when interpreting any exemptions described, as they are limited to projects that are consistent with the purpose of this Act as interpreted by the lead agency, Department of Interior. Applicants should work with the U.S. Fish and Wildlife Service, which reviews proposals to determine whether a project falls within a protected unit and if so, whether an exception applies. Maps of the CBRS are available through the interactive U.S. Fish and Wildlife Service [Coastal Barrier Resources System Mapper](http://www.fws.gov/cbra/Maps/Mapper.html).<sup>15</sup>

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

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

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

The Sole Source Aquifer program under this statute precludes Federal financial assistance for

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<sup>15</sup> U.S. Fish and Wildlife Service Interactive Coastal Barrier Resources System Mapper - <http://www.fws.gov/cbra/Maps/Mapper.html>, verified 8/18/2015.

any project that the EPA determines may contaminate a designated sole source aquifer through a recharge zone so as to create a significant hazard to public health.

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

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

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

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

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

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

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

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

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

The Marine Protection, Research and Sanctuaries Act prohibits dumping of material into ocean waters beyond the territorial limit without a permit. Recipients must identify any potential ocean dumping of materials, obtain the appropriate permit, if applicable, and notify the Council. Under the National Marine Sanctuaries Act, Federal agencies are required to protect National Marine Sanctuary resources. Recipients must identify actions that are in or

may affect a National Marine Sanctuary and notify the Council. EO 13089 requires that any actions authorized or funded by Federal agencies not degrade the condition of coral reef ecosystems. Recipients must identify any action that might affect a coral reef ecosystem and notify the Council.

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

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

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

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

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

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

### **17. Miscellaneous Requirements**

#### **17.1 Criminal and Prohibited Activities**

- a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*), provides for the imposition of civil penalties against persons who make false, fictitious or fraudulent claims to the Federal Government for money (including money representing grants, loans or other benefits).
- b. The False Claims Amendments Act and the False Statements Act (18 U.S.C. §§ 287 and 1001, respectively), provide that whoever makes or presents any false, fictitious or fraudulent statement, representation or claim against the United States shall be subject to imprisonment of not more than five years and shall be subject to a fine in the amount provided by 18 U.S.C. § 287.
- c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*), provides that suits can be brought by the government, or a person on behalf of the government, for false claims made under Federal assistance programs.
- d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), prohibits a person or organization engaged in a Federally-supported project from enticing an employee working on the



project from giving up a part of his compensation under an employment contract. The Copeland “Anti-Kickback” Act also applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.

### **17.2 Political Activities**

The non-Federal entity must comply, as applicable, with provisions of the Hatch Act (5 U.S.C.

§§ 1501-1508) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

### **17.3 Drug-Free Workplace**

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

### **17.4 Foreign Travel**

- a. The non-Federal entity may not use funds from this Award for travel outside of the United States unless the Grants Officer provides prior written approval. The non-Federal entity shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency’s mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral “Open Skies Agreements” (U.S. Government Procured Transportation) that allow Federally-funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple “Open Skies Agreements” currently in effect. For more information about the current bilateral and multilateral agreements, visit the [GSA website](#).<sup>16</sup> Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country

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<sup>16</sup> GSA Fly America Act website - <http://www.gsa.gov/portal/content/103191>, verified 8/18/2015.

agreements may be accessed via the [Department of State's website](#).<sup>17</sup>

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

#### **17.5 Increasing Seat Belt Use in the United States**

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

#### **17.6 Research Involving Human Subjects**

- a. All proposed research involving human subjects must be conducted in accordance with 15 C.F.R. part 27 "Protection of Human Subjects." No research involving human subjects is permitted under this Award unless expressly authorized by special Award condition, or otherwise in writing by the Grants Officer.
- b. Federal policy defines a human subject as a living individual about whom an investigator conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information. Research means a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge.
- c. Department of Commerce regulations at 15 C.F.R. part 27, applying to all Federal departments and agencies, require that recipients maintain appropriate policies and procedures for the protection of human subjects. In the event it becomes evident that human subjects may be involved in this project, the non-Federal entity shall submit appropriate documentation to the Federal Program Officer for approval by the appropriate Council officials. This documentation may include:
  1. Documentation establishing approval of the project by an institutional review board (IRB) approved for Federal-wide use under Department of Health and Human Services guidelines (*see also* 15 C.F.R. § 27.103);

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<sup>17</sup> Department of State Open Skies Agreements website - <http://www.state.gov/e/eb/tra/ata/index.htm>, verified 8/18/2015.

2. Documentation to support an exemption for the project under 15 C.F.R. § 27.101(b);
  3. Documentation to support deferral for an exemption or IRB review under 15 C.F.R. § 27.118;
  4. Documentation of IRB approval of any modification to a prior approved protocol or to an informed consent form.
- d. No work involving human subjects may be undertaken or conducted, or costs incurred and/or charged for human subjects research, until the appropriate documentation is approved in writing by the Grants Officer. Notwithstanding this prohibition, work may be initiated or costs incurred and/or charged to the project for protocol or instrument development related to human subjects research.

### **17.7 Federal Employee Expenses**

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

### **17.8 Minority Serving Institutions Initiative**

Pursuant to EOs 13555 ("White House Initiative on Educational Excellence for Hispanics"), 13270 ("Tribal Colleges and Universities"), and 13532 ("Promoting Excellence, Innovation, and Sustainability at Historically Black Colleges and Universities"), the Council is strongly committed to broadening the participation of minority serving institutions (MSIs) in its financial assistance programs. The Council's goals include achieving full participation of MSIs in order to advance the development of human potential, strengthen the Nation's capacity to provide high-quality education, and increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. The Council encourages all recipients to include meaningful participation of MSIs. Institutions eligible to be considered MSIs are listed on the Department of Education website.

### **17.9 Research Misconduct**

The Council adopts, and applies to financial assistance Awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President's Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification or plagiarism in proposing, performing or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by the Council must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect and investigate allegations of research misconduct and, for

this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal Award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the Award, up to and including Award termination and/or suspension or debarment. The Council requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the Treasury OIG of such allegation. Once the non-Federal entity has investigated the allegation, it shall submit its findings to the Grants Officer. The Council may accept the non-Federal entity's findings or proceed with its own investigation. The Grants Officer will inform the non-Federal entity of the Council's final determination.

#### **17.10 Publications, Videos, Signage and Acknowledgment of Sponsorship**

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

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

#### **17.11 Care and Use of Live Vertebrate Animals**

Recipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89- 544, 7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 C.F.R. Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling and treatment of warm-blooded animals held for research, teaching or other activities

supported by Federal financial assistance. No research involving vertebrate animals is permitted under any Council financial assistance Award without the prior written approval of the Grants Officer.

#### **17.12 Homeland Security Presidential Directive 12**

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

- a. *The Subrecipient or contractor shall comply with the Council personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*
- b. *The Subrecipient or contractor shall account for all forms of Government-provided identification issued to the Subrecipient or contractor employees in connection with performance under this subaward or contract. The Subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Council: (1) When no longer needed for subaward or contract performance; (2) Upon completion of the Subrecipient or contractor employee’s employment; or (3) Upon subaward or contract completion or termination.*

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

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

- b. In performing this financial assistance Award, the non-Federal entity may gain access to items subject to export control (export-controlled items) under the Export Administration Regulations (EAR). The non-Federal entity is responsible for compliance with all applicable laws and regulations regarding export-controlled items, including the EAR's deemed exports and reexports provisions. The non-Federal entity shall establish and maintain effective export compliance procedures at Council and non-Council facilities throughout performance of the financial assistance Award. At a minimum, these export compliance procedures must include adequate controls of physical, verbal, visual, and electronic access to export-controlled items, including by foreign nationals.
- c. Definitions
  - 1. Export-controlled items. Items (commodities, software, or technology), that are subject to the EAR (15 C.F.R. §§ 730-774), implemented by the Department of Commerce's Bureau of Industry and Security. These are generally known as "dual-use" items, items with both a military and commercial application.
  - 2. Deemed Export/Reexport. The EAR defines a deemed export as a release of export-controlled items (specifically, technology or source code) to a foreign national in the U.S. Such release is "deemed" to be an export to the home country of the foreign national. 15 C.F.R. § 734.2(b)(2)(ii). A release may take the form of visual inspection, oral exchange of information, or the application abroad of knowledge or technical experience acquired in the U.S. If such a release occurs abroad, it is considered a deemed reexport to the foreign national's home country. Licenses may be required for deemed exports or reexports.
- d. The non-Federal entity shall control access to all export-controlled items that it possesses or that comes into its possession in performance of this financial assistance Award, to ensure that access to, or release of, such items are restricted, or licensed, as required by applicable Federal laws, EOs, and/or regulations, including the EAR.
- e. As applicable, non-Federal entity personnel and associates at Council sites shall be informed of any procedures to identify and protect export-controlled items.
- f. To the extent the non-Federal entity wishes to provide foreign nationals with access to export-controlled items, the non-Federal entity shall be responsible for obtaining any necessary licenses, including licenses required under the EAR for deemed exports or deemed reexports.
- g. Nothing in the terms of this financial assistance Award is intended to change, supersede, or waive the requirements of applicable Federal laws, EOs or regulations.
- h. Compliance with the foregoing will not satisfy any legal obligations the non-Federal entity may have regarding items that may be subject to export controls administered by other agencies such as the Department of State, which has jurisdiction over exports of munitions items subject to the International Traffic in Arms Regulations (ITAR) (22 C.F.R. §§ 120-130), including releases of such items to foreign nationals.
- i. The non-Federal entity shall include this Subsection .13, including this Subparagraph i, in

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

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

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the non-Federal entity engages in certain activities related to trafficking in persons. The Council incorporates the following Award term required by [2 C.F.R. § 175.15\(b\)](#).<sup>18</sup>

Award Term from 2 C.F.R. § 175.15(b):

I. Trafficking in persons.

- a. Provisions applicable to a non-Federal entity that is a private entity.
  1. You as the non-Federal entity, your employees, Subrecipients under this Award, and Subrecipients' employees may not—
    - i. Engage in severe forms of trafficking in persons during the period of time that the Award is in effect;
    - ii. Procure a commercial sex act during the period of time that the Award is in effect; or
    - iii. Use forced labor in the performance of the Award or subawards under the Award.
  2. We as the Federal Awarding agency may unilaterally terminate this Award, without penalty, if you or a Subrecipient that is a private entity —
    - i. Is determined to have violated a prohibition in paragraph a.1 of this Award term; or
    - ii. Has an employee who is determined by the agency official authorized to terminate the Award to have violated a prohibition in paragraph a.1 of this Award term through conduct that is either— (A) Associated with performance under this Award; or (B) Imputed to you or the Subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- b. Provision applicable to a non-Federal entity other than a private entity. We as the Federal Awarding agency may unilaterally terminate this Award, without penalty, if a Subrecipient that is a private entity—
  1. Is determined to have violated an applicable prohibition in paragraph a.1 of this

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

- Award term; or
2. Has an employee who is determined by the agency official authorized to terminate the Award to have violated an applicable prohibition in paragraph a.1 of this Award term through conduct that is either—
    - i. Associated with performance under this Award; or
    - ii. Imputed to the Subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- c. Provisions applicable to any non-Federal entity.
1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this Award term.
  2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this Award.
  3. You must include the requirements of paragraph a.1 of this Award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this Award term:
1. Employee means either:
    - i. An individual employed by you or a Subrecipient who is engaged in the performance of the project or program under this Award; or
    - ii. Another person engaged in the performance of the project or program under this Award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  2. Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of 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); and (B) A for-profit organization.



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

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

- a. Searchable Website Requirements. The Federal Funding Accountability and Transparency Act of 2006 (FFATA) requires information on Federal Awards (Federal financial assistance and expenditures) be made available to the public via a single, searchable website. This information is available at the [USA Spending website](#).<sup>19</sup> Recipients and Subrecipients must include the following required data elements in their application:

Name of entity receiving Award;

- Award amount;
  - Transaction type, funding agency, Catalog of Federal Domestic Assistance Number, and descriptive Award title;
  - Location of entity, primary location of performance (City/State/Congressional District/Country); and
  - Unique identifier of entity.
- b. Reporting Subawards and Executive Compensation. Prime grant recipients Awarded a new Federal grant greater than or equal to \$25,000 on or after October 1, 2010, other than those funded by the Recovery Act, are subject to FFATA subaward reporting requirements as outlined in the OMB guidance issued August 27, 2010. The prime non-Federal entity is required to file a FFATA subaward report by the end of the month following the month in which the prime non-Federal entity Awards any sub-grant greater than or equal to \$25,000. *See* Pub. L. No. 109-282, as amended by section 6202(a) of Pub. L. No. 110-252 (*see* 31 U.S.C. 6101 note). The reporting requirements are located in Appendix A of [2 C.F.R. Part 170](#).<sup>20</sup>

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

I. Reporting Subawards and Executive Compensation.

- a. Reporting of first-tier subawards.
1. Applicability. Unless you are exempt as provided in paragraph d. of this Award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (*see* definitions in paragraph e. of this Award term).

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<sup>19</sup> USASpending.gov website - [www.USASpending.gov](http://www.USASpending.gov), verified 8/18/2015.

<sup>20</sup> 2 C.F.R. § 170.320 on GPO website - <http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf>, verified 8/18/2015

2. Where and when to report.
  - i. You must report each obligating action described in paragraph a.1 of this Award term to the FFATA Subaward Reporting System ([FSRS](#)).<sup>21</sup>
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
3. What to report. You must report the information about each obligating action that the submission instructions posted at the [FSRS](#) website specify.
- b. Reporting Total Compensation of Non-Federal Entity Executives.
  1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
    - i. the total Federal funding authorized to date under this Award is \$25,000 or more;
    - ii. in the preceding fiscal year, you received—
      - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
      - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
    - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the [U.S. Security and Exchange Commission](#) total compensation filings.<sup>22</sup>)
  2. Where and when to report. You must report executive total compensation described in paragraph b.1 of this Award term:
    - i. As part of your registration profile in the System for Award Management ([SAM](#)),<sup>23</sup>  
and

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<sup>21</sup> Federal Funding Accountability and Transparency Act Subaward Reporting System - <http://www.fsr.gov>, verified 8/18/2015.

<sup>22</sup> U.S. Security and Exchange Commission Executive Compensation “Fast Facts” - <http://www.sec.gov/answers/excomp.htm>, verified on 8/18/2015.

<sup>23</sup> System for Award Management (SAM) - <https://www.sam.gov>, verified on 8/18/2015.

- ii. By the end of the month following the month in which this Award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
  - 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this Award term, for each first-tier Subrecipient under this Award, you shall report the names and total compensation of each of the Subrecipient's five most highly compensated executives for the Subrecipient's preceding completed fiscal year, if—
    - i. In the Subrecipient's preceding fiscal year, the Subrecipient received—
      - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
      - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
    - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
  - 2. Where and when to report. You must report Subrecipient executive total compensation described in paragraph c.1. of this Award term:
    - i. To the non-Federal entity.
    - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the Subrecipient by November 30 of that year.
- d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any Subrecipient.
- e. Definitions. For purposes of this Award term:
  - 1. Entity means all of the following, as defined in 2 C.F.R. part 25:
    - i. A Governmental organization, which is a State, local government, or Indian tribe;

- ii. A foreign public entity;
  - iii. A domestic or foreign nonprofit organization;
  - iv. A domestic or foreign for-profit organization;
  - v. A Federal agency, but only as a Subrecipient under an Award or subaward to a non- Federal entity.
2. Executive means officers, managing partners, or any other employees in management positions.
  3. Subaward:
    - i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this Award and that you as the non-Federal entity Award to an eligible Subrecipient.
    - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, *see* 2 C.F.R. § 200.331).
    - iii. A subaward may be provided through any legal agreement, including an agreement that you or a Subrecipient considers a contract.
  4. Subrecipient means an entity that:
    - i. Receives a subaward from you (the non-Federal entity) under this Award; and
    - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
  5. Total compensation means the cash and noncash dollar value earned by the executive during the non-Federal entity's or Subrecipient's preceding fiscal year and includes the following (for more information *see* 17 C.F.R. 229.402(c)(2)):
    - i. Salary and bonus.
    - ii. Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
    - iii. Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
    - iv. Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
    - v. Above-market earnings on deferred compensation which is not tax-qualified.
    - vi. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf

of the employee, perquisites or property) for the executive exceeds \$10,000.

- c. System for Award Management (SAM) and Universal Identifier requirements.
1. Requirement for SAM. Unless you are exempted from this requirement under 2 C.F.R. § 25.110, you as the recipient must maintain the currency of your information in the SAM until you submit the final financial report required under this Award or receive the final payment, whichever is later. This requires that you review and update the information at least annually after the initial registration, and more frequently if required by changes in your information or another Award term.
  2. Requirement for unique entity identifier. If you are authorized to make subawards under this Award, you:
    - i. Must notify potential Subrecipients that no entity (see definition in paragraph C of this Award term) may receive a subaward from you unless the entity has provided its unique entity identifier to you.
    - ii. May not make a subaward to an entity unless the entity has provided its unique entity identifier to you.
  3. Definitions for purposes of this Award term:
    - i. System for Award Management (SAM) means the Federal repository into which an entity must provide information required for the conduct of business as a recipient. Additional information about registration procedures may be found at the System for Award Management [Internet site](#).<sup>24</sup>
    - ii. Unique entity identifier means the identifier required for SAM registration to uniquely identify business entities.
    - iii. Entity, as it is used in this Award term, means all of the following, as defined at 2 C.F.R. part 25, subpart C:
      - (A) A Governmental organization, which is a State, local government, or Indian Tribe;
      - (B) A foreign public entity;
      - (C) A domestic or foreign nonprofit organization;
      - (D) A domestic or foreign for-profit organization; and
      - (E) A Federal agency, but only as a Subrecipient under an Award or subaward to a non-Federal entity.
    - iv. Subaward:
      - (A) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this Award and that you as the non-Federal entity Award to an eligible Subrecipient.
      - (B) The term does not include your procurement of property and services

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

needed to carry out the project or program (for further explanation, *see* 2 C.F.R. § 200.331).

(C) A subaward may be provided through any legal agreement, including an agreement that you consider a contract.

v. Subrecipient means an entity that:

(A) Receives a subaward from you under this Award; and

(B) Is accountable to you for the use of the Federal funds provided by the subaward.

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

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

- a. Unless there is an actual rescission of funds for specific grant obligations, recipients of Federal financial assistance Awards for which funds have been obligated generally will be able to continue to perform and incur allowable expenses under the Award during a funding hiatus. Recipients are advised that ongoing activities by Federal employees involved in grant administration (including payment processing) or similar operational and administrative work cannot continue when there is a funding lapse. Therefore, there may be delays, including payment processing delays, in the event of a shutdown.
- b. All Award actions will be delayed during a government shutdown; if it appears that a non-Federal entity's performance under a grant or cooperative agreement will require agency involvement, direction or clearance during the period of a possible government shutdown, the Program Officer or Grants Officer, as appropriate, may attempt to provide such involvement, direction, or clearance prior to the shutdown or advise recipients that such involvement, direction, or clearance will not be forthcoming during the shutdown. Accordingly, recipients whose ability to withdraw funds is subject to prior agency approval, which in general are recipients that have been designated high risk, recipients of construction Awards, or are otherwise limited to reimbursements or subject to agency review, will be able draw funds down from the relevant Automatic Standard Application for Payment (ASAP) account only if agency approval is given and coded into ASAP prior to any government shutdown or closure. This limitation may not be lifted during a government shutdown. Recipients should plan to work with the Grants Officer to request prior approvals in advance of a shutdown wherever possible. Recipients whose authority to draw down Award funds is restricted may decide to suspend work until the government reopens.
- c. The ASAP system may remain operational during a government shutdown. As applicable, recipients that do not require Council approval to draw down advance funds from their ASAP accounts may be able to do so during a shutdown. The 30-day limitation on the drawdown of advance funds will apply notwithstanding a government shutdown and

advanced funds held for more than 30 days shall be returned with interest.

### **18. Certifications**

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