

## **PROFESSIONAL SERVICES AGREEMENT**

STATE OF TEXAS           §

COUNTY OF BRAZORIA   §

This Agreement for professional services (“Agreement”) is made and entered into by and between **BRAZORIA COUNTY**, a political subdivision of the State of Texas, hereinafter referred to as the “County” and Tetra Tech, Inc., PO Box 200191, Dallas, Texas 75320-0191, a Texas Corporation, hereinafter referred to as “Consultant”.

### **RECITALS**

The County intends to enter into a professional services contract procured under RFP #21-84 Disaster Monitoring Services, to provide Emergency Watershed Protection (EWP) Management/Consulting Services, hereinafter called the “Project”

The County desires that Consultant perform certain professional engineering and related services in connection with the Project; and

Consultant represents that it is qualified and desires to perform such services.

In consideration of the mutual covenants, agreements and benefits to the Parties hereto, it is agreed as follows:

### **TERMS**

#### *Article 1 Scope of Agreement*

1.01 The Consultant agrees to perform professional engineering services as set forth in the Exhibits attached hereto and incorporated herein.

#### *Article 2 Character and Extent of Services*

2.01 The Consultant shall perform its obligations under this Contract in accordance with the Scope of Work within the Consultant’s proposal attached hereto as **Exhibit “A.”** County and Consultant may agree to amend this contract. All amendments to this contract will be added as **“Exhibit F-”** (F-1, F-2, etc.).

2.02 The Consultant and County agree and acknowledge that the County is entering into this Contract in reliance on the Consultant’s competence and qualifications, as those were presented to County by Consultant with respect to professional services. The Consultant, in consideration for the compensation set forth expressly herein, shall at all times utilize its skill and attention to fully,

timely, and properly render professional services for the development of the Project to final completion as set out in, or reasonably inferred from, the Scope of Work. This shall be done in a manner utilizing the degree of care ordinarily used by Consultants performing similar services on projects of a similar nature and scope within the State of Texas.

2.03 The Consultant shall be represented by a professional engineer, who has been assigned by Consultant to manage the Project, licensed to practice in the State of Texas, at meetings of any official nature concerning the Project, including, but not limited to, scope meetings, status meetings, pre-bid meetings, pre-construction meetings and construction meetings with County and staff and/or its contractors, unless otherwise set forth in the Scope of Work or approved in writing by the County.

2.04 Work, labor, services, and materials to be furnished by Consultant shall fully comply with applicable Federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work. In the event of any change in the applicable Federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work for the Project, which occur after the Effective Date of the Contract, and which Consultant was not and should not reasonably have been aware of, which require changes to the Work that has already been completed by the Consultant, or require work outside the Scope of Work, then the Consultant and the County shall attempt to agree in writing on the required modifications to the Scope of Work and an equitable fee and time adjustment resulting from such additional Scope of Work. Conflicts between any applicable Federal, state and local laws, rules, regulations, statutes, ordinances and directives related to the Consultant and/or the Work shall be brought to the attention of the County by Consultant.

2.05 Consultant shall comply with all Federal laws, including but not limited to, the specific laws identified and attached hereto as **Exhibit "C"** and incorporated herein and made part of this contract. The Consultant shall require and ensure that its contractors and subcontractors comply with all applicable laws.

2.06 All work provided under this Agreement shall conform to and be in the format required by Federal and state funding agencies. Guidelines and requirements of the Federal Transit Administration, the Federal Highways Administration, the Federal Emergency Management Agency, the Environmental Protection Agency, the Texas Commission on Environmental Quality, and the Texas Department of Transportation as applicable to the project. Other Federal and local funding sources may impose additional and/or differing requirements. The project may utilize funding from the following: grants, ad valorem taxes; general obligation bonds, which all requirements for this contract must adhere to the requirements.

2.07 Effective January 1, 2020, the requirements of Subchapter J, Chapter 552, Texas Government Code, may apply to this contract and the Consultant agrees that the contract can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of that subchapter.

*Article 3*  
*Time for Performance*

3.01 The Consultant shall complete the services called for in this Agreement as set forth in schedule specified in **Exhibit “A”** or as further modified in **Exhibit “F-\*. ”** Consultant understands that time is of the essence to complete the services by the scheduled deadlines.

*Article 4*  
*Consultant Compensation*

4.01 For and in consideration of the services rendered by the Consultant under Article 2, the County shall pay to the Consultant in accordance with its Fee Schedule in **Exhibit “A”** or as further modified in **Exhibit “F-\*. ”**

*Article 5*  
*Time of Payment*

5.01 Monthly payments shall be made based upon that portion of the work which has been completed. Consultant shall provide, no later than the last day of each calendar month a sworn statement to the County Engineer, setting forth the percentage of the services provided which were completed during such calendar month, the compensation due, Consultant’s hourly rates, if applicable, subcontractor invoices and the respective backup documentation, and any other documentation required to support compensation due. Said statement shall be accompanied by an affidavit signed by an officer or principal of the Consultant certifying that the work was performed, it was authorized by the County Engineer and that all information contained in the invoice being submitted is true and correct.

5.02 Consultant agrees to maintain, for a period of five (5) years, detailed time records identifying each person performing the services, the date or dates that the services were performed, the applicable hourly rates, the total amount billed for each person and the total amount billed for all persons, and shall provide such other details as may be requested by the County Auditor for verification purposes. The Consultant shall retain its records and shall keep same available for inspection during regular business hours by County officials.

5.03 The Consultant’s statement becomes due and payable within thirty (30) days after receipt and approval by County. The approval or payment shall not be considered to be evidence of performance by the Consultant to the point indicated by such statement or of receipt or acceptance by the County of the work covered by such statement.

*Article 6*  
*Compliance Standards*

6.01 The Consultant agrees to perform the work hereunder in accordance with County’s road and bridge specifications or Texas Department of Transportation road and bridge specifications, Brazoria County Drainage Criteria Manual and other generally accepted standards applicable

thereto, and shall use that degree of care and skill commensurate with the Consultants profession to comply with all applicable state, Federal and local laws, ordinances, rules and regulations relating to the work to be performed hereunder and Consultant's performance.

*Article 7*  
*Procurement, Suspension and Debarment*

7.01 The Consultant certifies by execution of this Agreement or Contract that it is not ineligible for such participation in Federal or state assistance programs. The Consultant further agrees to include this certification in all Agreements or Contracts between itself and any subcontractor in connection with the services performed under this Agreement or Contract. The Consultant also certifies that it will notify the County in writing if it is not in compliance with Federal or State assistance programs at any time during the term of this Agreement or Contract. The Consultant agrees to refund Brazoria County for any payments made to the Consultant that would have been properly payable or reimbursable from Federal or state funds but for the fact that such payment failed to comply with Federal or state assistance programs.

*Article 8*  
*Ownership of Documents, Copyright*

8.01 The County shall be the absolute and unqualified owner of all drawings, preliminary layouts, electronic documents and drawings, record drawings, sketches, reports, and other documents completed or partially completed, mylar reproducibles, preliminary layouts, created, produced, developed, or prepared, pursuant to this Agreement, by the Consultant or its approved outside advisory or support consultants (collectively the "Documents") with the same force and effect as if the County prepared same.

8.02 Consultant shall deliver all Documents to County within thirty (30) days of the termination or upon completion of this Agreement, whichever occurs first.

8.03 The Consultant may retain one (1) set of reproducible copies of such documents and such copies shall be for the Consultant's sole use in preparation of studies or reports for Brazoria County only. The Consultant is expressly prohibited from selling, licensing or otherwise marketing or donating such documents, or using such documents in the preparation of other work for any other client, without the prior express written permission of the County.

8.04 County shall be the owner of all intellectual property rights of the services rendered hereunder including all rights of copyright therein.

*Article 9*  
*Public Contact*

9.01 Contact with the news media, citizens of Brazoria County, the State of Texas or other governmental agencies shall be the responsibility of the County. Under no circumstances shall the Consultant release any material or information developed in the performance of its services hereunder without the express prior written permission of the County.

*Article 10*  
*Consultant's Insurance Requirements*

10.01 Prior to commencement of the Services, Consultant shall furnish County with properly executed certificates of insurance which shall evidence all insurance required and provide that such insurance shall not be canceled, except on 30 days' prior written notice to County. Consultant shall provide certified copies of insurance endorsements and/or policies if requested by County. Consultant shall maintain such insurance coverage from the time Services commence until Services are completed and provide replacement certificates, policies and/or endorsements for any such insurance expiring prior to completion of Services. Consultant shall obtain such insurance written on an Occurrence form (except Professional Liability which is on a Claims Made policy) from such companies having Best rating of V/VII or better, licensed or approved to transact business in the State of Texas, and shall obtain such insurance of the following types and minimum limits set forth on **Exhibit "B."**

10.02 County shall be named as additional insured to all required coverage except for Workers' Compensation and Professional Liability. All liability policies including Workers' Compensation written on behalf of Consultant shall contain a waiver of subrogation in favor of County and members of Commissioners Court.

10.03 If required coverage is written on a claims-made basis, Consultant represents that any retroactive date applicable to coverage under the policy precedes the effective date of the contract; and that continuous coverage will be maintained or an extended discovery period will be exercised for a period of 2 years beginning from the time that work under the Agreement is completed.

*Article 11*  
*Indemnification*

11.01 THE CONSULTANT SHALL INDEMNIFY THE COUNTY FROM AND AGAINST CLAIMS AND LIABILITY, PERFORMED UNDER THIS CONTRACT WHICH RESULT FROM NEGLIGENT ACT, ERROR, OR OMISSION OF THE CONSULTANT OR OF ANY PERSON EMPLOYED BY THE CONSULTANT. THE CONSULTANT SHALL IN PROPORTION OF CONSULTANT'S LIABILITY BE RESPONSIBLE TO REIMBURSE THE COUNTY FOR REASONABLE EXPENSES, INCLUDING BUT NOT LIMITED TO REASONABLE ATTORNEY'S FEES, TO THE EXTENT ARISING OUT OF THE NEGLIGENT ACTS, ERRORS OR OMISSIONS OF THE CONSULTANT, ITS AGENTS, OR EMPLOYEES.

11.02 CONSULTANTS DUTY TO INDEMNIFY COUNTY SHALL AS DESCRIBED ABOVE BE ABSOLUTE. IT SHALL NOT ABATE OR END BY REASON OF THE EXPIRATION OR TERMINATION OF THIS AGREEMENT UNLESS OTHERWISE AGREED BY COUNTY IN WRITING. THE PROVISIONS OF THIS SECTION SHALL SURVIVE THE TERMINATION OF THE AGREEMENT AND SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ALL SUCH MATTERS NO MATTER WHEN THEY ARISE.

*Article 12*  
*Dispute Resolution*

12.01 In the event of a dispute related to the breach of this Agreement that cannot be settled through negotiation, County and Consultant agree to submit the dispute to mediation.

12.02 All expenses associated with mediation shall be shared fifty (50) percent by each party.

12.03 The requirement to seek mediation shall be a condition required before filing an action at law or in equity, unless to do so would prevent either party from seeking relief in a court of law in equity under any applicable statutes of limitation.

*Article 13*  
*Termination*

13.01 The County may terminate this Agreement at any time by notice in writing to the Consultant. Upon receipt of such notice, the Consultant shall discontinue all services in connection with the performance of this Agreement and shall proceed to promptly cancel all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement. As soon as practicable after receipt of notice of termination, the Consultant shall submit a statement, showing in detail the services performed under this Agreement to the date of termination. The County shall then pay the Consultant that proportion of the prescribed charges which the services actually performed under this Agreement bear to the total services called for under this Agreement, less such payments on account of the charges as have been previously made. Copies of all completed or partially completed designs, electronic data files, drawings and specifications of any kind prepared under this Agreement shall be delivered to the County when and if this Agreement is terminated.

*Article 14*  
*Notice*

14.01 Any notice permitted or required to be given to the County hereunder may be given by hand-delivery or certified United States mail, postage prepaid, return receipt requested addressed to:

**County:**

Brazoria County Engineer  
451 N. Velasco, Suite 230  
Angleton, Texas 77515  
ATTN: Matthew Hanks, JD, PE  
Email: [matth@brazoria-county.com](mailto:matth@brazoria-county.com)  
Phone: 979-864-1265

**Consultant:**

Tetra Tech  
2301 Lucien Way, Suite 120  
Maitland, Florida 32751  
ATTN: Jonathan Burgiel  
Email: [TDR.Contracts@tetrattech.com](mailto:TDR.Contracts@tetrattech.com)  
Phone: 407-735-6580

14.02 Such notice shall be deemed given upon receipt of hand-delivery or, if mailed, three days after the date of deposit of the notice in the United States mail as aforesaid.

*Article 15*  
*Successors and Assigns*

15.01 Neither the County nor the Consultant shall assign, sublet, or transfer its or his interest in this Agreement without the prior written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public body which may be a party hereto.

*Article 16*  
*Applicable Law*

16.01 The laws of the State of Texas govern all disputes arising out of or relating to this Agreement. The parties hereto acknowledge that venue is proper in Brazoria County, Texas for all legal actions or proceedings arising out of or relating to this Agreement and waive the right to sue or be sued elsewhere. Nothing in this Agreement shall be construed to waive the County's sovereign immunity.

*Article 17*  
*Modifications*

17.01 This instrument contains the entire Agreement between the parties related to the rights herein granted and obligations herein assumed. Any oral or written representations or modifications concerning this instrument shall be of no force and effect excepting a subsequent modification in writing signed by both parties.

*Article 18*  
*Authority of County Engineer*

18.01 The County Engineer shall decide any and all questions which may arise as to the interpretation of this Agreement and all questions as to the acceptable fulfillment of this Agreement by the Consultant. His decision shall be final. It is mutually agreed by both parties that the County Engineer shall act as referee in all questions arising under the terms of this Agreement between the parties hereto and that the decisions of the County Engineer in such shall be final and binding alike on both parties hereto. But, nothing contained in this Article shall be construed to authorize the County Engineer to alter, vary or amend any of the terms or provisions of this Agreement.

*Article 19*  
*Severability*

19.01 If any provision of this Agreement is determined to be invalid, illegal, or unenforceable, the remaining provisions remain in full force, if the essential terms and conditions of this Agreement for each party remain valid, binding, and enforceable.



*Article 20*  
*Merger*

20.01 The Parties agree that this Agreement contains all of the terms and conditions of the understanding of the parties relating to the subject matter hereof. All prior negotiations, discussions, correspondence and preliminary understandings between the parties and others relating hereto are superseded by this Agreement.

*Article 21*  
*Boycott Verification*

21.01 This verification is required pursuant to Sections 808, 809, 2271, and 2274 (87(R) Senate Bill 13 and 19 versions) of the Texas Government Code:

Definitions:

1. Per Government Code Chapter 808, "Boycott Israel" means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purpose
2. Per Government Code Chapter 809, "Boycott energy company" means, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company:
  - (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and state law; or
  - (B) does business with a company described by Paragraph (A).
3. Per Government Code Chapter 2274 (87(R) Senate Bill 19), "Discriminate against a firearm entity or firearm trade association":
  - (A) means, with respect to the entity or association, to:
    - (i) refuse to engage in the trade of any goods or services with the entity or association based solely on its status as a firearm entity or firearm trade association;
    - (ii) refrain from continuing an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association;
    - or
    - (iii) terminate an existing business relationship with the entity or association based solely on its status as a firearm entity or firearm trade association;
4. "Company" has the meaning assigned by Texas Government Code Sections 808.001(2), 809.001(2), and 2274.001(2) (87(R) Senate Bill 19).



This verification is only required for a contract that is between a governmental entity and a company with 10 or more full-time employees; and has a value of \$100,000 or more that is to be paid wholly or partly from public funds of the governmental entity. If your contract value or number of employees does not reach that threshold, please provide a written certification of the contract amount and number of employees.

By signing this contract consultant agrees to the following:

- (A) does not boycott Israel currently;
- (B) will not boycott Israel during the term of the contract the named Company, business or individual with Brazoria County Texas, Texas;
- (C) does not boycott energy companies currently;
- (D) will not boycott energy companies during the term of the contract the named Company, business or individual with Brazoria County, Texas;
- (E) does not discriminate against a firearm entity of firearm trade association currently; and
- (F) will not discriminate against a firearm entity of firearm trade association during the term of the contract the named Company, business or individual with Brazoria County, Texas

21.02 All requirements of Subtitle A, Title 8 Government Code Chapter 808, apply to this contract and the Consultant, by signing below, hereby verifies its understanding of the exemptions contained therein.

21.03 Consultant agrees that the contract can be terminated if the Consultant knowingly or intentionally fails to comply with a requirement of this subchapter.

*Article 22*  
*Attachments*

22.01 The following attachments are a part of this Agreement:

Exhibit A	Scope of Work, Fee Schedule and Project Schedule
Exhibit B	County's minimum insurance requirements
Exhibit C	Compliance with Laws
Exhibit D	Certificate of Interested Parties
Exhibit E	Conflict of Interest Disclosure
Exhibit F	Contract Amendments (As Needed)
Attachment A	U.S. Department of Agriculture Farm Production and Conservation General Terms and Conditions for Grants and Cooperative Agreements

*Article 23*  
*Execution*

23.01 The County executes this Agreement by and through the County Judge acting pursuant to Order of the Commissioners Court of Brazoria County, Texas, so authorizing. This Agreement shall not become effective until executed by all Parties hereto.

**Brazoria County, Texas**

**Tetra Tech**

**a Texas company**

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

**L.M. (Matt) Sebesta, Jr**

**County Judge**

**Date:** \_\_\_\_\_

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

**Name:** **Jonathan Burgiel**

**Title:** **Business Unit President**

**Date:** **09/08/2025**

**EXHIBIT “A”**  
**SCOPE OF WORK, FEE SCHEDULE AND PROJECT SCHEDULE**

**BRAZORIA COUNTY, TEXAS**  
**2025 NRCS Waterway Debris Removal\_Hurricane Beryl**

**BRAZORIA COUNTY, TEXAS** (County) hereby authorizes services to be performed for the period of performance and estimated budget set forth herein:

**PROJECT:           2025 NRCS Waterway Debris Removal**  
**Hurricane Beryl**

**I.           DURATION OF WORK:**

Estimated project term: **September 1, 2025** through **December 31, 2026** or until completion of the below scope of work or until the funds have been expended in full, whichever first occurs. The period of performance may be extended upon approval by both parties. To the extent the period of performance is required to be extended due to reasons beyond the Tetra Tech Team's control; such unforeseen circumstances may result in an increase in the project timeline and budget.

**II.          SCOPE OF WORK:**

Brazoria County seeks to authorize Tetra Tech as a qualified Consultant to provide Emergency Watershed Protection (EWP) Management/Consulting Services for waterway debris related consulting services. Tetra Tech will advise, define and execute services necessary for managing the emergency watershed program for recovery of damages from Hurricane Beryl.

The primary responsibility of Tetra Tech will be to provide management support to the Grants Administration Department during implementation of the United States Department of Agriculture's (USDA) EWP Program #5118DSR 48-14-24-5118-002– debris removal from streambank and shoreline along Oyster Creek and Bastrop Bayou, Brazoria County, Texas in Brazoria County. Project limits are shown in the attached exhibit. This includes implementing watershed management program goals, managing construction restoration and stabilization of identified funded projects to reduce imminent threat to life, and loss of property. These services may be expanded by the County, modified, or altered to encompass other County or Departmental needs for accomplishing emergency watershed protection or floodplain management goals.

To facilitate construction and complete exigent projects, Tetra Tech will serve as the primary consultant to the County. Tetra Tech will provide consultation, technical assistance, permit application as necessary, engineering and planning support, bid procurement, advise on contractor selection, bid tabulations, contract award, scheduling contractors, coordination of contractors, monitoring/inspecting work in progress, inspection and certification of completed work, documentation of contractor progress, review of testing results, borrow evaluation, preparation of progress reports and final reports, management of payment request, determining consistency and adherence to project plans & specifications, certification of projects, and project close-out for EWP task orders.

Duties/tasks will include but not be limited to the following Tasks:

**1.   TASK 1: Construction Specifications / Drawings & Survey Reports**

Tetra Tech will conduct and provide pre and post survey documentation for waterway debris removal to the County and NRCS with identifying sites; conduct site visits and capture damages. Prepare design,

Brazoria County, TX  
2025 NRCS Funded Waterway Debris Removal

construction specifications, and drawings in accordance with standard engineering principles that comply with NRCS programmatic requirements; and/or contract/install the designed construction. Any design services will be by a professional registered engineer. Sponsor will obtain NRCS review and concurrence on the design, construction plans, and specifications. The Sponsor must ensure description of work is reviewed, concurred, and approved by NRCS. A copy of the final signed and sealed plans and specifications shall be provided to NRCS. Prior to commencement of work and/or solicitation of bids, Tetra Tech will submit for NRCS review and concurrence a Quality Assurance Plan (QAP). The QAP shall outline technical and administrative expertise required to ensure the EWP project measures are installed in accordance with the plans and specifications, identify individuals with the expertise, describe items to be inspected, list equipment required for inspection, outline the frequency and timing of inspection (continuous or periodic), outline inspection procedures, and record keeping requirements. A copy of the final QAP shall be provided to NRCS prior to commencement of construction.

**2. TASK 2: Contract Administration, Bid Solicitation, and Contractor Selection Support**

Tetra Tech will provide the County with guidance on Federal Grant Compliance; assist the County and NRCS as needed with technical support, engineering recommendations, RFP development, bid solicitations, bid advertisement, bid evaluation/tabulation, contractor procurement, bid award, and guidance with executing contracts that are compliant with NRCS and 2 Code of Federal Register (CFR) requirements.

**3. TASK 3: Debris Monitoring Inspections/Construction Documentation & Reporting**

Tetra Tech will use the preexisting Plans, Drawings & Specifications provided to USDA-NRCS to manage the Contractor during construction activities. Tetra Tech will provide construction inspectors to document the construction process and to assure that the work performed is consistent with the project. Consultant will prepare post construction Plans, Drawings & Specifications for submittal to USDA/NRCS; in the event of deviation from the project plans, the Consultant will notify the County immediately. Consultant will advise and provide the County oversight to ensure compliance with aspects of the applicable grant requirements. Inspection reports will be prepared by the Consultant on a daily basis. A 5-Day Report will be prepared each week and submitted to the County; deviations to scope of work, costs, or schedule will be noted in the 5-Day Report. A Final Report will be prepared at the conclusion of each completed project and submitted to the County within the time period prescribed by the contract. Other reports and progress updates may be required by the County or NRCS as needed. Periodic meetings may be required by the County or NRCS to be held at office locations defined by the contract or Statement of Work developed for each project. Tetra Tech shall attend meetings as requested by the County or NRCS. The County or NRCS may require Tetra Tech to perform periodic review of project engineering plans and specifications that are prepared by NRCS. NRCS may request design input, recommendations, analysis, or guidance on project designs on an as needed basis.

**4. TASK 4: Contract Management**

Tetra Tech will assist the County with managing contract the contract and cost accounting. The Consultant will review task order budgets, monitor contractor invoicing, and track project costs to assure that budgets are maintained. The Consultant will provide the County and NRCS with authorization to release payment for work completed that is determined to be complete and performed in accordance with project plans and specifications. The Consultant will be expected to work closely with the County and NRCS to conduct meetings as required for safety, slope/streambank restoration techniques, scope or contract changes, contracting/payment specifications, dispute resolution, or other subjects.

5. **TASK 5: Easement Assess/Right-of-Entry (Optional Services)**

Tetra Tech will assist the County with gaining access authorization to sites placed on the EWP Eligible Site Inventory list.

**III. ESTIMATED COST (not to exceed)**

Initial Estimated Not-to-Exceed: **\$800,378.28**

The fee for the services will be based on the actual hours of services furnished multiplied by Tetra Tech's current hourly rates as set forth below (procured under RFP # 21-84). The tables below outline the anticipated staff positions and level of effort by task.

**Table 1: Estimated Cost Breakdown**  
**for Task 1: Construction Specifications/Drawings & Survey Reports [1][2]**

Positions	Hourly Rate	Estimated # of Staff	Estimated # of Hours/Day	Estimated # of Days	Estimated Total
Principal-in-charge	\$226.60	1	1	2	\$453.20
Senior Grant Management Consultant	\$156.89	1	3	4	\$1,882.68
Environmental Specialist	\$145.26	1	2	10	\$2,905.20
GIS Analyst	\$75.54	1	3	10	\$2,266.20
Admin Assistant	\$55.78	1	3	10	\$1,673.40
Estimated Total for Task 1:					<b>\$9,180.68</b>

**Table 2: Estimated Cost Breakdown**  
**for Task 2: Contract Administration, Bid Solicitation, and Contractor Selection Support [1][2][3]**

Positions	Hourly Rate	Estimated # of Staff	Estimated # of Hours/Day	Estimated # of Days	Estimated Total
Principal-in-charge	\$226.60	1	1	20	\$4,532.00
Senior Grant Management Consultant	\$156.89	1	4	20	\$12,551.20
Public Assistance Consultant	\$133.64	1	4	20	\$10,691.20
GIS Analyst	\$75.57	1	3	10	\$2,267.10
Admin Assistant	\$55.78	1	3	10	\$1,673.40
Estimated Total for Task 2:					<b>\$31,714.90</b>

**Table 3: Estimated Cost Breakdown**  
**for Task 3: Debris Monitoring Inspections/Construction Documentation & Reporting [1][2][5]**

Positions	Hourly Rate	Estimated # of Staff	Estimated # of Hours/Day	Estimated # of Days	Estimated Total
Principal-in-charge/Senior Program Manager	\$110.40	1	1	60	\$6,624.00
Project Manager	\$87.16	1	8	80	\$55,782.40

Operations Manager	\$74.37	1	12	80	\$71,395.20
Field Supervisor	\$52.30	2	12	80	\$100,416.00
Collection Monitor	\$39.50	3	12	60	\$85,320.00
Debris Site / Tower Monitor	\$39.50	2	12	80	\$75,840.00
Marine Debris Monitor	\$54.62	6	12	60	\$235,958.40
GIS Analyst	\$75.54	1	3	60	\$13,597.20
Data Manager	\$63.92	1	8	60	\$30,681.60
Project Assistant (Clerical)	\$39.50	1	8	60	\$18,960.00
<b>Estimated Total for Task 3:</b>					<b>\$694,574.80</b>

**Table 4: Estimated Cost Breakdown  
for Task 4: Contract Management [1][2][5]**

Positions	Hourly Rate	Estimated # of Staff	Estimated # of Hours/Day	Estimated # of Days	Estimated Total
Principal-in-charge	\$226.60	1	1	15	\$3,399.00
Project Manager	\$87.16	1	1	60	\$5,229.60
Senior Grant Management Consultant	\$156.89	1	1	60	\$9,413.40
Data Manager	\$63.92	1	2	90	\$11,505.60
Project Assistant (Clerical)	\$39.50	1	2	90	\$7,110.00
<b>Estimated Total for Task 4:</b>					<b>\$36,657.60</b>

**Table 5: Estimated Cost Breakdown  
for Task 5: Easement Assess/Right-of-Entry: - Optional Services [1][2][4]**

Positions	Hourly Rate	Estimated # of Staff	Estimated # of Hours/Day	Estimated # of Days	Estimated Total
Principal-in-charge/Senior Program Manager - NRCS Debris Operations	\$110.40	1	1	20	\$2,208.00
Project Manager - NRCS Debris Operations	\$87.16	1	1	20	\$1,743.20
Field Supervisor - NRCS Debris Operations	\$52.30	1	8	30	\$12,552.00
GIS Analyst	\$75.57	1	2	15	\$2,267.10
Project Assistant (Clerical)	\$39.50	1	8	30	\$9,480.00
<b>Estimated Total for Task 5:</b>					<b>\$28,250.30</b>

**Table 6: Estimated Cost Breakdown Summary per Task [1][2]**

Task No.	Task Description	Estimated Total
1	Construction Specifications / Drawings & Survey Reports	\$9,180.68
2	Contract Administration, Bid Solicitation, and Contractor Selection Support	\$31,714.90
3	Debris Monitoring Inspections/Construction Documentation & Reporting	\$694,574.80



4	Contract Management	\$36,657.60
5	Easement Assess/Right-of-Entry (OPTIONAL)	\$28,250.30
<b>Total Estimated Cost:</b>		<b>\$800,378.28</b>

[1] The above estimated level of effort and associated costs are based on available information at the time the estimates were prepared and do not represent the actual cost of the project. The fee for the services will be based on the actual hours of services furnished multiplied by Tetra Tech's hourly rates.

[2] Tetra Tech may take the following actions, in its discretion: (i) Use fewer hours of one labor category and more hours of another labor category or categories and (ii) use fewer hours within one deliverable and more hours within another deliverable.

[3] The County purchasing department will be responsible for publishing and advertising BID documents in accordance with its typical practices. Additionally, the timeline for completion is dependent on the County's internal deadlines and procurement policies.

[4] Tetra Tech will be provided with potential access areas which may be needed to conduct the waterway debris removal.

[5] Specific project assumptions for tasks 3 and 4:

- Estimated Debris Volume – Vegetative: 100,000
- Average Truck Capacity: 70
- Average Load Call: 65%
- Estimated CY Per Load: 45.5
- Estimated Truck to Trailer Ratio: 1
- Estimated Trips Per Crew Per Day: 4
- Estimated Number of Trucks: 10
- Estimated Number of TDMS: 1
- Estimated Number of Working Days to Complete Collection: 60
- Estimated Working Days to Complete Haul-out: 30

#### IV. ASSUMPTIONS:

The scope of services and project costs shown above were developed with the following assumptions:

- **Project Sponsor.** The County will assign a primary point of contact to serve as project sponsor to address administrative and functional issues.
- **Access to Materials.** Documentation pertinent to the execution of this project should be made available to Tetra Tech for review in electronic format immediately, including any available documentation substantiating costs incurred in conjunction with the work performed. To the extent that Tetra Tech must instead help the County to recreate this information by contacting contractors or other County personnel, the costs of this time would be grounds for increasing the estimate above.
- **Access to Key Personnel.** Availability of County key personnel is critical to obtaining the information required for the overall success of this project. Information presented by key personnel will be accepted as factual and no confirmation will be made.
- **Period of Performance.** The estimated project term for the scope of work and proposed cost is from 09/01/25 to 12/31/26. The period of performance may be extended upon approval by both parties, which may result in an increase in the project budget.
- **Debris Removal Work.** Cost and Scope of Work estimate based upon County's estimate of 100K

Brazoria County, TX

2025 NRCS Funded Waterway Debris Removal

CYs of debris in navigable waterways.

- **Other Assistance Needed.** The scope of work and budget presented above is limited to supporting the County with cost recovery and reimbursement efforts for Category A Debris work only. If the County requires assistance with Categories B-G or any additional services outside of the above scope, Tetra Tech will submit to the County a separate proposal for the additional work for approval. A change order, updated purchase order, or new purchase order will be required.
- **Eligibility Determinations.** Tetra Tech cannot make eligibility determinations. Only the federal grant can do this under the federal programs. While Tetra Tech cannot guarantee any specific item is eligible to County paid for with NRCS dollars received by the County, Tetra Tech will provide the County with its most informed opinion regarding eligibility on any given expense based upon current guidance released by NRCS that provide information on the approved uses.
- **Personnel.** It is understood that the County may, from time to time, request additional personnel or seek personnel with defined, specialized skills to support its mission and priorities. The position titles and rates contained in the Master Services Agreement and supplemental positions (full rate schedule) are approved for use under this project.
- **Deliverables.** Tetra Tech will not disclose the deliverables relating to the services to a third party, including internal departments without written approval by the designated County Project Manager or designee.
- **Methods.** Except as otherwise provided in the Contract, the County acknowledges that during its performance under the Contract, the Consultant may use products, materials, and methodologies proprietary to the Consultant, and the County agrees that it will have or obtain no rights in such proprietary products, materials, and methodologies except pursuant to a separate written agreement (if) executed by the parties.
- **Work Location.** Work may be performed remotely. At the request of the County, in-person meetings may be accommodated in compliance with the most up-to-date social distancing guidance provided to the community.
- **Invoicing/Payment.** The County will be invoiced monthly. Payment terms are net 30 days.
- **Estimated Costs.** The cost estimate presented above is based on information known at the time of this proposal. Future changes to these assumptions will require a change to the estimate provided above as it is assumed that additional deliverables and period of performance will be required and are not included in the estimate above. Tetra Tech will work in good faith with the County to present a revised estimate when both parties agree it is warranted.

*Changes to these assumptions, expansion of scope of work, or debris contractor efficiency may impact the preliminary cost estimate and warrant a request for an increase by Tetra Tech.*

#### **INVOICE AND PAYMENT:**

Monthly Invoices -- Invoices are to be emailed to:

---

Payment terms are Net 30 days -- Payments are to be mailed to:

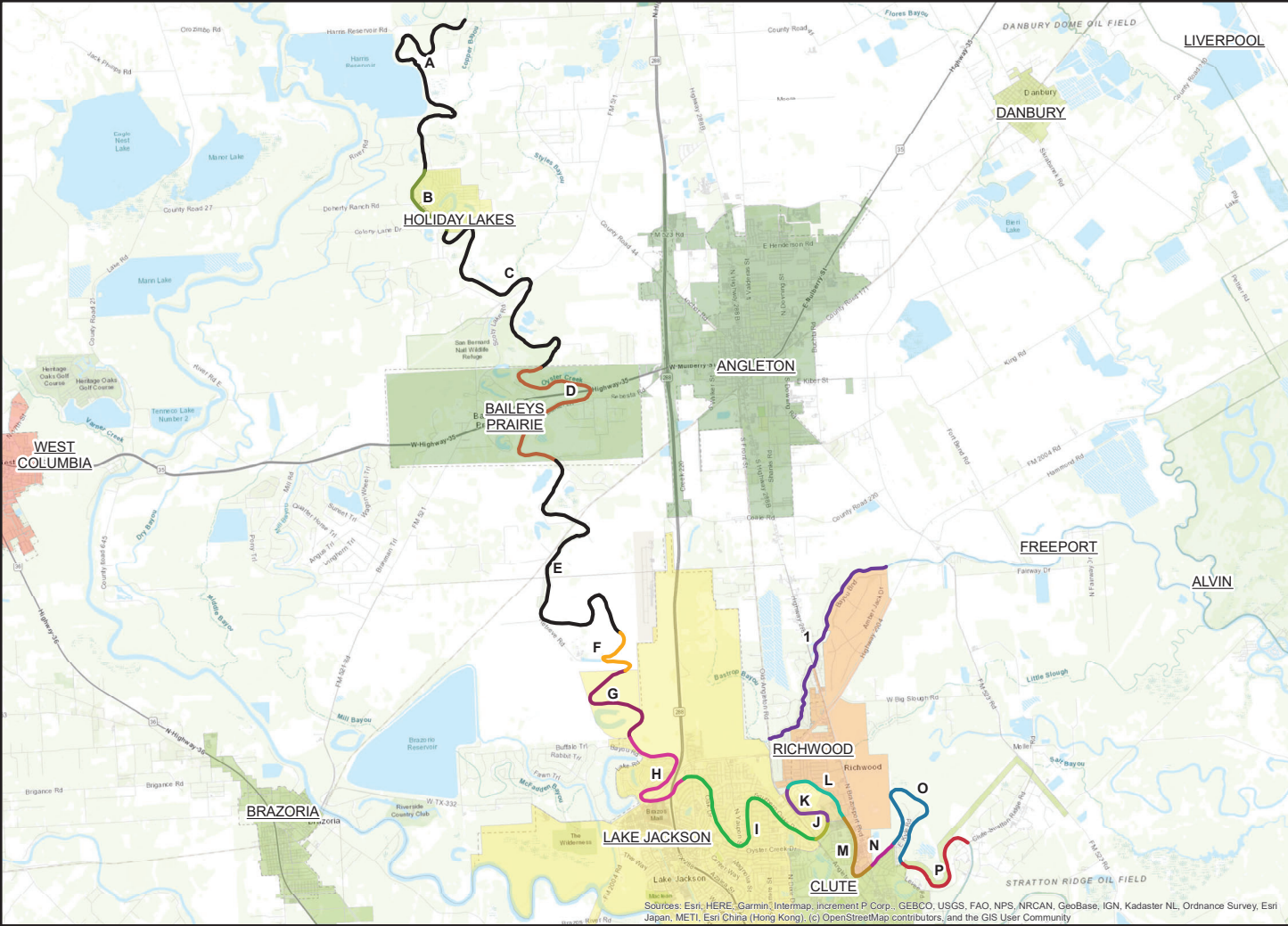
Tetra Tech, Inc.

PO Box 200191

Dallas, TX 75320-0191

Phone 321-441-8545 Brad Wesolowski

Email [brad.wesolowski@tetrattech.com](mailto:brad.wesolowski@tetrattech.com)



- 1 (4.22 miles)
- A (5.33 miles)
- B (1.49 miles)
- C (5.57 miles)
- D (4.42 miles)
- E (8.15 miles)
- F (1.34 miles)
- G (3.38 miles)
- H (2.54 miles)
- I (4.1 miles)
- J (0.41 miles)
- K (1.12 miles)
- L (1.33 miles)
- M (1.48 miles)
- N (0.54 miles)
- O (0.91 miles)
- P (2.09 miles)

Brazoria County Engineering



Oyster Creek

Date: 4/30/2025

**EXHIBIT “B”**  
**INSURANCE REQUIREMENTS**

1. Workers Compensation in accordance with the laws of the State of Texas. Substitutes to genuine Workers’ Compensation Insurance will not be allowed.
2. Employers’ Liability insurance with limits of not less than \$1,000,000 per injury by accident, \$1,000,000 per injury by disease, and \$1,000,000 per bodily injury by disease.
3. Commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 in the annual aggregate. Policy shall cover liability for bodily injury, personal injury, and property damage and products/completed operations arising out of the business operations of the policyholder.
4. Business Automobile Liability coverage applying to owned, non-owned and hired automobiles with limits not less than \$1,000,000 each occurrence combined single limit for Bodily Injury and Property Damage combined.
5. Professional Liability insurance with limits not less than \$1,000,000 each claim/annual aggregate.

**EXHIBIT “C”**  
**COMPLIANCE WITH LAWS**

The Consultant agrees to abide by any and all applicable Federal and state laws. The following list of Federal laws is illustrative of the type of requirements generally applicable to transportation projects. It is not intended to be exhaustive. The Consultant shall require that its contractors and subcontractors comply with applicable laws:

- i. The Americans With Disabilities Act of 1990 and implementing regulations (42 U.S.C. §§ 12101 et seq.; 28 C.F.R. § 35; 29 C.F.R. § 1630);
- ii. Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. §§ 2000d et seq.) and United States Department of Transportation regulation, 49 C.F.R. Part 21;
- iii. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (42 U.S.C. §§ 4601 et seq.), with the understanding that the requirements of said Act are not applicable with respect to utility relocations except with respect to acquisitions by the Borrower of easements or other real property rights for the relocated facilities;
- iv. Equal employment opportunity requirements under Executive Order 11246 dated September 24, 1965 (30 F.R. 12319), any Executive Order amending such order, and implementing regulations (29 C.F.R. §§ 1625-27, 1630; 28 C.F.R. § 35; 41 C.F.R. § 60; and 49 C.F.R. § 27);
- v. Restrictions governing the use of Federal appropriated funds for lobbying (31 U.S.C. § 1352; 49 C.F.R. § 20);
- vi. The Clean Air Act, as amended (42 U.S.C. §§ 1857 et seq., as amended by Pub. L. 91-604);
- vii. The National Environmental Policy Act of 1969 (42 U.S.C. §§ 4321 et seq.);
- viii. The Federal Water Pollution Control Act, as amended (33 U.S.C. §§ 1251 et seq., as amended by Pub. L. 92-500);
- ix. The Endangered Species Act, 16 U.S.C. § 1531, et seq.
- x. 23 U.S.C. § 138 [49 U.S.C. § 303]
- xi. The health and safety requirements set forth in 23 C.F.R. § 635.108;
- xii. The prevailing wage requirements set forth in 42 U.S.C. § 276a, 23 U.S.C. § 113, as supplemented by 29 C.F.R. Part 5, 23 C.F.R. §§ 635.117(f), 635.118 and FHWA Form 1273 §§ IV and V for those contracts that involve construction of highway improvements;
- xiii. The Buy America requirements set forth in Section 165 of the Surface Transportation Assistance Act of 1982 and implementing regulations (23 C.F.R. § 635.410);
- xiv. The requirements of 23 U.S.C. §§ 101 et seq. and 23 C.F.R.; and



- xv. The applicable requirements of 49 C.F.R. Part 26 relating to the Disadvantaged Business Enterprise program.

## 1.0 ADDITIONAL REQUIREMENTS, FEDERAL

### 1.1 Remedies

*“If the bidder/vendor fails to comply with the terms and conditions of this Agreement, Brazoria County may take one or more of the following actions, as appropriate to the circumstance:*

- (a) Temporarily withhold payments pending the bidder/vendor commencing in good-faith corrective action to cure the deficiency;*
- (b) Permanently withhold payments; and/or*
- (c) Take any and all other remedies that may be legally available.*

### 1.2 Access to Records and Record Retention

“Retention of Records. The contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case contractor agrees to maintain same until the FEMA or applicable Federal Administrator, Brazoria County, the Comptroller General of the United States, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related to the litigation or settlement of claims.”

Access to Records. The following access to records requirements apply to this contract:

- 1) The contractor agrees to provide Brazoria County, any State or Federal Agency, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions.
- 2) The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.
- 3) The contractor agrees to provide any State or Federal Agency, Brazoria County, the Comptroller General of the United States, or any of their authorized representatives or their authorized representatives access to construction or other work sites pertaining to the work being completed under this contract.

### 1.3 Debarment and Suspension

“Suspension and Debarment

- (1) The contractor is required to verify that none of the contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935).
- (2) The contractor must comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. (3) This certification is a material representation of fact relied upon by Brazoria County. If it is later determined that the contractor did not comply with 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C, in addition to remedies available to Texas Department of Emergency Management and Brazoria County, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- (4) The bidder or proposer agrees to comply with the requirements of 2 C.F.R. pt. 180, subpart C and 2 C.F.R. pt. 3000, subpart C while this offer is valid and throughout the period of any contract that



may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.”

#### **1.4 Procurement of Recovered Materials (Solid Waste Disposal Act) (2 CFR 200.323):**

##### *Application:*

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

[78 FR 78608, Dec. 26, 2013, as amended at 79 FR 75885, Dec. 19, 2014]

1) In the performance of this contract, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired

(i) Competitively within a timeframe providing for compliance with the contract performance schedule;

(ii) Meeting contract performance requirements; or

(iii) At a reasonable price.

Information about this requirement is available at EPA’s Comprehensive Procurement Guidelines web site, <http://www3.epa.gov/epawaste/conservation/tools/cpg/index.htm>

*The list of EPA-designate items is available at*

<https://www.epa.gov/smm/comprehensive-procurement-guideline-cpg-program>

#### **1.5 Domestic Preferences for Procurements (2 CFR 200.322)**

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

(b) For purposes of this section:

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

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

## 1.6 **DHS Seal, Logo and Flags**

"The contractor shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA or Federal Administrator preapproval."

## 1.7 **Compliance with Federal Law, Regulations, and Executive Orders**

"This is an acknowledgement that FEMA (or applicable Federal Administrator) financial assistance will be used to fund the contract only. The contractor will comply with all applicable federal law, regulations, executive orders, FEMA (or applicable Federal Administrator) , policies, procedures, and directives."

## 1.8 **No Obligation by Federal Government**

"The Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the non-Federal entity, contractor, or any other party pertaining to any matter resulting from the contract."

## 1.9 **Program Fraud and False or Fraudulent Statements or Related Acts**

"The contractor acknowledges that 31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements) applies to the contractor's actions pertaining to this contract."

## 1.10 **Termination for Cause and Convenience**

Termination with Cause:

"Upon written notice to the Contractor of a defect or breach of this Agreement, Contractor has five (5) business days to cure any defect(s) or breach(es) cited in said notice. If Contractor fails to cure the defect(s) or breach(es) within the five (5) business days allowed, Brazoria County may terminate this Agreement. Nevertheless, Brazoria County reserves the right to provide written notice to the Contractor that this Agreement shall continue if Contractor has in good-faith commenced efforts to cure said defect(s) or breach(es) and Contractor agrees, in writing, to continue to act without undue delay to cure said defect(s) or breach(es)."

Termination Without Cause:

This contract may be terminated by either the County or the Contractor at any time, without cause, by providing the other Party at least thirty (30) calendar days' prior written notice.

## 1.11 **Clean Air Act**

(1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

(2) The contractor agrees to report each violation to Brazoria County and understands and agrees that Brazoria County will, in turn, report each violation as required to assure notification to the applicable federal program Administrator, and the appropriate Environmental Protection Agency Regional Office.

(3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the applicable federal program Administrator.

**1.12 Federal Water Pollution Control Act**

- (1) The contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.
- (2) The contractor agrees to report each violation to Brazoria County and understands and agrees that Brazoria County will, in turn, report each violation as required to assure notification to Brazoria County and the appropriate Environmental Protection Agency Regional Office.
- (3) The contractor agrees to include these requirements in each subcontract exceeding \$100,000 financed in whole or in part with Federal assistance provided by the applicable federal program Administrator.”

**1.13 Byrd Anti-Lobbying Amendment**

Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer of employee of Congress, or an employee of a member of Congress in connection with obtaining and Federal contract, grant, or any other award covered by 31 U.S.C. 1352. Each tier shall 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 recipient.

**1.14 Energy Efficiency**

The Contractor shall comply with the 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)

**1.15 Equal Opportunity:**

Standard. 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. § 60- 1.3 must include the equal opportunity clause provided under 41 C.F.R. § 60- 1.4(b), in accordance with Executive Order 11246, Equal Employment Opportunity (30 Fed. Reg. 12319, 12935, 3 C.F.R. Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, Amending Executive Order 11246 Relating to Equal Employment Opportunity, and implementing regulations at 41 C.F.R. Part 60 (Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor). See 2 C.F.R. Part 200, Appendix II, ¶ C.

b. Key Definitions.

1) Federally Assisted Construction Contract. The regulation at 41 C.F.R. § 60-1.3 defines a “federally assisted construction contract” as any agreement or modification thereof between any applicant and a person for construction work which is paid for in whole or in part with funds obtained from the Government or borrowed on the credit of the Government pursuant to any Federal program involving a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, or any application or modification thereof approved by the Government for a grant, contract, loan, insurance, or guarantee under which the applicant itself participates in the construction work.

(2) Construction Work. The regulation at 41 C.F.R. § 60-1.3 defines “construction work” as the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction

§ 60–1.4 Equal opportunity clause.

Government contracts. Except as otherwise provided, each contracting agency shall include the following equal opportunity clause contained in section 202 of the order in each of its Government contracts (and modifications thereof if not included in the original contract):

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

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

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

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

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

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

(6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant

thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

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

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

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

#### **1.16 “Compliance with the Copeland “Anti-Kickback” Act.**

(1) Contractor. The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.

(2) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clause above and such other clauses as any State and or Federal Agency may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all of these contract clauses.

(3) Breach. A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.”

#### **1.17 Contract Work Hours and Safety Standards**

(1) Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and

subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The State, Federal agency, loan or grant recipient shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.

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

#### **1.18 Rights to Inventions Made Under a Contract or Agreement**

##### Application:

a. Stafford Act Disaster Grants. This requirement does not apply to the Public Assistance, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Grant Program, and Federal Assistance to Individuals and Households – Other Needs Assistance Grant Program, as FEMA awards under these programs do not meet the definition of “funding agreement.”

b. State or Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity 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 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 7 FEMA. See 2 C.F.R. Part 200, Appendix II, ¶ F.

c. The regulation at 37 C.F.R. § 401.2(a) currently defines “funding agreement” as any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

**AGREED TO AND ACKNOWLEDGED THIS** *[date]* September 8, 2025

**Tetra Tech, Inc.**

**a Texas company**

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

**Name:** Jonathan Burgiel

**Title:** Business Unit President

**Date:** 09/08/2025



**EXHIBIT “D”**  
**CERTIFICATE OF INTERESTED PARTIES**

Effective January 1, 2016, all contracts and contract amendments, extensions, or renewals executed by the Commissioners Court will require the completion of Form 1295 “Certificate of Interested Parties” pursuant to Government Code § 2252.908. Form 1295 must be completed by the Consultant and submitted with the partially executed Professional Services Agreement prior to final execution by Brazoria County. The Consultant shall update this document and resubmit it as needed for the duration of this contract.

The Texas Ethics Commission has posted a video which explains the process on how to submit Form 1295. The video link is available on the Brazoria County Purchasing website at <http://brazoriacountytexas.gov/departments/purchasing/doing-business>.

**EXHIBIT “E”**  
**CONFLICT OF INTEREST DISCLOSURE**

Texas Local Government Code Chapter 176 requires that any vendor or person who enters or seeks to enter into a contract with a local governmental entity (including any agent of such person or vendor) disclose in the Questionnaire Form CIQ the vendor or person’s employment, affiliation, business relationship, family relationship or provision of gifts that might cause a conflict of interest with a local governmental entity. By law, this questionnaire must be completed and filed with the records administrator of Brazoria County no later than the seventh business day after the date the person engages or communicates with Brazoria County or becomes aware of facts that require the completion of the questionnaire pursuant to Texas Local Government Code Section 176.006.

A person commits an offense if the person knowingly violates Texas Local Government Code section 176.006. An offense under this section is a Class C misdemeanor.

A copy of House Bill 23 which amended the Texas Local Government Code Chapter 176 is available at: <http://www.capitol.state.tx.us/tlodocs/84R/billtext/html/HB00023F.HTM>.

Texas Local Government Code Chapter 176 can be found here:  
<http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>.

By submitting a response to this request, the Consultant represents compliance with the requirements of Texas Local Government Code Chapter 176. If required, send completed forms to:

Brazoria County Courthouse  
County Clerk’s Office  
111 E. Locust Street, Suite 200  
Angleton, TX 77515

**CONFLICT OF INTEREST QUESTIONNAIRE**  
For vendor doing business with local governmental entity

**FORM CIQ**

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

**OFFICE USE ONLY**

Date Received

**1 Name of vendor who has a business relationship with local governmental entity.**

Tetra Tech, Inc.

**2** ☐ Check this box if you are filing an update to a previously filed questionnaire. (The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3 Name of local government officer about whom the information is being disclosed.**

\_\_\_\_\_  
Name of Officer

**4 Describe each employment or other business relationship with the local government officer, or a family member of the officer, as described by Section 176.003(a)(2)(A). Also describe any family relationship with the local government officer. Complete subparts A and B for each employment or business relationship described. Attach additional pages to this Form CIQ as necessary.**

N/A - None to report

A. Is the local government officer or a family member of the officer receiving or likely to receive taxable income, other than investment income, from the vendor?

☐

Yes

☐

No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer or a family member of the officer AND the taxable income is not received from the local governmental entity?

☐

Yes

☐

No

**5 Describe each employment or business relationship that the vendor named in Section 1 maintains with a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more.**

**6** ☐ Check this box if the vendor has given the local government officer or a family member of the officer one or more gifts as described in Section 176.003(a)(2)(B), excluding gifts described in Section 176.003(a-1).

**7**   
\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

09/08/2025

\_\_\_\_\_  
Date

## **CONFLICT OF INTEREST QUESTIONNAIRE**

### **For vendor doing business with local governmental entity**

A complete copy of Chapter 176 of the Local Government Code may be found at <http://www.statutes.legis.state.tx.us/Docs/LG/htm/LG.176.htm>. For easy reference, below are some of the sections cited on this form.

**Local Government Code § 176.001(1-a):** "Business relationship" means a connection between two or more parties based on commercial activity of one of the parties. The term does not include a connection based on:

- (A) a transaction that is subject to rate or fee regulation by a federal, state, or local governmental entity or an agency of a federal, state, or local governmental entity;
- (B) a transaction conducted at a price and subject to terms available to the public; or
- (C) a purchase or lease of goods or services from a person that is chartered by a state or federal agency and that is subject to regular examination by, and reporting to, that agency.

**Local Government Code § 176.003(a)(2)(A) and (B):**

- (a) A local government officer shall file a conflicts disclosure statement with respect to a vendor if:

\*\*\*

- (2) the vendor:

(A) has an employment or other business relationship with the local government officer or a family member of the officer that results in the officer or family member receiving taxable income, other than investment income, that exceeds \$2,500 during the 12-month period preceding the date that the officer becomes aware that

(i) a contract between the local governmental entity and vendor has been executed;

or

(ii) the local governmental entity is considering entering into a contract with the vendor;

(B) has given to the local government officer or a family member of the officer one or more gifts that have an aggregate value of more than \$100 in the 12-month period preceding the date the officer becomes aware that:

(i) a contract between the local governmental entity and vendor has been executed; or

(ii) the local governmental entity is considering entering into a contract with the vendor.

**Local Government Code § 176.006(a) and (a-1)**

- (a) A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with a local governmental entity and:

(1) has an employment or other business relationship with a local government officer of that local governmental entity, or a family member of the officer, described by Section 176.003(a)(2)(A);

(2) has given a local government officer of that local governmental entity, or a family member of the officer, one or more gifts with the aggregate value specified by Section 176.003(a)(2)(B), excluding any gift described by Section 176.003(a-1); or

(3) has a family relationship with a local government officer of that local governmental entity.

- (a-1) The completed conflict of interest questionnaire must be filed with the appropriate records administrator not later than the seventh business day after the later of:

- (1) the date that the vendor:

(A) begins discussions or negotiations to enter into a contract with the local governmental entity; or

(B) submits to the local governmental entity an application, response to a request for proposals or bids, correspondence, or another writing related to a potential contract with the local governmental entity; or

- (2) the date the vendor becomes aware:

(A) of an employment or other business relationship with a local government officer, or a family member of the officer, described by Subsection (a);

(B) that the vendor has given one or more gifts described by Subsection (a); or

(C) of a family relationship with a local government officer.

**EXHIBIT “F”**  
**CONTRACT AMENDMENTS**

*INSERT ALL AMENDMENTS TO THIS CONTRACT AS EXHIBIT F-1, F-2, ETC.*



# ATTACHMENT A

## U.S. DEPARTMENT OF AGRICULTURE FARM PRODUCTION AND CONSERVATION

### GENERAL TERMS AND CONDITIONS FOR GRANTS AND COOPERATIVE AGREEMENTS

**March 2025**

The Farm Production and Conservation (FPAC) mission area encompasses the following USDA agencies:

- Natural Resources Conservation Service (NRCS)
- Farm Service Agency (FSA)
- Risk Management Agency (RMA)
- FPAC Business Center (FPAC BC)

These general terms and conditions apply to all FPAC mission area agencies and the Commodity Credit Corporation, collectively referred to as the USDA agency.

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## A. APPLICABLE REGULATIONS

1. As a condition of this award, the recipient assures and certifies that it has and/or will comply and require subrecipients to comply with the requirements contained in the following statutes and regulations, as applicable. The full text of Code of Federal Regulations (CFR) references may be found at <https://www.gpo.gov/fdsys/browse/collectionCfr.action?collectionCode=CFR> and <http://www.ecfr.gov/>.
  - a. 2 CFR Part 25, “Universal Identifier and System of Award Management”
  - b. 2 CFR Part 170, “Reporting Subaward and Executive Compensation Information”
  - c. 2 CFR Part 175, “Award Term for Trafficking in Persons”
  - d. 2 CFR Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement)”
  - e. 2 CFR Part 182, “Governmentwide Requirements for Drug- Free Workplace (Financial Assistance)”
  - f. 2 CFR Part 183 Never Contract with the Enemy
  - g. 2 CFR Part 184, “Buy America Preferences for Infrastructure Projects”
  - h. 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards”
  - i. 2 CFR Part 400, “Uniform Administrative Requirements, Cost Principles, And Audit Requirements for Federal Awards”
  - j. 2 CFR Part 417, “Nonprocurement Debarment and Suspension”
  - k. 2 CFR Part 418, “New Restrictions on Lobbying”
  - l. 2 CFR Part 421, “Requirements for Drug-Free Workplace (Financial Assistance)”
  - m. 2 CFR Part 422, “Research Institutions Conducting USDA-Funded Extramural Research; Research Misconduct”
2. Allowable project costs will be determined in accordance with the authorizing statute, the purpose of the award, and, to the extent applicable, to the type of organizations receiving the award, regardless of tier. The following portions of the Code of Federal Regulations are hereby incorporated by reference. The full text of Code of Federal Regulations references may be found at <https://www.ecfr.gov/current/title-2/subtitle-A/chapter-II/part-200>, 2 CFR Part 200, “Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards”
3. For corporate recipients, by accepting this award the recipient acknowledges: (1) that it does not have a Federal tax delinquency, meaning that it is not subject to any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, and (2) that it has not been convicted of a felony criminal violation under any Federal law within 24 months preceding the award, unless a suspending and debarring official of the USDA has considered suspension or debarment of the recipient corporation

based on these convictions and/or tax delinquencies and determined that suspension or debarment is not necessary to protect the interests of the Government. If the recipient fails to comply with these provisions, the agency will annul this agreement and may recover any funds the recipient has expended in violation of the above cited statutory provisions.

## **B. USE AND ACCEPTANCE OF ELECTRONIC SIGNATURES**

Use of electronic signatures is encouraged to increase efficiency when creating and maintaining electronic records. "Electronic signature" means symbols or other data in digital form attached to an electronically submitted document as verification of the sender's intent to sign the document or a method of signing an electronic message that identifies and authenticates a particular person as the source of the electronic message and indicates such person's approval of the information contained in the message along with a date stamp (44 U.S.C. 3504, Sec. 1710). The USDA agency will accept such signatures on application materials, payment requests, reports, and any other document that requires a signature certification. Scanned or photographed images of manual signatures are also acceptable, though photographs are least preferred due to the large amount of digital storage required to maintain them. Names merely typed in script fonts or other unverified electronic signatures cannot be accepted. Application documents submitted through Grants.gov are deemed "signed" if they bear the Grants.gov date stamp footer. Documents transmitted via ezFedGrants are digitally authenticated and acceptable.

## **C. AGREEMENT COUNTERPARTS**

This Agreement may be executed in one or more counterparts, and by the parties in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

## **D. CONFLICT OF INTEREST**

Recipients must maintain written standards of conduct covering conflicts of interest and governing the performance of its employees in the selection, award, and administration of Federal awards. No employee, officer or agent may participate in the selection, award, or administration of 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 employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a non-Federal entity considered for a Federal award. Recipients may set standards for situations in which the financial interest is not substantial, or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient. Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest.

## **E. UNALLOWABLE COSTS**

The following costs are not allowed:

1. Profit and management fees. Recipients may not earn and keep income resulting from an award.
2. Costs above the amount authorized for the project.

3. Costs incurred after the award period of performance end date, except for costs in accordance with 2 CFR 200.403.
4. Costs not identified in the approved budget or approved budget revisions.
5. Costs of promotional items and memorabilia, including models, gifts, and souvenirs.
6. Compensation for injuries to persons or damage to property arising from project activities.
7. Meals: Meals may be charged to an award only if they are necessary for the performance of the project. For instance, meals (normally only lunch) that are a necessary part of the costs of meetings and conferences (i.e., required attendance and continuity of a meeting), the primary purpose of which is the dissemination of information, are allowable, as are costs of transportation, rental of facilities, speakers' fees, and other items incidental to such meetings or conferences. Note: Meals consumed while in official travel status do not fall in this category. They are considered to be per diem expenses and should be reimbursed in accordance with the organization's established travel policies subject to statutory limitations or in accordance with Federal travel policies.
8. Costs normally charged as indirect costs may not be charged as direct costs without proper justification and agency approval. Proper justification includes documentation that the costs meet the criteria for allowability (see 2 CFR 200.403). Examples of such costs include rent, utilities, depreciation on buildings and equipment, the costs of operating and maintaining facilities, and general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, and accounting.
9. Salaries that are not commensurate with level of work: All costs must be reasonable to be allowable (2 CFR 200.403), and 2 CFR 200.404 defines a reasonable cost as one if, in its nature and amount, it does not exceed that which would be incurred by a prudent person under the circumstances prevailing at the time the decision was made to incur the cost. Salaries determined not to be reasonable compared to the level of work will be unallowable.
10. Honoraria: A payment made to someone for a service when a price is not legally required or customary. Honoraria are often given as a gesture of appreciation or "thank you" to guest speakers or lecturers and are unallowable. However, speaker fees are allowable.
11. Costs which lie outside the scope of the approved project and amendments thereto.
12. Entertainment costs, regardless of their apparent relationship to project objectives.
13. Consulting services performed by a Federal employee during official duty hours when such consulting services result in the payment of additional compensation to the employee; and
14. Unless specifically allowed by the agency or program, renovation or refurbishment of facilities, the purchase or installation of fixed equipment in facilities, and the planning, repair, rehabilitation, acquisition, or construction of buildings or facilities.

This list is not exhaustive. For general information about the allowability of particular items of costs, please see 2 CFR Part 200, "Subpart E - Cost Principles", or direct specific inquiries to the administrative contact identified in the award. The allowability of some items of costs may be difficult to determine. To avoid disallowance or dispute of such costs, the recipient may seek prior approval before incurring them. See 2 CFR 200.407.

## **F. COST SHARING REQUIREMENTS**

1. If the award has specific cost sharing requirements, cost sharing participation in other projects must not be counted toward meeting the specific cost share requirement of this award. Cost share must come from non-Federal sources unless otherwise stated in the applicable program authorizing statute.
2. Cost share costs must be necessary and reasonable for accomplishment of project or program objectives.
3. Cost sharing must be documented on each SF 425 and payment request as it is provided by the recipient or third party. The required cost sharing ratio must be met by the end of the agreement period of performance; however, it does not have to be maintained for every payment request.
4. Should the recipient become aware that it may be unable to provide the cost share amount identified in this award, it must:
  - a. Immediately notify the FPAC Business Center Grants and Agreements Division via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov), and
  - b. Either specify the steps it plans to take to secure replacement cost share or specify the plans to phase out the project in the absence of cost share.

Failure by the recipient to notify the USDA agency in accordance with this section or failure to submit an acceptable remediation plan may result in the disallowance of some or all the costs charged to the award, the subsequent recovery by FPAC of some of the FPAC funds provided under the award, and/or termination of the award. It may constitute a violation of the terms and conditions of the award so serious as to provide grounds for subsequent suspension or debarment. The USDA agency reviews and approves or disapproves cost sharing remediation plans on a case-by-case basis.

5. The recipient must maintain records of all project costs that are claimed as cost sharing as well as records of costs to be paid by the USDA agency. If the recipient's cost sharing includes in-kind contributions, the basis for determining the valuation for volunteer services and donated property must be documented.
6. Recipients must also request prior approval before changing the source or type of cost sharing. See the Prior Approval Section.

## **G. PROGRAM INCOME**

1. Program income does not include Federal funds received under an award. Program income means gross income earned by the non-Federal entity that is directly generated by a supported activity or earned as a result of the Federal award during the period of performance except as provided in §200.307(f). Examples include fees charged for conferences or workshops, fees for services performed, the use or rental of real or personal property acquired under Federal awards, the sale of commodities or items fabricated under a Federal award, license fees and royalties on patents and copyrights, and principal and interest on loans made with Federal award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal statutes, regulations, or the terms and conditions of the Federal award, program income does not include rebates, credits, discounts, and interest earned on any of them.

2. Unless recipients specifically request to use the deductive or cost share method, program income must be additive.
3. If program income is earned and not already identified and addressed in the award, the recipient must provide notification to the FPAC BC GAD via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov) and indicate the preferred treatment method. Use of the deductive or cost share method may require an amendment or prior approval.
4. Program income may be used to meet recipient cost sharing requirements with prior approval of the USDA agency.
5. Recipients must report all program income on the applicable SF 270 and SF 425 as it is earned.

## H. PAYMENTS

1. Payment Submission: Recipients must request reimbursement or advances using a properly completed and executed SF-270, submitted with a Budget Expense Table or Deliverable Expense Table (or similar summary document), as applicable. Submit requests to either the ezFedGrants system or to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). Email submissions must reference the agreement number in the subject line of the email.
2. Payment Guidance: Payment request preparation guidance and templates for Budget Expense Tables and Deliverable Expense Tables are available at this link: <https://www.fpacbc.usda.gov/about/grants-and-agreements/award-payments/index.html>. Documents must be provided as attachments; documents submitted via weblink or other document services will not be accepted.
3. Advances: Recipients requesting advances should request payments in amounts necessary to meet their current needs pursuant to procedures contained in the Federal administrative provisions and 31 CFR Part 205. Requests must be submitted no less than 15 days prior to the start of the requested advance period. The recipient must provide a summary document showing the amount of advanced funds spent within 30 days of the end of the advance period. If applicable, the recipient must also submit a summary of the cost share provided.
4. Documentation Requirements: The recipient must maintain records of supporting documentation all costs incurred under this award. Such documentation includes, but is not limited to, canceled checks, paid bills, payroll records, and subaward documents. Labor cost charges to this award must be based upon salaries actually earned and the time actually worked on this award. All project costs must be incurred within the period of performance of this award, including any approved no-cost extension of time. The USDA agency may disallow costs that cannot be supported by supporting documentation or that are incurred outside of the agreement period of performance and budget and may require the return of any funds paid out for those costs. The level of detail and documentation required to be provided to support any individual payment request is at the discretion of the USDA agency. Do not provide supporting documentation unless it is specifically requested.
5. Final Payment Deadlines: Recipients must pay all costs incurred (i.e., liquidate obligations) under the award and request all final requests for payment no later than 120 calendar days after the period of performance end date. The USDA agency is not obligated to make

payments received more than 120 days after the period of performance end date.

6. **Fixed Amount Awards:** Payments under fixed-amount awards are made based on deliverables completed, milestones achieved, or as a single payment upon award completion rather than costs incurred. The USDA agency and recipient must utilize 2 CFR 200, Subpart E, Cost principles to support unit prices included in fixed amount awards prior to agreement execution.
7. **Contractor and Subrecipient Payment:** Recipients are responsible for establishing payment methods to contractors and subrecipients, documenting the method in the applicable contract or subaward agreement, and making direct payments to contractors and subrecipients in accordance with those methods. Recipients must not submit requests directly from their contractors or subrecipients to the USDA agency for USDA agency review, approval, or payment.

## **I. PRIOR APPROVAL REQUIREMENTS**

Certain items of cost and award revisions require the prior written approval of the USDA agency. The following are the most common situations requiring prior approval. However, this list is not exhaustive, and the recipient is also bound by any other prior approval requirements identified in the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. Submit all requests for the approvals described below via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). All requests for prior approval must reference the agreement number in the subject line of the email.

1. **Pre-award costs:** To receive reimbursement for costs incurred prior to the award date, recipients must request written approval. This restriction also applies to costs intended to meet cost share requirements. Even with approval, recipients incur pre- award costs at their own risk. The USDA agency is under no obligation to reimburse such costs if for any reason the recipient does not receive a Federal award or if the Federal award is less than anticipated and inadequate to cover the costs.
2. **Revisions to scope, objective, or deliverables:** When it is necessary to modify the scope, objective, or deliverables of an award, the recipient must submit a written request and justification for the change along with the revised scope, objective, or deliverables of the award.
3. **Additions or changes to subawards and contracts:** The subawarding, transferring, or contracting out of any work (i.e., services) under a Federal award not identified in the original award budget or any changes to subaward or contracts requires prior written approval. The recipient must submit a justification for the proposed subaward/contract, and a detailed budget for the subaward/contract. This provision does not apply to the acquisition of supplies, material, equipment, or general support services.
4. **Permanent change in key personnel specified in the award:** Key personnel have the primary responsibility for the leadership of the project and actively participate in the development, delivery, and management of the project. When there is a permanent change in key personnel, including key contractor employees, the recipient must request prior written approval for the substitution or change. The request must identify the replacement personnel and provide his or her qualifications.
5. **Absence or temporary change in project leadership:** If the approved project director or



principal investigator disengages from the project for more than three months or reduces time devoted to the project by 25 percent or more, the recipient must request prior approval in writing, identifying who will be in charge during the project director's absence. The notification must include the qualifications of the replacement.

6. Budget revisions: Recipients must request prior written approval for deviations from the approved budget in the instances described below. For budget revisions, the recipient may be required to submit a new SF 424A or 424C and budget narrative, even those that do not require prior approval.
  - a. The inclusion of costs that require prior approval in accordance with Subpart E—Cost Principles of this part or 45 CFR part 75 Appendix IX, "Principles for Determining Costs Applicable to Research and Development under Awards and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.
  - b. Where the cumulative amount of transfers of funds among direct cost categories or programs, functions, and activities exceeds or is expected to exceed 10 percent of the total budget as last approved by the USDA agency, and where the Federal share of the project exceeds the simplified acquisition threshold. Recipients must notify the USDA agency of budget changes that do not meet the threshold described above.
  - c. Changes in the approved cost share provided by the recipient, including to the amount, source, or type.
  - d. Additional Federal funds needed to complete the project. This change also requires a formal agreement amendment.
  - e. Adjustments to Indirect Cost Rates: Recipients must have either a current NICRA or elect to use the de minimis in order to charge indirect costs. If an indirect cost rate increases during the award's period of performance, the USDA agency is not obligated, but retains discretion to, either add funds to the award or allow a budget realignment. If an indirect cost rate decreases during the award's period of performance, indirect costs must be charged in accordance with the current rate.
  - f. If the change is due to receipt of a new negotiated indirect costs rate agreement (NICRA), the prior approval request must include a copy of the new agreement.
7. No-Cost Extensions of Time: When a no-cost extension of time is necessary, the recipient authorized signatory must submit a separate, written request via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). Include the agreement number in the subject line of the email and do not combine a no-cost extension request with other submissions, such as payments or reports. Except in limited circumstances, a no-cost extension of time cannot exceed 12 months. The USDA agency cannot approve requests for no-cost extensions received after the expiration of the award. In addition, time may not allow extension requests submitted less than 30 calendar days before the period of performance end date to be processed, so recipients are encouraged to submit requests as soon as possible. The USDA agency cannot approve no-cost extensions requested merely to expend remaining funds. The request must contain the following:
  - a. Amount of additional time requested
  - b. Explanation for the need for the extension
  - c. A summary of progress to date and revised milestones



## **J. FINANCIAL REPORTING**

1. Submission: Recipients must submit a Federal Financial Report (FFR), SF 425 in accordance with the schedule included in the award statement of work. Recipients must submit reports to either the ezFedGrants system or via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). Email submissions must reference the agreement number in the subject line of the email. Reports submitted via e-mail must be provided as attachments; documents submitted via weblink or other document services will not be accepted.
2. Report Guidance: SF425 and instructions are available at <https://www.fpacbc.usda.gov/about/grants-and-agreements/required-reports-closing/index.html>.
3. Final Report: The recipient must submit a final financial report no later than 120 calendar days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIS).
4. Failure to submit reports as required may result in suspension or termination of award. The USDA agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

## **K. PERFORMANCE MONITORING AND REPORTING**

1. Monitoring: The recipient is responsible for monitoring day-to-day performance and for reporting to the USDA agency. If the project involves subaward/contractual arrangements, the recipient is also responsible for monitoring the performance of project activities under those arrangements to ensure that approved goals and schedules are met.
2. Submission: The recipient must submit a written progress report at the frequency specified in the statement of work to either the ezFedGrants system or via e-mail to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov). Email submissions must reference the agreement number in the subject line of the email. Reports submitted via e-mail must be provided as attachments; documents submitted via weblink or other document services will not be accepted. Each report must include/cover:
  - a. The agreement number and period covered by the report.
  - b. A comparison of actual accomplishments with the milestones and deliverables established for the reporting period and, where project output can be quantified, a computation of the costs per unit of output.
  - c. The reasons why milestones and deliverables targets were not met, if appropriate.
  - d. Additional pertinent information including, where appropriate, analysis and explanation of cost overruns or high unit costs.
3. Final Report: The recipient must submit a final report no later than 120 calendar days after the period of performance end date. Failure to do so may result in a negative report to the Federal Awardee Performance and Integrity Information System (FAPIS).
4. Delinquent Reports: The USDA agency will withhold payments under this award if the recipient is delinquent in submitting required reports.

## **L. REPORTING SUBAWARDS AND EXECUTIVE COMPENSATION**

### **1. Reporting of first-tier subawards.**

- a. Applicability. Unless you are exempt as provided in paragraph 4 of this award term, you must report each action that obligates \$30,000 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).
- b. Where and when to report:
  - i. You must report each obligating action described in paragraph 1.a. of this award term to <http://www.fsrs.gov>.
  - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.
- c. What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov>.

### **2. Reporting Total Compensation of Recipient Executives.**

- a. 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 \$30,000 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 CFR 170.320 (and subawards); and
    - (b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 CFR 170.320 (and subawards); and
  - iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15U.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>.)
- b. Where and when to report. You must report executive total compensation described in paragraph 2.a. of this award term --
  - i. As part of your registration profile at <https://sam.gov>.

- ii. By the end of the month following the month in which this award is made, and annually thereafter
- 3. Reporting of Total Compensation of Subrecipient Executives.
  - a. 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 CFR 170.320 (and subawards); and
      - (b) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
    - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
  - b. Where and when to report. You must report subrecipient executive total compensation described in paragraph 3.a. of this award term:
    - i. To the recipient.
    - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- 4. 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:
  - a. Subawards, and
  - b. The total compensation of the five most highly compensated executives of any subrecipient
- 5. Definitions. For purposes of this award term:
  - a. Entity means all of the following, as defined in 2 CFR part 25:
    - i. A Governmental organization, which is a State, local government, or Indian Tribe;
    - ii. A foreign public entity;

- iii. A domestic or foreign nonprofit organization;
  - 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.
- b. Executive means officers, managing partners, or any other employees in management positions.
- c. Subaward:
- i. This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
  - ii. The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec.210 of the attachment to OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations").
  - iii. A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- d. Subrecipient means an entity that:
- i. Receives a subaward from you (the recipient) under this award; and
  - ii. Is accountable to you for the use of the Federal funds provided by the subaward.
- e. Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 CFR 229.402(c)(2)):
- 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.

**M. PROCUREMENT STANDARDS**

The recipient must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations, for the acquisition of property or services (including construction) required under a Federal award or subaward. Those procedures must comply with the procurement standards set out in 2 CFR 200.317-327, including the requirements regarding conflicts of interest, competition, and methods of procurement. Procurements must be well-documented, and those records are subject to inspection and audit.

**N. REQUIREMENTS FOR PASS-THROUGH ENTITIES**

A pass-through entity is a non-Federal entity that provides a subaward to a subrecipient to carry out part of a Federal program. See 2 CFR 200.332 for responsibilities of pass-through entities.

**O. AMENDMENTS**

The parties may modify this agreement via formal amendment executed by the authorized signatories of each. The FPAC Business Center's Grants and Agreements Division has developed streamlined procedures for certain agreement changes, including no-cost extensions and some changes to agency and recipients contacts that do not require formal amendments. Contact the administrative contact for this award for instructions.

**P. NONEXPENDABLE EQUIPMENT**

1. Recipients purchasing equipment or products with funds provided under this award are encouraged to purchase only American-made equipment and products. A state and Indian Tribe must use, manage and dispose of equipment acquired under a Federal award by the state or Indian Tribe in accordance with state or Tribal laws and procedures. All other recipients must follow the procedures below.
2. Title to equipment acquired under a Federal award will vest conditionally in the recipient upon acquisition. The recipient must not encumber the property without prior approval of the USDA agency.
3. The recipient must use the equipment for the authorized purposes of the project for as long as needed whether or not the project or program continues to be supported by the Federal award. When no longer needed for the original program or project, the equipment may be used in other activities supported by the USDA agency, in the following order of priority:
  - a. Activities under a Federal award from the USDA agency which funded the original program or project, then
  - b. Activities under Federal awards from other Federal awarding agencies.
4. The recipient must maintain property records that include a description of the property, a serial number or other identification number, the source of funding for the property (including the FAIN), who holds title, the acquisition date, and cost of the property, percentage of Federal participation in the project costs for the Federal award under which the property was acquired, the location, use and condition of the property, and any ultimate disposition data including the date of disposal and sale price of the property.
5. The recipient must take a physical inventory of the property and reconcile the results with the property records at least once every two years until final disposition.

6. When equipment is no longer needed for any of the purposes set out in this provision and the per-unit fair market value is less than \$10,000, the recipient may retain, sell, or dispose of the equipment with no further obligation to the USDA agency. However, if the per-unit fair market value is \$10,000 or more, the recipient must submit a written request for disposition instructions to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov).

#### **Q. AWARD CLOSEOUT**

1. Award closeout is the process by which the USDA agency determines that all required project activities have been performed satisfactorily and all necessary administrative actions have been completed.
2. The recipient must submit, no later than 120 calendar days after the period of performance end date, all financial, performance, and other reports as required by the terms and conditions of the agreement, including documentation showing that cost share requirements have been met. The awarding agency may approve extensions when requested by the recipient.
3. Unless the USDA agency authorizes an extension, the recipient must liquidate all obligations incurred under the agreement no later than 120 calendar days after the period of performance end date.
4. Recipients must submit all requests for reimbursements no later than 120 calendar days after the period of performance end date.
5. The recipient must promptly refund any balances of unobligated cash that the USDA agency paid in advance or paid and that are not authorized to be retained by the recipient for use in other projects. See OMB Circular A-129 and see §200.345 Collection of amounts due, for requirements regarding unreturned amounts that become delinquent debts.

Recipients must retain all records pertaining to the agreement in accordance with 2 CFR 200.334-337 and any additional requirements included in the agreement statement of work.

6. Recipients must follow disposition requirements for property acquired with award funds in accordance with 2 CFR 200.310-316 and the terms of this agreement.
7. If the recipient does not submit all reports in accordance with this section and the terms and conditions of the Federal award within one year of the period of performance end date, the USDA agency must proceed to close out with the information available, including de-obligation of remaining funds. In addition, in accordance with 2 CFR 200.344, the USDA agency must report the non-Federal entity's material failure to comply with the terms and conditions of the award with the OMB- designated integrity and performance system (currently FAPIIS).

Refer to <https://www.fpacbc.usda.gov/about/grants-and-agreements/required-reports-closing/index.html> for applicable forms.

#### **R. TERMINATION**

In accordance with 2 CFR 200.340, the recipient understands this agreement may be terminated in whole or in part as follows:

1. By the USDA agency or pass-through entity, if a recipient fails to comply with the terms and conditions of a Federal award;

2. By the USDA agency or pass-through entity, to the greatest extent authorized by law, if an award no longer effectuates the program goals or agency priorities;
3. By the USDA agency or pass-through entity with the consent of the recipient, in which case the two parties must agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated; or
4. By the recipient upon sending to the USDA agency 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 USDA agency 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 USDA agency or pass-through entity may terminate the Federal award in its entirety.
5. If the Federal award is terminated for the recipient's material failure to comply with the U.S. Constitution, Federal statutes, regulations, or terms and conditions of the Federal award, the termination decision will be reported to the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS) in accordance with 2 CFR 200.341.

#### **S. CONTINUING OBLIGATIONS**

The rights and obligations of the parties that, by their nature, would continue beyond the expiration or termination of this agreement (e.g., confidentiality-related clauses) shall survive such expiration or termination of this agreement.

#### **T. AUDIT REQUIREMENTS**

The recipient is responsible for complying with audit requirements in accordance with 2 CFR 200, Subpart F. A recipient entity that expends \$1,000,000 or more during the recipient's fiscal year in Federal awards must have a single or program-specific audit conducted for that year. A single audit is required to be uploaded by the recipient to the Federal Audit Clearinghouse within 30 calendar days after receipt of the auditor's report, or nine (9) months after the end of the audit period, whichever comes first.

#### **U. FOR-PROFIT ORGANIZATIONS PROVISIONS**

This section contains provisions that apply to awards to for-profit organizations. These provisions are in addition to or in exception of other applicable provisions of these general terms and conditions.

1. In accordance with 2 CFR 200.101, the USDA agency applies the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal awards to for-profit entities.
2. No funds may be paid as profit to any recipient even if the recipient is a for-profit organization. Profit is any amount in excess of allowable direct and indirect costs.
3. For-profit organizations that receive annual awards totaling more than the audit requirement threshold in Subpart F have two options regarding audits:
  - a. If the commercial organization receives awards under only one FPAC agency program, financial audit of that award in accordance with Generally Accepted



Government Auditing Standards issued by the Comptroller General of the United States or, if awards are received under multiple USDA Agency programs, a financial audit of all awards in accordance with Generally Accepted Government Auditing Standards issued by the Comptroller General of the United States; or

- b. An audit that meets the requirements contained in Subpart F.

## **V. SECTION 508 COMPLIANCE**

Recipient must ensure that all tools, publications, and other materials produced under this award meet the accessibility of Electronic and Information Technology (EIT) requirements as specified in Section 508 of the Rehabilitation Act of 1973 (29 U.S.C. 794d) as amended by the Workforce Investment Act of 1998 (P.L. 105-220). Specifically, subsection 508(a)(1) requires that when the Federal government procures EIT, it must allow Federal employees and individuals of the public with disabilities comparable access to and use of information and data that is provided to Federal employees and individuals of the public without disabilities. All EIT that is subject to the 36 CFR 1194 standards will have a Section 508 acceptance test and will be validated upon acceptance. All maintenance for EIT that requires upgrades, modifications, installations, and purchases will adhere to the Section 508 standards and 36 CFR 1194.

## **W. ACKNOWLEDGMENT OF USDA SUPPORT AND DISCLAIMER**

1. Recipients must have an acknowledgement of USDA agency support placed on any information dissemination products produced with any Federal financial assistance support, including those which report the results or, or describe, a Federal financial assistance-supported activity.

Unless the provisions of the Federal financial assistance award make it apply, this requirement does not apply to audiovisuals produced as research instruments or for documenting experimentation or findings and not intended for presentation or distribution to the public.

Use the following language on the product: whether copyrighted or not, and any products in electronic formats (web sites, computer programs, etc.) that is substantially based upon or developed under this award:

“This material is based upon work supported by the U.S. Department of Agriculture, under agreement number [recipient should enter the applicable award number here].”

2. In addition, all publications and other materials, except scientific articles or papers published in scientific journals, must include the following statement:

“Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the views of the U.S. Department of Agriculture. In addition, any reference to specific brands or types of products or services does not constitute or imply an endorsement by the U.S. Department of Agriculture for those products or services.”

3. All publications printed with Federal Government funds will include the most current USDA nondiscrimination statement, available from the Public Affairs Division, Civil Rights Division, or on the USDA home page. If the material is too small to include the full nondiscrimination statement, the material must, at a minimum, include the following statement: “USDA is an equal opportunity provider, employer, and lender.”

4. The recipient is responsible for ensuring that an acknowledgment of USDA is made during news media interviews, including popular media such as radio, television, and news magazines, that discuss work funded by this award in a substantial way.

#### **X. ACKNOWLEDGMENT OF SECTION 1619 COMPLIANCE**

The recipient agrees to comply with the USDA agency guidelines and requirements regarding the disclosure of information protected under Section 1619 of the Food, Conservation, and Energy Act of 2008 (PL 110- 246), 7 U.S.C. 8791 as described below.

1. Acceptance of this award indicates acknowledgment and understanding that the recipient is legally bound by Federal statute to comply with the provisions of Section 1619 and that the recipient will not subsequently disclose information protected by section 1619 to any individual or organization that is not directly covered by this award. Any such subsequent disclosure of the protected information (except as permitted under Section 1619) will be considered a violation of Section 1619. The recipient will be held responsible should disclosure of the protected information occur.

Protected Information. Examples of the types of information prohibited by disclosure under Section 1619 include, but are not limited to, the following:

- State identification and county number (where reported and where located).
  - Producer or landowner name, business full address, phone number, Social Security Number, and similar personal identifying information.
  - Farm, tract, field, and contract numbers.
  - Production shares and share of acres for each Farm Serial Number (FSN) field.
  - Acreage information, including crop codes.
  - All attributes for Common Land Units (CLUs) in USDA's Geospatial Information System
  - Any photographic, map, or geospatial data that, when combined with other maps, can be used to identify a landowner.
  - Location of conservation practices.
2. Acceptance of this award legally binds every owner, manager, supervisor, employee, contractor, agent, and representative of the recipient to comply with the provisions in Section 1619. The recipient must consult with FPAC prior to providing protected information to an entity or individual outside of the recipient and as necessary to implement the program to ensure that such release is permissible.
  3. The recipient will use the protected information only to perform work that is directly connected to this award. Use of the protected information to perform work that is not directly connected to this award is expressly prohibited.
  4. The recipient must internally restrict access to the protected information to only those individuals who have a demonstrated need to know the protected information to perform work under this award.
  5. The provisions in Section 1619 are continuing obligations. Even when the recipient is no longer a recipient, or when individuals currently affiliated with the recipient become no

longer so affiliated, every person having been provided access to the protected information will continue to be legally bound to comply with these provisions.

6. The recipient must notify all managers, supervisors, employees, contractors, agents, and representatives about this provision and the requirements of Section 1619. Notifications about the existence of this provision must be made to those individuals who are new to the organization and periodic notifications must be sent throughout the organization (as well as to all contractors and agents) to remind all about the ongoing and continuing requirements.
7. When the recipient is unsure whether particular information is covered or protected by Section 1619, the recipient must consult with FPAC to determine whether the information must be withheld.
8. Use of the protected information for any purpose is expressly prohibited after the period of performance end date of this award. Upon the award end date, any protected information provided under this award must be immediately destroyed or returned to FPAC. The recipient must provide to FPAC written certification that the protected information (paper copy, electronic copy, or both) has been properly destroyed, removed from any electronic storage media, or both.
9. Any State's "sunshine law," "open records act" or other version of the Freedom of Information Act is superseded by section 1619 under the Supremacy Clause of the U.S. Constitution. Accordingly, information protected from disclosure by section 1619 must not be released under such State laws.
10. Section 1619 allows disclosure of "payment information (including payment information and the names and addresses of recipients of payments) under any Department program that is otherwise authorized by law" (emphasis added). The names and payment information of producers generally may be provided to the public; however, the recipient shall consult with the USDA agency if there is any uncertainty as to the provision of such information.
11. Section 1619 also allows disclosure of otherwise protected information if "the information has been transformed into a statistical or aggregate form without naming any (i) individual owner, operator, or producer; or (ii) specific data gathering site." The recipient must consult with the USDA agency as to whether specific information falls within this exception prior to relying on this exception.
12. Violations. The recipient will be held responsible for violations of this provision and Section 1619. A violation of this provision by the recipient may result in action by the USDA agency, including termination of the underlying Federal award.
13. The recipient is to immediately notify the USDA agency, if the recipient, or its contractors, suspect, discover or are notified of a suspected or confirmed Privacy Incident relating to PII provided under this Agreement, the recipient shall immediately, but in no event later than two (2) hours from suspicion, discovery, or notification of the suspected or confirmed Privacy Incident. Notification to USDA includes communicating in writing with the Program Office that disclosed the data to you and/or emailing the USDA FPAC Privacy Officer at [sm.fpac.privacy.office@usda.gov](mailto:sm.fpac.privacy.office@usda.gov).
14. The recipient is to investigate any Privacy Incident emanating from this agreement involving USDA PII. At minimum, the investigation shall include: (1) Date of Incident, State

of Occurrence (if applicable), (2) type of PII involved, (3) number of individuals whose information was exposed, (4) breach/incident method (mail, email, etc.), and (5) mitigation efforts to manage the incident. The recipient is responsible for carrying out all necessary measures to remedy the effects of the Privacy Incident.

15. Effective Period. The requirements of this provision are effective on the date of the final signature and will continue until the USDA agency notifies the recipient that it is no longer required based on changes in applicable Federal law.

## **Y. PRIVACY ACT**

### **1. General**

- a. Privacy Act of 1974, as amended, 5 U.S.C. § 552a (Privacy Act). The Privacy Act is a federal law that establishes a code of information practices that governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in an agency's system of records. Disclosure of records about an individual from a system of records is prohibited, absent the written consent of the individual, unless disclosure is pursuant to one of twelve exceptions specified in the Privacy Act. If, as part of the funded project, the recipient collects similar information from individuals, the Privacy Act extends to the agreement.
- b. Recipient must take reasonable cybersecurity and other measures to safeguard information including protected personally identifiable information (PII) and other types of information. This also includes information the Federal agency or pass-through entity designates as sensitive or other information the recipient or subrecipient considers sensitive and is consistent with applicable Federal, State, local, and tribal laws regarding privacy and responsibility over confidentiality. See 2 CFR 200.303.

The USDA implements the Privacy Act through 7 CFR Part 1 Subpart G.

The following definitions apply:

- Breach: The loss of control, compromise, unauthorized disclosure, unauthorized acquisition, or any similar occurrence where (1) a person other than an authorized user accesses or potentially accesses personally identifiable information or (2) an authorized user accesses personally identifiable information for another than authorized purposed.
- Incident: An occurrence that (1) actually or imminently jeopardizes, without lawful authority, the integrity, confidentiality, or availability of information or an information system; or (2) constitutes a violation or imminent threat of violation of law, security policies, security procedures, or acceptable use policies.
- Personally Identifiable Information (PII): The term PII refers to the information that can be used to distinguish or trace an individual's identity, either alone or when combined with other information that is linked or linkable to a specific individual. It is important to recognize that information that is not PII can become PII whenever additional information becomes available – in any medium or from any source – that would make it possible to identify an individual.

- c. Activities performed under this award may involve access to confidential and potentially sensitive information about governmental and landowner issues. The term “confidential information” means proprietary information or data of a personal nature about an individual, or information or data submitted by or pertaining to an organization. This information must not be disclosed without the prior written consent of the USDA agency.
  - d. The recipient’s personnel will follow the rules and procedures of disclosure set forth in the Privacy Act of 1974, 5 U.S.C. Section 552a, and implementing regulations and policies with respect to systems of records determined to be subject to the Privacy Act. The recipient’s personnel must also comply with privacy of personal information relating to natural resources conservation programs administered by NRCS or FSA in accordance with section 1244 of Subtitle E of title XII of the Food Security Act of 1985 (16 USC 3841 et seq.).
  - e. The recipient is to immediately notify USDA, if the recipient, or its contractors, suspect, discover or are notified of a suspected or confirmed Privacy Incident relating to PII provided under this Agreement, the recipient shall immediately, but in no event later than two (2) hours from suspicion, discovery, or notification of the suspected or confirmed Privacy Incident. Notification to USDA includes communicating in writing with the Program Office that disclosed the data to you and/or emailing the USDA FPAC Privacy Officer at [sm.fpac.privacy.office@usda.gov](mailto:sm.fpac.privacy.office@usda.gov).
  - f. The recipient is to investigate any Privacy Incident emanating from this agreement involving USDA PII. At minimum, the investigation shall include: (1) Date of Incident, State of Occurrence (if applicable), (2) type of PII involved, (3) number of individuals whose information was exposed, (4) breach/incident method (mail, email, etc.), and (5) mitigation efforts to manage the incident. The recipient is responsible for carrying out all necessary measures to remedy the effects of the Privacy Incident.
2. Prohibition Against Certain Internal Confidentiality Agreements: The recipient agrees to comply with the “Prohibition Against Certain Internal Confidentiality Agreements:”
- a. You may not require your employees, contractors, or subrecipients seeking to report fraud, waste, or abuse to sign or comply with internal confidentiality agreements or statements prohibiting or otherwise restricting them from lawfully reporting that waste, fraud, or abuse to a designated investigative or law enforcement representative of a Federal department or agency authorized to receive such information.
  - b. You must notify your employees, contractors, or subrecipients that the prohibitions and restrictions of any internal confidentiality agreements inconsistent with paragraph a. of this award provision are no longer in effect.
  - c. The prohibition in paragraph a. of this award provision does not contravene requirements applicable to any other form issued by a Federal department or agency governing the nondisclosure of classified information.
  - d. If the USDA agency determines that you are not in compliance with this award provision, the USDA agency:
    - i. Will prohibit your use of funds under this award, in accordance with sections 743 and 744 of Division E of the Consolidated Appropriations Act, 2016,

(Pub. L. 114-113) or any successor provision of law;

- ii. May pursue other remedies available for your material failure to comply with award terms and conditions.

## **Z. SPECIAL PROVISIONS**

1. The recipient assures and certifies that it will comply with the minimum-wage and maximum-hour provisions of the Federal Fair Labor Standards Act.
2. Employees of the USDA agency will participate in efforts under this agreement solely as representatives of the United States. They may not participate as directors, officers, employees, or otherwise serve or hold themselves out as representatives of the recipient. They also may not assist the recipient with efforts to lobby Congress or to raise money through fundraising efforts. Further, USDA agency employees must report to their immediate supervisor any negotiations with the recipient concerning future employment and must refrain from participation in projects or agreements with such recipients.
3. Except for agreements entered under the Agriculture Conservation Experienced Services (ACES) program authorized by the Food, Conservation, and Energy Act of 2008, employees of the recipient will not be considered Federal employees or agents of the United States for any purposes under this agreement. An individual providing services under the ACES program is deemed to be an employee of the United States Government solely for purposes of chapter 171 of title 28, United States Code, provided the individual is acting within the scope of the agreement.
4. Except for agreements under the programs listed below, no agreement period of performance can exceed a total of five years, including extensions.
  - a. Emergency Watershed Protection Program
  - b. Watershed Protection and Flood Prevention
  - c. Watershed Rehabilitation Program
5. The recipient and its employees are prohibited from promoting or recommending specific commercial products or services with USDA agency clients in the course of carrying out activities under this agreement, including any products or services offered by the recipient, except as may be specifically allowed in the agreement.
6. The recipient agrees to comply with USDA's Department-wide enterprise geospatial data management policy implemented in DR 3465-001, which establishes the USDA policy for defining the strategic direction necessary to optimize the management of the USDA geospatial data and geospatial infrastructure, including all geospatial data created for, by, and enhanced by USDA. Recipients can access DR 3465-001 at <https://www.usda.gov/directives/dr-3465-001>.

## **AA. PATENTS, INVENTIONS, AND COPYRIGHTS**

1. Allocation of rights of patents, inventions, and copyrights must be in accordance with 2 CFR Part 200.315. This regulation provides that small businesses normally may retain the principal worldwide patent rights to any invention developed with USDA support.
2. In accordance with 37 CFR Section 401.14, each subject invention must be disclosed to the USDA agency within 2 months after the inventor discloses it in writing to recipient



personnel responsible for patent matters. Invention disclosure statements pursuant to 37 CFR Section 401.14(c) must be made in writing to [FPAC.BC.GAD@usda.gov](mailto:FPAC.BC.GAD@usda.gov).

3. USDA receives a royalty-free license for Federal Government use, reserves the right to require the patentee to license others in certain circumstances, and requires that anyone exclusively licensed to sell the invention in the United States must manufacture it domestically.

## **BB. LIMIT OF FEDERAL LIABILITY**

1. The maximum financial obligation of the USDA agency to the recipient is the amount of funds indicated in the award as obligated by the USDA agency. However, if an erroneous amount is stated on the approved budget, or any supporting document relating to the award, the USDA agency will have the unilateral right to make the correction and to make an appropriate adjustment in the USDA agency share of the award to align with the Federal amount authorized.
2. For awards where it is anticipated that the period of performance will include multiple budget periods, all subsequent budget periods are subject to the availability of funds, program authority, satisfactory performance, and compliance with the terms and conditions of the Federal award.

## **CC. NATIONAL POLICY REQUIREMENTS**

The recipient must comply with all relevant public policy requirements, including those detailed below as well as those included in general appropriations provisions, which can be accessed at this link:

[https://www.usda.gov/sites/default/files/documents/Regulatory\\_Statutory\\_National\\_Policy\\_Requirements\\_Overlay.pdf](https://www.usda.gov/sites/default/files/documents/Regulatory_Statutory_National_Policy_Requirements_Overlay.pdf)

1. National Environmental Policy Act (NEPA): Projects may be subject to the NEPA. If applicable, the USDA agency must work with awardees to complete an environmental review of each awarded project before project commencement. In addition, prior to any ground-disturbing activities related to the USDA agency funding, the awardee must work with USDA agency staff to complete an environmental evaluation (EE) related to those activities. Awardees may be required to prepare or pay for preparation of an environmental assessment (EA) or environmental impact statement (EIS), should any environmental review find that an EA or EIS is required.
2. National Historic Preservation Act (NHPA): In addition, a Section 106 review and consultation with consulting parties (such as the pertinent State Historic Preservation Officer and federally recognized Indian Tribes) may be required prior to the implementation of project activities that have the potential to impact cultural resources. NHPA Section 106, its implementing regulations (36 CFR Part 800), and other related authorities, require Federal agencies to determine if a project has the potential to cause an effect to historic properties and, if so, if they are adverse and how the effects may be addressed. The NHPA review and compliance in accordance with Section 106 of NHPA and implementing regulations at 36 CFR Part 800 must be completed by the USDA agency and applicants may be required to pay for any cultural resource surveys needed for the USDA agency to assess project effects. More information on the applicant's role in the NHPA Section 106 process can be found on the Advisory Council on Historic Preservation website at <https://www.achp.gov/digital-library-section-106-landing/section-106->



[applicant-toolkit.](#)

3. Endangered Species Act (ESA): Consultation with the U.S. Fish & Wildlife Service and/or the National Marine Fisheries Service under the Section 7 of the ESA is required for projects that may affect listed or proposed species or destroy or modify critical habitat. The ESA consultation in accordance with Section 7 of the ESA and implementing regulations at 50 CFR Part 402 must be completed by the USDA agency prior to the implementation of project activities that have the potential to impact species or habitat protected under the ESA. More information on the Section 7 consultation process can be found at <https://www.fws.gov/service/esa-section-7-consultation>.

## **DD. CARE AND USE OF ANIMALS**

For any award that involves the care and use of vertebrate animals, the recipient is responsible for complying with the Animal Welfare Act (7 USC, 2131-2156), Public Law 89- 544, 1996, as amended, and the regulations promulgated thereunder by the Secretary of Agriculture in 9 CFR Parts, 1, 2, 3, and 4. In the case of domesticated farm animals housed under farm conditions, the recipient must adhere to the principles stated in the Guide for the Care and Use of Agricultural Animals in Research and Teaching ([https://www.asas.org/docs/default-source/default-document-library/agguide\\_4th.pdf?sfvrsn=56b44ed1\\_2](https://www.asas.org/docs/default-source/default-document-library/agguide_4th.pdf?sfvrsn=56b44ed1_2)), published by the American Dairy Science Association®, the American Society of Animal Science, and the Poultry Science Association, 2020. The recipient must have an approved Animal Welfare Assurance Statement on file with the Public Health Service Office for Laboratory Animal Welfare (OLAW) that describes the institution's animal care and use policies, the line of authority for animal care at the institution, veterinary care program, personnel and facilities. If no assurance statement is on file, the organization must contact FPAC to discuss alternatives.

## **EE. INDUSTRIAL HEMP**

By accepting the award, the awardee agrees that if the project involves industrial hemp, the organization will comply with all terms and conditions set by the applicant's State agency regarding industrial hemp growth and cultivation. For this purpose, the term "industrial hemp" includes the plant *Cannabis sativa* L. and any part or derivative of such plant, including seeds of such plant, whether growing or not, that is used exclusively for industrial purposes (fiber and seed) with a tetrahydrocannabinols concentration of not more than 0.3 percent on a dry weight basis. The term "tetrahydrocannabinols" includes all isomers, acids, salts, and salts of isomers of tetrahydrocannabinols. If industrial hemp activities are conducted under the award, In accordance with 2 CFR 200.337, the USDA agency has the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, to verify compliance with the terms and conditions set by the applicant's State agency.

## **FF. BUILD AMERICA, BUY AMERICA FOR CONSTRUCTION**

Buy America Preference -- Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for an infrastructure project unless:

1. All iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;

2. All manufactured products used in the project are produced in the United States— this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The construction material standards are listed below.

Incorporation into an infrastructure project. The Buy America Preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Categorization of articles, materials, and supplies. An article, material, or supply should only be classified into one of the following categories: (i) Iron or steel products; (ii) Manufactured products; (iii) Construction materials; or (iv) Section 70917(c) materials. An article, material, or supply should not be considered to fall into multiple categories. In some cases, an article, material, or supply may not fall under any of the categories listed in this paragraph. The classification of an article, material, or supply as falling into one of the categories listed in this paragraph must be made based on its status at the time it is brought to the work site for incorporation into an infrastructure project. In general, the work site is the location of the infrastructure project at which the iron, steel, manufactured products, and construction materials will be incorporated.

Application of the Buy America Preference by category. An article, material, or supply incorporated into an infrastructure project must meet the Buy America Preference for only the single category in which it is classified.

Determining the cost of components for manufactured products. In determining whether the cost of components for manufactured products is greater than 55 percent of the total cost of all components, use the following instructions:

1. For components purchased by the manufacturer, the acquisition cost, including transportation costs to the place of incorporation into the manufactured product (whether or not such costs are paid to a domestic firm), and any applicable duty (whether or not a duty-free entry certificate is issued); or
2. For components manufactured by the manufacturer, all costs associated with the manufacture of the component, including transportation costs as described in paragraph (a), plus allocable overhead costs, but excluding profit. Cost of components does not include any costs associated with the manufacture of the manufactured product.

Construction material standards. The Buy America Preference applies to the following construction materials incorporated into infrastructure projects. Each construction material is

followed by a standard for the material to be considered “produced in the United States.” Except as specifically provided, only a single standard should be applied to a single construction material.

1. Non-ferrous metals. All manufacturing processes, from initial smelting or melting through final shaping, coating, and assembly, occurred in the United States.
2. Plastic and polymer-based products. All manufacturing processes, from initial combination of constituent plastic or polymer-based inputs, or, where applicable, constituent composite materials, until the item is in its final form, occurred in the United States.
3. Glass. All manufacturing processes, from initial batching and melting of raw materials through annealing, cooling, and cutting, occurred in the United States.
4. Fiber optic cable (including drop cable). All manufacturing processes, from the initial ribboning (if applicable), through buffering, fiber stranding and jacketing, occurred in the United States. All manufacturing processes also include the standards for glass and optical fiber, but not for non-ferrous metals, plastic and polymer-based products, or any others.
5. Optical fiber. All manufacturing processes, from the initial preform fabrication stage through the completion of the draw, occurred in the United States.
6. Lumber. All manufacturing processes, from initial debarking through treatment and planing, occurred in the United States.
7. Drywall. All manufacturing processes, from initial blending of mined or synthetic gypsum plaster and additives through cutting and drying of sandwiched panels, occurred in the United States.
8. Engineered wood. All manufacturing processes from the initial combination of constituent materials until the wood product is in its final form, occurred in the United States.

Waivers: When necessary, recipients may apply for, and the agency may grant, a waiver from these requirements. The agency should notify the recipient for information on the process for requesting a waiver from these requirements.

When the Federal agency has made a determination that one of the following exceptions applies, the awarding official may waive the application of the Buy America Preference in any case in which the agency determines that:

1. Applying the Buy America Preference would be inconsistent with the public interest;
2. The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality; or
3. The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent.

A request to waive the application of the Buy America Preference must be in writing.

The agency will provide instructions on the format, contents, and supporting materials required for any waiver request. Waiver requests are subject to public comment periods of no less than 15 days and must be reviewed by the Made in America Office.

There may be instances where an award qualifies, in whole or in part, for an existing waiver described at <https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver>

Definitions:

“Buy America Preference” means the “domestic content procurement preference” set forth in section 70914 of the Build America, Buy America Act, which requires the head of each Federal agency to ensure that none of the funds made available for a Federal award for an infrastructure project may be obligated unless all of the iron, steel, manufactured products, and construction materials incorporated into the project are produced in the United States.

“Construction materials” means articles, materials, or supplies that consist of only one of the items listed in paragraph 1. of this definition, except as provided in paragraph 2 of this definition. To the extent one of the items listed in paragraph 1 contains as inputs other items listed in paragraph 1, it is nonetheless a construction material.

1. The listed items are:

- a. Non-ferrous metals;
- b. Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- c. Glass (including optic glass);
- d. Fiber optic cable (including drop cable);
- e. Optical fiber;
- f. Lumber;
- g. Engineered wood; and
- h. Drywall.

2. Minor additions of articles, materials, supplies, or binding agents to a construction material do not change the categorization of the construction material.

“Infrastructure” means public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

“Infrastructure project” means any activity related to the construction, alteration, maintenance, or repair of infrastructure in the United States regardless of whether infrastructure is the primary purpose of the project. See also paragraphs (c) and (d) of 2 CFR 184.4.

“Iron or steel products” means articles, materials, or supplies that consist wholly or predominantly of iron or steel or a combination of both.

“Manufactured products” means:

1. Articles, materials, or supplies that have been:
  - a. Processed into a specific form and shape; or
  - b. Combined with other articles, materials, or supplies to create a product with different properties than the individual articles, materials, or supplies.
2. If an item is classified as an iron or steel product, a construction material, or a Section 70917(c) material under 2 CFR 184.4(e) and the definitions set forth in 2 CFR 184.3, then it is not a manufactured product. However, an article, material, or supply classified as a manufactured product under 2 CFR 184.4(e) and paragraph 1 of this definition may include components that are construction materials, iron or steel products, or Section 70917(c) materials.

“Predominantly of iron or steel or a combination of both” means that the cost of the iron and steel content exceeds 50 percent of the total cost of all its components. The cost of iron and steel is the cost of the iron or steel mill products (such as bar, billet, slab, wire, plate, or sheet), castings, or forgings utilized in the manufacture of the product and a good faith estimate of the cost of iron or steel components.

“Section 70917(c) materials” means cement and cementitious materials; aggregates such as stone, sand, or gravel; or aggregate binding agents or additives. See Section 70917(c) of the Build America, Buy America Act.

## **GG. REPORTING OF MATTERS RELATED TO RECIPIENT INTEGRITY AND PERFORMANCE**

1. General Reporting Requirement - If the total value of the recipient entity's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then the recipient entity during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently, the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings described in section 2 of this award condition. This is a statutory requirement under section 872 of Public Law 110-417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111-212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance reviews required for Federal procurement contracts, will be publicly available.
2. Proceedings About Which the Recipient Entity Must Report - Submit the information required about each proceeding that:
  - a. Is in connection with the award or performance of a grant, cooperative agreement, or procurement contract from the Federal Government;
  - b. Reached its final disposition during the most recent five-year period; and
  - c. Is one of the following:
    - i. A criminal proceeding that resulted in a conviction, as defined in section 5 of this award condition;

- ii. A civil proceeding that resulted in a finding of fault and liability and payment of a monetary fine, penalty, reimbursement, restitution, or damages of \$5,000 or more;
  - iii. An administrative proceeding, as defined in section 5 of this award condition, that resulted in a finding of fault and liability and the recipient entity's payment of either a monetary fine or penalty of \$5,000 or more or reimbursement, restitution, or damages in excess of \$100,000; or
  - iv. Any other criminal, civil, or administrative proceeding if:
    - (a) It could have led to an outcome described in section 2.c.(i), (ii), or (iii) of this award condition;
    - (b) It had a different disposition arrived at by consent or compromise with an acknowledgment of fault on the part of the recipient entity; and
    - (c) The requirement in this award condition to disclose information about the proceeding does not conflict with applicable laws and regulations.
- 3. Reporting Procedures - Enter in the SAM Entity Management area the information that SAM requires about each proceeding described in section 2 of this award condition. The recipient entity does not need to submit the information a second time under assistance awards that the recipient received if the recipient already provided the information through SAM because the recipient was required to do so under Federal procurement contracts that the recipient entity was awarded.
- 4. Reporting Frequency - During any period of time when the recipient entity is subject to the requirement in section 1 of this award condition, the recipient entity must report proceedings information through SAM for the most recent five-year period, either to report new information about any proceeding(s) that the recipient entity has not reported previously or affirm that there is no new information to report. Recipients that have Federal contract, grant, and cooperative agreement awards with a cumulative total value greater than \$10,000,000 must disclose semiannually any information about the criminal, civil, and administrative proceedings.
- 5. Definitions - For purposes of this award condition:
  - a. "Administrative proceeding" means a non-judicial process that is adjudicatory in nature in order to make a determination of fault or liability (e.g., Securities and Exchange Commission Administrative proceedings, Civilian Board of Contract Appeals proceedings, and Armed Services Board of Contract Appeals proceedings). This includes proceedings at the Federal and State level but only in connection with performance of a Federal contract or grant (including a cooperative agreement). It does not include audits, site visits, corrective plans, or inspection of deliverables.
  - b. "Conviction", for purposes of this award condition, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, and includes a conviction entered upon a plea of nolo contendere.
  - c. "Total value of currently active grants, cooperative agreements, and procurement contracts" includes --
    - i. Only the Federal share of the funding under any Federal award with a recipient cost share; and



- ii. The value of all expected funding increments under a Federal award and options, even if not yet exercised.

## **HH. AWARDS WITH RESEARCH ACTIVITIES**

1. Recipients who engage or assist in scientific related activities on behalf of USDA must uphold the principles of scientific integrity established by Departmental Regulations 1074-001, Scientific Integrity. Covered activities include engaging in, supervising, managing, and reporting scientific work; analyzing and publicly communicating information resulting from scientific work; and utilizing information derived from scientific work in policy and decision making.
2. In accordance with USDA Departmental Regulation (DR) 1020-006, recipients of awards that produce scholarly publications and digitally formatted scientific data assets resulting from unclassified scientific research supported wholly or in part by USDA funds must make the publications and data sets publicly accessible, to the extent feasible with law, agency mission, and resources. Final peer-reviewed, accepted manuscripts must be made freely accessible to the public through the USDA public access archive system (PubAg, hosted by the National Agricultural Library (NAL)). Public access through PubAg must be established within 12 months of the date on which the publisher makes the article available online. The final published article may be submitted to PubAg in lieu of the final peer-reviewed, accepted manuscript, provided the author has the right to submit the published version (e.g., open access articles). Recipients can access NAL at <https://www.nal.usda.gov>.

Digital scientific research data assets connected to a scholarly publication must also receive a digital persistent identifier, such as a Digital Object Identifier (DOI), that allows a scholarly publication and its catalog metadata to link to the published digital scientific research data asset from which the publication was developed. Authors of scholarly publications, at their discretion, are also encouraged to obtain digital persistent identifiers for other associated scientific research products, such as software, workflow documentation, curricular materials, and multi-media materials, if these products are not subject to statutory restrictions and would provide information that would help future users of the scholarly publication. Recipients can receive a DOI via NAL.

Recipients can access DR 1020-006 at <https://www.usda.gov/directives/dr-1020-006>

## **II. NON-DISCRIMINATION IN USDA PROGRAMS**

In accordance with Federal civil rights law and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Agencies, offices, and employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Persons with disabilities who require alternative means of communication for program information (e.g., Braille, large print, audiotope, American Sign Language, etc.) should contact the responsible Agency or USDA's TARGET Center at (202) 720-2600 (voice and TTY) or



contact USDA through the Federal Relay Service at (800) 877-8339. Additionally, program information may be made available in languages other than English.

To file a program discrimination complaint, complete the USDA Program Discrimination Complaint Form, AD-3027, found online at [How to File a Program Discrimination Complaint](#) and at any USDA office or write a letter addressed to USDA and provide in the letter all of the information requested in the form. To request a copy of the complaint form, call (866) 632-9992. Submit your completed form or letter to USDA by: (1) mail: U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue, SW, Washington, D.C. 20250-9410; (2) fax: (202) 690-7442; or (3) email: [program.intake@usda.gov](mailto:program.intake@usda.gov).

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