



## Mississippi Department of Marine Resources

**SOLICITATION:**

Invitation for Bids

**SOLICITATION NUMBER:**

**3160006321**

**DESCRIPTION:**

Deer Island Chenier and Cell 3 Project

**ISSUE DATE:**

**December 21, 2023**

**BID CLOSING LOCATION:**

Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, Mississippi 39530

**BID COORDINATOR:**

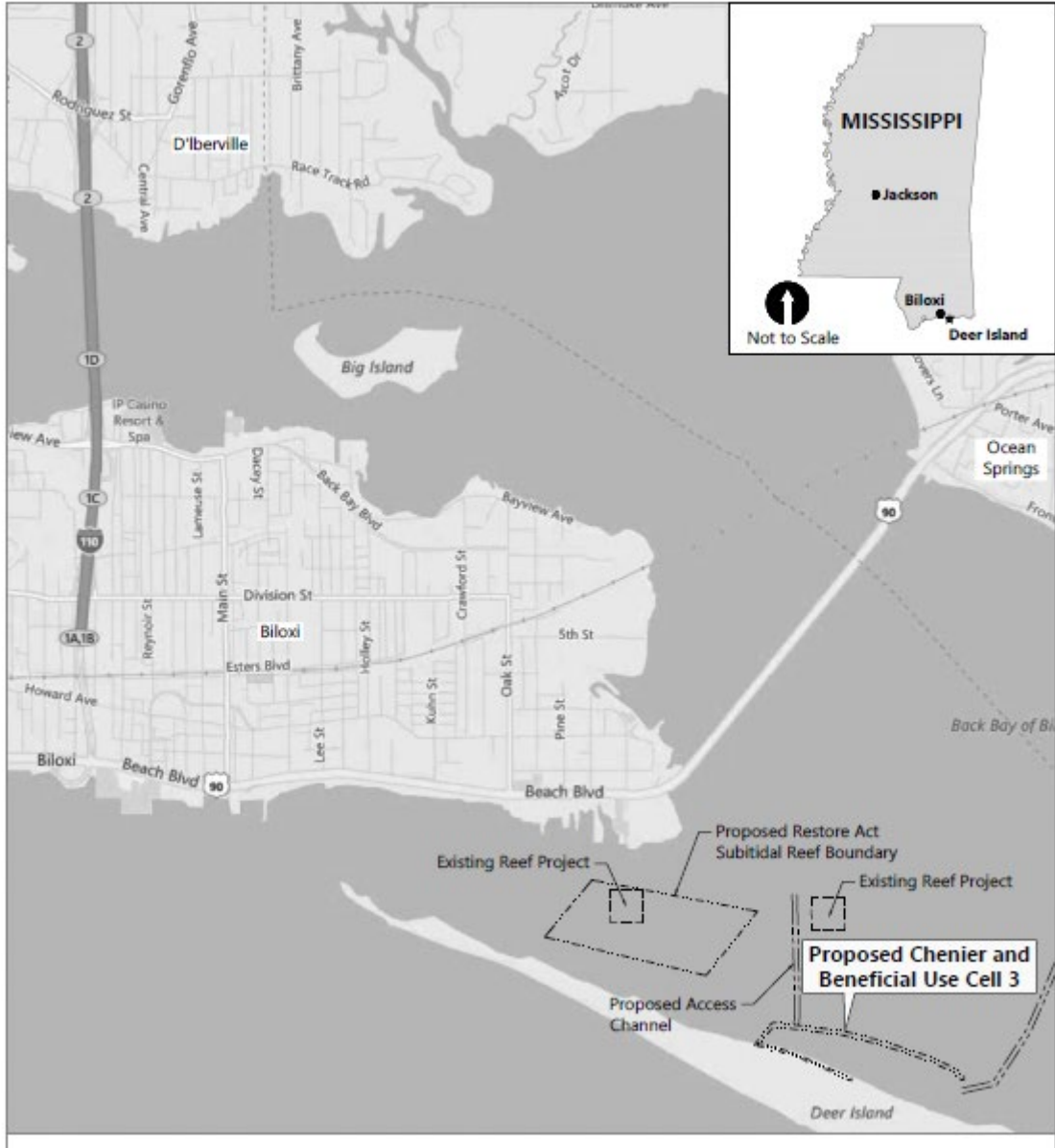
Rick Kinnard  
(228) 523-4147  
[procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov)

**CLOSING DATE AND TIME:**

**January 30, 2024 @ 2:00 p.m.**

# MISSISSIPPI DEPARTMENT OF MARINE RESOURCES

## Deer Island Chenier and Cell 3



December 2023

## INVITATION FOR BIDS

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**Project:** MDMR – DEER ISLAND CHENIER AND CELL 3

**Contracting Agency:** Mississippi Department of Marine Resources

**To:** Prospective Bidders

### 1.0 PURPOSE AND STATEMENT OF WORK

*The Mississippi Department of Marine Resources (“MDMR”, “Agency”, or “State”) is seeking sealed bids for the MDMR – DEER ISLAND CHENIER AND CELL 3 (the “Project”). The Project requirements are detailed in this Invitation for Bids and the Contract Documents.*

*This Project is solicited by MDMR as part of the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). The Project is administered by MDMR and funded through the RESTORE Council and the Mississippi Department of Environmental Quality (“MDEQ”). The Project includes the construction of approximately 2000 linear feet of chenier against the north shoreline of Deer Island and 4500 linear feet of containment dike that will encompass approximately 70 acres.*

The Project requirements are detailed in this Invitation for Bids and the Contract Documents. The Contract Documents include the Section 00 52 15 Agreement, the Standard Contract Terms and Conditions (Attachment F), the Specifications (Divisions 01, 31 and 35, and the Appendices), the Contract Drawings, and this Invitation for Bids (including Attachments A through L), together with any addendum that may be issued through the solicitation process. Following award of the Contract, the Contract Documents will also include the Contractor’s Bid, the Notice of Award, the Notice to Proceed, the bonds required for this Project, the insurance certificates and endorsements required for this Project, and any addenda, Change Orders or modifications that may be issued. The Section 00 52 15 Agreement may be referred to as the “Agreement” or the “Contract” throughout the Contract Documents.

MDMR is seeking bidders with qualifications, experience, equipment, and labor for the work detailed herein. The selected bidder shall complete all work as specified in the Contract Documents as defined in Article 1 of the Section 00 52 15 Agreement (“Work”). **MDMR reserves the right to accept or reject any or all bids.**

Under the foregoing premise, the Contract will be awarded to the lowest responsible/responsive bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids. The lowest responsible/responsive bidder is the one who supplies the lowest Bid for the Work as specified on the Bid Form attached hereto as Attachment D and meets all the requirements of Section 2.8, Minimum Bid Requirements, and Section 2.11, Standards of Responsibility. The successful contractor shall have the prior experience furnishing, deploying and placing large quantities of stone/rip-rap and other materials necessary to construct a containment dike along the coast line and shall list that experience in Attachment A, List of Prior Experience.

The Contract Documents may be examined at the office of Anchor QEA, LLC located at 2113 Government St. Suite K-2 Ocean Springs, MS 39564. The Contract Documents may also be examined at the office of the Mississippi Department of Marine Resources, 1141 Bayview Drive, Biloxi, MS 39530. To obtain a downloadable copy of the Contract Documents for this Project, please visit [www.restore.ms](http://www.restore.ms), email [procurement@dmr.ms.gov](mailto:procurement@dmr.ms.gov), or call Rick Kinnard at 228.523.4147.

**If the funds anticipated for this Project are, at any time, not forthcoming or insufficient, MDMR reserves the right to terminate the Project and to not award a contract or to discontinue the Project, without damage, penalty, cost, or expenses to MDMR of any kind whatsoever.**

## **2.0 SUBMISSION INSTRUCTIONS, REQUIREMENTS, CONDITIONS, DEADLINES AND NOTICES FOR BIDS**

### **2.1 Issuing Office**

This Invitation for Bids is issued for the State of Mississippi by MDMR. MDMR reserves the right, without qualifications to reject all bids not meeting minimum requirements and to exercise its discretion and apply its judgment with respect to any bid submitted.

### **2.2 Pre-Bid Meeting**

A Pre-Bid Meeting will be held at 2:00 p.m., January 10, 2024, at the following location:

E. L. Bolton Building, Conference Room #2, First Floor  
1141 Bayview Avenue,  
Biloxi, MS 39530

The purpose of the pre-submittal conference is to allow potential offerors an opportunity to present questions to staff and obtain clarification of the procurement requirements.

**Attendance at the Pre-Bid Meeting is not a mandatory requirement for submitting a bid.**

### **2.3 Deadline**

Bids must be submitted with one (1) original and five (5) copies; or electronic bids may be submitted to Mississippi's Accountability System for Government Information and Collaboration (MAGIC: Solicitaion number 3160006321. **All bids must be received by MDMR no later than 2:00 p.m., January 30, 2024.** All bids received after the deadline will be returned unopened. If a bid is to be mailed, bidders should use certified mail with a return receipt guaranteed. MDMR will not be responsible for mail delays or lost mail.

**Bids must be labeled as follows on the exterior of the sealed bid envelope/package, if submitting a written bid, or, provided as an attachment included in an electronic bid submittal, if submitting an electronic bid:**

**MDMR – DEER ISLAND CHENIER AND CELL 3**

**Mississippi Department of Marine Resources  
Attention: Rick Kinnard  
1141 Bayview Avenue  
Biloxi, MS 39530**

**Bidder's name:** \_\_\_\_\_

**Bidder's legal address:** \_\_\_\_\_

**Certificate of Responsibility No.** \_\_\_\_\_

**SEALED BID – DO NOT OPEN**

Bids will be opened in the presence of two (2) or more procurement officials. All written bids shall be recorded and maintained as a public record. Bids will be opened publicly and read aloud at 2:00 p.m., January 30, 2024, at the MDMR office located at 1141 Bayview Avenue, Biloxi, Mississippi, 39530.

Each bid must be accompanied by a Bid Bond provided by a surety licensed to operate in the State of Mississippi by the Mississippi Department of Insurance in the amount of five percent (5%) of the total bid as a bid security naming MDMR as the beneficiary. The Bid Bond shall be duly executed by the bidder, the surety, and a registered agent. Each Bid Bond must be accompanied by an appropriate Power of Attorney. The Bid Bond must be on the standard bond form in Attachment K. No other bond form will be accepted by MDMR. Once a Contract has been executed with a successful bidder, the specified time has elapsed so that bids may be withdrawn, or all bids have been rejected, the Bonds of the unsuccessful bidders will be returned. The Bid Bond of the successful bidder will be retained until the Payment Bond and Performance Bond have been executed and approved, and the Contract has been executed, in accordance with Section 2.21 of this Invitation for Bids, after which it will be returned. If the apparent lowest responsible/responsive bidder fails to provide the appropriate Payment Bond, Performance Bond, Tax Bond, insurance certificates or does not execute the Agreement, the Bidder will forfeit his or her Bid Bond.

**2.4 Force Majeure Event**

If MDMR is closed for any reason, including but not limited to: Acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, hurricanes, tropical storms, floods, or other natural disasters (the "Force Majeure Events"), which closure prevents the delivery of Bids by the advertised deadline, the bid submission deadline shall take place the next business day that MDMR shall be open and at the previously advertised time. The new date and time of the bid submission deadline, as determined in accordance with this section, shall not be advertised, and all bidders, upon submission of a bid proposal, shall be deemed to have knowledge of and shall have agreed to the provisions of this section. Bids shall be received by MDMR until the new date and time of the bid deadline as set forth herein. **MDMR shall not be held responsible for the receipt of any bids for which the delivery was attempted and failed due to the closure of MDMR as a result of a Force Majeure Event.** Each bidder shall be required to ensure the delivery and receipt of its bid by MDMR prior to the new date and time of the bid submission deadline.

## 2.5 Nonresident Bidder

In accordance with Miss. Code Ann. § 31-3-21(3), in the letting of public contracts, preference shall be given to resident bidders, and a nonresident bidder domiciled in a state having laws granting preference to local contractors shall be awarded Mississippi public contracts only on the same basis as the nonresident bidder's state awards contracts to Mississippi contractors bidding under similar circumstances; and resident bidders actually domiciled in Mississippi, be they corporate, individuals, or partnerships, are to be granted preference over nonresidents in awarding of contracts in the same manner and to the same extent as provided by the laws of the state of domicile of the nonresident. **In accordance with Miss. Code Ann. Section 31-3-21(3), when a nonresident bidder submits a bid for a public project, he shall attach thereto a copy of his resident state's current law pertaining to such state's treatment of nonresident contractors. Any bid submitted by a nonresident bidder which does not include the nonresident contractor's current state law shall be rejected and not considered for award. If no law exists, the bidder will include with the bid a statement on letterhead and signed by the same person who signs the *Bid Form* stating that no preference laws exist in that state.**

## 2.6 MAGIC

Effective July 1, 2014, the State of Mississippi requires vendors to register in Mississippi's Accountability System for Government Information and Collaboration ("MAGIC") for the State to execute a contract and/or pay for services/products (See Attachment E).

## 2.7 Minority and Women Businesses

MDMR's policy is to promote participation of Minority Business Enterprises (MBE) and Women Business Enterprises (WBE) in the contracts let by MDMR. The intent of the following provision is to encourage contractors to involve such businesses in a meaningful role in the provision of services under this solicitation.

**(A) Offerors and offeror's subcontractors will abide by the following steps to encourage participation by MBE and WBE:**

- (1) Including MBE and WBE on solicitation lists;
- (2) Assuring that MBE and WBE are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of MBE and WBE;
- (4) Establishing delivery schedules, where the requirements of the work permits, which will encourage participation by MBE and WBE;
- (5) Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U.S. Department of Commerce or Mississippi Development Authority's Minority Business Small Business Development Division, as appropriate; OR satisfying the self-certification requirements of this section where appropriate, and
- (6) Including these steps in any subcontracts awarded under the Contract.

**(B) If applicable, the bidder shall supply MDMR with proof of bidder's and bidder's subcontractor's minority status by providing the following prior to contract execution:**

- (1) Certification by the Small Business Administration;

- (2) Certification by the Mississippi Development Authority's Minority Business Certification Program; or
- (3) Self-Certification through Notarized affidavit of the MBE/WBE documenting that said business is:
  - (a) Wholly owned or majority controlled by a minority or woman; and
  - (b) Has been doing business in Mississippi for a period of at least six months prior to the provision of work under this Contract.

## 2.8 Minimum Bid Requirements

Bids shall contain the following minimum information:

- A. One (1) original and five (5) copies shall be submitted; or bids may be submitted electronically to MAGIC; Solicitation 3160006321.
- B. Fully completed and/or executed copies of Attachments A, C, and D, attached hereto.
- C. The written information for a responsibility determination in accordance with Section 2.11, Standards of Responsibility, in this Invitation for Bids.
- D. A copy of bidder's current Certificate of Responsibility issued by the State of Mississippi for the type of work to be performed under this Invitation for Bids, pursuant to Miss Code Ann. § 31-3-21(1). **The Certificate of Responsibility number must be provided on the exterior of the sealed bid envelope/package, if submitting a written bid, or, provided as an attachment included in an electronic bid submittal, if submitting an electronic bid.**
- E. Proof from the Office of the Secretary of the State of Mississippi demonstrating that the bidder is in good standing to do business in Mississippi.
- F. If the bidder is a non-resident contractor, a copy of bidder's **current** state bidder preference law pertaining to that State's treatment of non-resident contractors, pursuant to Miss. Code Ann. § 31-3-21(3) or a statement on letterhead and signed by the same person who signs the *Bid Form* stating that no preference laws exist in that state. The state of residency of a contractor shall be the same as the corporate office as reported by the Mississippi Secretary of State's office, unless any contractor reflecting a foreign corporate office with the Secretary of State provides a sworn affidavit verifying and stating that it, or its affiliate or parent company, has maintained a permanent full-time office in Mississippi, including the address(es) of such office, for at least two (2) full years prior to the bid consistent with the provisions of Mississippi Code § 31-3-21(c), in which case such contractor shall be considered a resident bidder.
- G. A Certificate of Commitment to Comply with the obligation to provide an employment plan pursuant to Miss. Code Ann. § 31-5-37, which is attached hereto as Attachment I. A copy of § 31-5-37 is attached hereto as Attachment G. A copy of the employment plan that must be submitted within seven (7) days of the award is attached hereto as Attachment H.
- H. A fully completed MBE/WBE Solicitation Form attached hereto as Attachment J, which is addressed in Section 2.7 of this Invitation for Bids.
- I. A Bid Bond in the amount of five percent (5%) of the bid amount naming MDMR as the beneficiary and meeting the requirements of Section 2.3 of this Invitation for Bids.

## 2.9 Response to Inquiries

All questions regarding this Invitation for Bids must be submitted in writing to Rick Kinnard via email at [rick.kinnard@dmr.ms.gov](mailto:rick.kinnard@dmr.ms.gov), or by mail to **1141 Bayview, Biloxi, MS 39530** and must be received by MDMR by January 12, 2024. Questions submitted after this date will not be considered. Bidders shall provide an email address or fax number for MDMR to direct the consolidated "question and answer" document. MDMR answers will be provided in writing and transmitted via their [website](#),

email or fax to all prospective bidders who are known to have requested a copy of the bid package. Only answers transmitted in this manner will be considered official and valid by MDMR. No negotiations, decisions, or actions shall be initiated by any bidder as a result of any verbal discussion with any State or Agency representative.

## **2.10 Proprietary Information/Mississippi Public Records Act**

Bids may be made available for public inspection after bid opening. For this reason, confidential or proprietary material should be clearly labeled as such. The classification of an entire bid as proprietary or trade secret is not acceptable and may result in rejection of the bid. Requests to review proprietary information will be handled in accordance with state law and applicable procedures. All disclosures of bid information to interested parties will be made in compliance with MDMR policies and procedures established in accordance with the Mississippi Public Records Act of 1983, Miss. Code Ann. §§ 25-61-1 et seq., and exceptions found in Miss. Code Ann. §§ 25-61-9 and 79-23-1.

## **2.11 Standards of Responsibility**

Factors that will be considered in determining whether the standard of responsibility has been met include whether a bidder has:

A. A satisfactory record of relevant experience (5 points)

*Provide the information requested in Attachment A for, at a minimum, five (5) previous projects of like nature to the work solicited under this Invitation for Bids. Like nature projects may include the following:*

- i. Construction and assembly of aqueous coastal dikes, diversion walls or other marine structures using sediment and rock as the primary construction material*
- ii. Loading and unloading barges*
- iii. Working with barges and cranes in coastal waters*
- iv. Compliance experience with environmental permits associated with working on projects in coastal areas similar to the Mississippi Sound.*

B. A commercial working-knowledge in shallow coastal waters similar to the Mississippi Sound (10 points)

*Describe previous experience working in shallow coastal water similar to those found in the Mississippi Sound along the north shore of Deer Island within the past five (5) years that would be similar to the work solicited under this Invitation for Bids.*

C. A satisfactory record of integrity (5 points)

*Provide, at a minimum, five (5) references and contact information for persons and/or firms familiar with the business integrity of the bidder.*

D. A satisfactory record of performance (5 points)

*Provide a listing of all projects within the past five (5) years and identify all such projects that resulted in construction claims associated with defective work, defaulted or required action by the bonding company. A bidder will not be penalized for claims won by the Bidder.*

Bidders should submit a written narrative of ten (10) pages or less for factor B, above, and the burden is on the prospective bidder to thoroughly demonstrate their responsibility in all of the above-listed categories. The written narrative pages should be numbered in consecutive order. Attachments A, C, and D will not count against the page number of such written narrative. Any bidder with an overall score of eight (8) points or below, or a score of two (2) points or below in categories A, C and D, or a score of six (6) points or below in Category B, on the above Standards of Responsibility will be deemed non-responsible and will be rejected.



The bidder shall be experienced in work of the type and character defined in the Invitation for Bids. Further, the bidder must have a current Certificate of Responsibility and the classification of contractor's kind of work or projects for which the bidder is qualified shall be so stated in the Certificate of Responsibility. If a bidder fails to supply the requested information concerning responsibility, MDMR shall base the determination of responsibility upon any available information or may find the bidder non-responsive.

Bidders should clearly mark any information considered to be a trade secret or proprietary data and should expressly request the nondisclosure of same.

Following an evaluation and determination as to which bidders are both responsive and responsible, an award will be made to the lowest bidder in accordance with this Invitation for Bids.

### **2.12 Waiver of Informalities or Rejection of Bids**

MDMR may waive any informalities or minor defects or reject any and all bids. Any bid may be rejected in whole or in part when such rejection is determined to be in the best interest of MDMR. Waivers, when granted, shall in no way modify the Invitation for Bids requirements or excuse a party from full compliance with the Invitation for Bids specifications and other requirements if the party is awarded the Contract. Reasons for rejecting a bid include, but are not limited to:

- A. Failure to comply with the requirements of the Invitation for Bids and any of its Addenda.
- B. Bidder is in arrears on existing contracts with MDMR or a governing authority or state agency.
- C. Bidder is, anticipates being, or has been within the last five (5) years in litigation, arbitration, or claim with MDMR, or another state agency, governing authority, or other entity of the State of Mississippi.
- D. Bidder has defaulted on a previous contract.
- E. The bid contains unauthorized amendments to the requirements of the Invitation for Bids.
- F. The bid is conditional or qualified.
- G. The bid is incomplete or contains irregularities, which make the bid indefinite or ambiguous.
- H. The bid is not signed by an authorized representative of the party.
- I. The bid contains false or misleading statements or references.
- J. The bidder is determined to be non-responsible.
- K. The bid ultimately fails to meet the announced requirements of the State in some material aspect.
- L. The bid price is clearly unreasonable.
- M. The bid is not responsive, i.e., does not conform in all material aspects to the Invitation for Bids.
- N. The work or materials offered in the bid is unacceptable by reason of its failure to meet the requirements of the specifications or permissible alternative or other acceptability criteria set forth in the Invitation for Bids.
- O. A decision by MDMR at its discretion to reject bids for the Project, regardless of the low bidder(s).

### **2.13 Disposition of Bids**

All submitted bids become the property of the State of Mississippi.

### **2.14 Conditions of Solicitation**

The release of this Invitation for Bids does not constitute an acceptance of any offer, nor does such invitation in any way obligate MDMR to execute a contract with any party. MDMR reserves the right to

accept or reject any or all offers on the basis of the evaluation criteria contained within this document. The final decision to execute a contract with any party rests solely with MDMR.

Before preparing the bid, all parties should note:

- A. MDMR accepts no responsibility for any expenses incurred by the bidder in the preparation and presentation of an offer. Such expenses shall be borne exclusively by the bidder.
- B. The award of a contract for any bid is contingent upon the following:
  - 1) Favorable evaluation of the bid;
  - 2) Availability of funds; and
  - 3) Approval of the Public Procurement Review Board.
- C. Contracted parties will be required to assume full responsibility for all specified services, materials, labor and equipment, and may subcontract only as specified in Attachment F, "Standard Contract Terms and Conditions," herein.

### **2.15 Withdrawal of Bids**

Any bid may be withdrawn prior to the above-scheduled time for the submission of bids or authorized postponement thereof. Further, no bidder may withdraw a bid within ninety (90) days after the actual date of the bid opening.

### **2.16 Bid Modification Requests**

Any requests to modify bids must be submitted in writing by the primary bidder. All requests for modification must be submitted prior to the submission deadline for the receipt of the sealed bids.

### **2.17 Addenda to Bid Specifications**

MDMR reserves the right to issue addenda to this Invitation for Bids. If an addendum becomes necessary, MDMR will provide copies of the addendum to all persons known to have requested a copy of the bid package via the [www.dmr.ms.gov/procurement](http://www.dmr.ms.gov/procurement) web site, email, mail, or fax.

### **2.18 Acknowledgement of Addendum**

Bidders shall acknowledge receipt of any addendum to the Invitation for Bids and/or the Contract Documents by signing and returning the addendum with the bid and by identifying the addendum number and date in the space provided for this purpose on the Bid Form attached hereto as Attachment D. The acknowledgement must be received by MDMR by the time and at the place specified for receipt of sealed bids.

### **2.19 Information Regarding References**

The bidder understands and agrees that MDMR reserves the right to request information relative to references.

### **2.20 Performance, Payment, and Tax Bonds**

Within seven (7) calendar days after receipt of the Notice of Award and Contract, the successful contractor shall execute and deliver to MDMR performance and payment bonds pursuant to Miss. Code. Ann. § 31-5-51, each in the amount of one hundred percent (100%) of the Contract Price, payable to the Mississippi Department of Environmental Quality but conditioned for the prompt payment of all persons supplying labor or material used in the prosecution of the Work under the Contract, with a surety qualified to do business in Mississippi and listed on the United States Treasury Department's list of acceptable sureties and approved by MDMR, which shall be required for the faithful performance of the Contract. MDMR shall be named as the indemnitee in the Performance Bond. The Performance and Payment Bonds shall be on the standard bond forms provided in Attachment K. No other bond forms will be accepted by MDMR.

A Tax Bond, pursuant to Miss. Code Ann. § 31-5-3, securing the prompt payment of taxes, licenses, assignments, contributions, damages, penalties, and interest thereon incurred in connection with the performance of the Contract shall be provided to MDMR before commencing Work under the Contract. The Tax Bond shall be on the standard bond form provided in Attachment K. No other bond form will be accepted by MDMR.

Attorneys-in-fact who sign Payment Bonds, Performance Bonds, and Tax Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

### **2.21 Award of Contract**

If MDMR makes an award for the Project, MDMR will do so within ninety (90) days after opening the bids. Should there be any reason why the Contract cannot be awarded within ninety (90) days after bid opening, the time may be extended by written mutual agreement between MDMR and the successful bidder(s). The Notice of Award shall be accompanied by the Contract. Actions taken by a bidder prior to final execution of such Contract will be at the bidder's OWN RISK and MDMR will not be liable for such action. The party to whom the Contract is awarded will be required to execute the Contract and obtain the Performance Bond and Payment Bond within seven (7) calendar days from the date when Notice of Award is delivered to the bidder and the Tax Bond shall be provided prior to commencing work under the Contract. In case of failure of the bidder to execute the Contract or submit other required documents, MDMR may award the Contract to the next lowest and best responsible/responsive bidder whose bid meets the requirements and criteria set forth in this Invitation for Bids, without relieving the bidder initially selected for award and its bonding company providing the Bid Bond from their liability to MDMR for such failure.

Within thirty (30) days of receipt of an acceptable Performance Bond, an acceptable Payment Bond, and the Contract signed by the party to whom the contract was awarded, MDMR shall sign the Contract. When the Contract is fully executed, an executed duplicate of the Contract shall be returned to the bidder. Should MDMR not execute the Contract within thirty (30) days from receipt of an acceptable Performance Bond, an acceptable Payment Bond and the Contract, the bidder may, by Written Notice, withdraw bidder's signed Contract. Such notice of withdrawal shall be effective upon receipt of the notice by MDMR.

Subject to receipt of an acceptable Tax Bond, suitable weather, water conditions, and/or other environmental conditions as determined solely by MDMR, a Notice to Proceed is anticipated to be issued in February 2024.

### **2.22 Equal Opportunity**

Contracts, grants, loans, purchases and all other financial transactions are administered by MDMR equally to all without regard to race, color, creed, sex, religion, national origin, disability, or age. In addition, the bidder understands that MDMR is an equal opportunity employer and maintains a policy that prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other unlawful consideration. During the term of the Contract, the contractor must strictly adhere to this policy in its employment practices and provision of services.

### **2.23 Applicable Laws**

The bidder is responsible for complying with all applicable federal, state, and local laws and regulations.

### **2.24 Governing Law**

This solicitation and any resulting contract shall be governed in all respects by the laws of the State of Mississippi, and any litigation with respect thereto shall be brought in the appropriate state or federal courts located in Jackson, Hinds County, Mississippi.

**2.25 Certification of Independent Price Determination**

Bidder shall execute, notarize and attach the Bidder Statement of Compliance (Attachment C) to its Bid, certifying that the prices submitted in response to the solicitation have been arrived at independently and without any consultation, communication or agreement (for the purpose of restricting competition) with any other bidder or competitor relating to those prices, the intention to submit a bid, or the methods or factors used to calculate the prices proposed.

**2.26 Procurement Regulations**

Any resulting contract shall be governed by the applicable provisions of the Public Procurement Review Board Regulations.

**2.27 Contract Documents**

Bidders are advised that this Invitation for Bids, any issued Addenda and related Contract Documents (including the Specifications and Drawings) and their bid, should it be accepted, will become part of the final Contract. In the event of any *conflict* between the terms appearing in the Contract Documents, the provisions of Article 7 of the Agreement included in this Invitation for Bids shall apply to resolve the conflict.

**3.0 PERIOD OF PERFORMANCE**

The period of performance for a Contract (“Contract Time”) awarded under this solicitation shall commence upon issuance of a Notice to Proceed by MDMR. A Notice to Proceed is anticipated to be issued in February 2024. A successful contractor will be allowed 120 calendar days complete the entire construction of the containment dike. Liquidated Damages in the amount of \$1,650/day shall be assessed for each day the Work is not complete beyond the allowed Contract Time.

**4.0 INSURANCE REQUIREMENTS**

The successful contractor shall maintain during the time of the Contract the liability insurance coverage required by Section 31 of the Standard Contract Terms and Conditions, or shall require its subcontractors to maintain said coverage, related to the work of the successful contractor and in connection with the Contract.

**5.0 RELATIONSHIP OF PARTIES**

All parties expressly understand and agree that MDMR enters into a contract with a contractor based on the work performed pursuant to the Contract and not based on an employer-employee relationship or a joint venture relationship. For all purposes under this Contract:

A successful contractor shall not be deemed in any way, directly or indirectly, expressly, or by implication, to be an employee of MDMR. A successful contractor will be an independent contractor.

## **6.0 CONTRACT ADMINISTRATION**

The Contract awarded subsequent to this solicitation shall be administered by MDMR. The MDMR Engineer for this Project is as follows:

Anchor QEA, LLC  
614 Magnolia Avenue  
Ocean Springs, Mississippi 39564

## **7.0 COMPENSATION**

Compensation for the Work performed pursuant to the Contract(s) will be in the form of unit prices and lump sum basis as defined in the Bid Form. Payment Applications may be submitted on a monthly basis in accordance with the Agreement (Section 00 52 15).

## **8.0 CONTRACT TERMS AND CONDITIONS**

An awarded Contract will include, but is not limited to, the Standard Contract Terms and Conditions, a copy of which is attached hereto as Attachment F.

## **9.0 INFORMATION FOR BIDDERS RELATED TO RESTORE ACT FUNDING**

MINORITY BUSINESS ENTERPRISE AND WOMEN'S BUSINESS ENTERPRISE (MBE/WBE) REQUIREMENTS: Documentation of compliance with the MBE/WBE requirements is a matter of contractor responsibility. When subcontracting, the contractor must submit documentation of good faith efforts to meet the project's MBE/WBE requirements before contracted work can commence; MBE/WBE requirements and required documentation are outlined in MDEQ Required Attachments Section of the Contract Documents. Failure on the part of the contractor to submit proper documentation may cause the Owner to not execute or to terminate the contract.

Davis Bacon and Related Acts, HUD Section 3 Program requirements, and DBE requirements do not apply to this Contract.

MISSISSIPPI FIRST ACT (Miss. Code Ann. § 31-5-37): Contractors submitting bids for public works that involve an expenditure of Five Thousand Dollars (\$5,000) or more that are financed with RESTORE Funds are subject to the hiring policies established by this section. Each contractor SHALL submit with their bid a certification that they will comply with the provisions if they are awarded a contract. Within seven (7) days after the award of the contract, the prime contractor must submit an employment plan to the OWNER and the Mississippi Department of Employment Security.

Detailed Information regarding compliance with the aforementioned Mississippi First Act is included in the RESTORE Required Attachments Section of the Contract Documents.

## **10.0 LIST OF ATTACHMENTS AND FORMS**

The following are included as attachments to this Invitation for Bids:

Attachment A – List of Prior Experience

Attachment B – Map of Proposed Project Area

Attachment C – Bidder Statement of Compliance

Attachment D – Bid Form

Attachment E – Instructions for MAGIC

Attachment F – Standard Contract Terms and Conditions

Attachment G – A copy of Miss. Code Ann. § 31-5-37, §31-5-33 and §31-7-305

Attachment H – Mississippi First Act – Employment Plan Form for Public Works Projects

Attachment I – Certificate of Commitment to Comply with Miss. Code Ann. § 31-5-37

Attachment J – MBE/WBE Solicitation Form

Attachment K – Bond Forms

Attachment L – Required Attachments for RESTORE Comprehensive Plan Component Construction Contracts

Section 00 52 15 – Agreement

Division 01 Specifications

Division 31 Specifications

Division 35 Specifications

Appendices A – E

Contract Drawings

**Attachment A**  
***List of Prior Experience***

The Bidder must complete this Attachment to include its prior experience in the type of work solicited under this Invitation for Bids.

Date Work Performed: \_\_\_\_\_

Agency: \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Agency Contact Phone Number: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Scope of Project: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Phone Number: \_\_\_\_\_

Work Performed by Bidder [ ] or Subcontractor [ ]

If subcontractor, list subcontractor name: \_\_\_\_\_

Date Work Performed: \_\_\_\_\_

Agency: \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Agency Contact Phone Number: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Scope of Project: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Phone Number: \_\_\_\_\_

Work Performed by Bidder [ ] or Subcontractor [ ]

If subcontractor, list subcontractor name: \_\_\_\_\_

Attachment A (continued)

Date Work Performed: \_\_\_\_\_

Agency: \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Agency Contact Phone Number: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Scope of Project: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Phone Number: \_\_\_\_\_

Work Performed by Bidder [ ] or Subcontractor [ ]

If subcontractor, list subcontractor name: \_\_\_\_\_

Date Work Performed: \_\_\_\_\_

Agency: \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Agency Contact Phone Number: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Scope of Project: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Phone Number: \_\_\_\_\_

Work Performed by Bidder [ ] or Subcontractor [ ]

If subcontractor, list subcontractor name: \_\_\_\_\_



Attachment A (continued)

Date Work Performed: \_\_\_\_\_

Agency: \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Agency Contact Phone Number: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

Scope of Project: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Phone Number: \_\_\_\_\_

Work Performed by Bidder [ ] or Subcontractor [ ]

If subcontractor, list subcontractor name: \_\_\_\_\_

Date Work Performed: \_\_\_\_\_

Agency: \_\_\_\_\_

Agency Contact Name: \_\_\_\_\_

Agency Contact Phone Number: \_\_\_\_\_

Name of Project: \_\_\_\_\_

Address of Project: \_\_\_\_\_

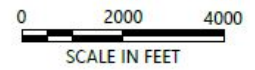
Scope of Project: \_\_\_\_\_

Client Name: \_\_\_\_\_

Client Phone Number: \_\_\_\_\_

Work Performed by Bidder [ ] or Subcontractor [ ]

If subcontractor, list subcontractor name: \_\_\_\_\_



**Attachment C**

**Bidder Statement of Compliance**

State of \_\_\_\_\_

County of \_\_\_\_\_

I, \_\_\_\_\_, individually, and in my capacity as \_\_\_\_\_ of \_\_\_\_\_ (Bidder), being first duly sworn, on oath depose and state the following on behalf of the company:

**Bidder's Representation Regarding Contingent Fees**

The Bidder represents as a part of such Bidder's bid that such Bidder has not retained any person or agency on a percentage, commission, brokerage, or other contingent arrangement to secure this Contract.

**Bidder's Non-Collusion Certification**

The Bidder, nor any of its officers, partners, owners, agents, representatives, employees, suppliers, subcontractors, or parties in interest have not in any way colluded, conspired, or agreed directly or indirectly with any other Bidder, supplier, subcontractor, firm, or person to:

- a) fix prices or prices in the attached Bid or for other Bidders.
- b) fix or make arrangements to restrict land use availability or lease/rental prices for this Bid or for other Bidders; or
- c) fix any overhead, profit or cost elements for this Bid or for other Bidders.

**Bidder History, Debarment and Suspension Representations**

Bidder certifies that Bidder and its corporate officers, principal owners, managers, auditors, and others in a position of administering governmental funds:

- a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental department or agency.
- b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or Contract under a public transaction.
- c) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property.

- d) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in b) and c) above; and
- e) Have not within a three-year period preceding this application/ proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

### **Bidder's Representation of No Improper Influence**

Bidder further certifies, to the best of its knowledge and belief, that:

- a) No Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal Contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal Contract, grant, loan, or cooperative agreement.
- b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Contract, Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions will be completed and submitted.

### **No Conflict of Interest**

Bidder further certifies that, to the best of its knowledge and belief, there are no present or currently planned interests (financial, contractual, organizational, or otherwise) relating to the work to be performed under any contract or task order resulting from this Bid that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) that would impinge on its ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this clause, the term "potential conflict" means reasonably foreseeable conflict of interest. Bidder further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to the State's satisfaction, such conflict of interest (or apparent conflict of interest). The Bidder further certifies that it has no conflict of interest with respect to MDMR or the work to be performed (as set forth in the Invitation for Bids and accompanying Bid documents).

By submission of this bid, I have agreed to adhere to **all conditions and requirements**, as set forth in MDMR's Invitation for Bids and Contract Documents, including all the terms and conditions in the Contract Documents. I further understand that my failure to comply with all requirements and qualifications will result in disqualification of my bid relative to this procurement action. I have submitted appropriate documentation and completed Contract form(s) as necessary to substantiate this evaluation. If inadequate, my bid will not meet the bid requirements and will be evaluated as "Not Meeting Specifications."

MDMR reserves the right to reject any and/or all bids and to waive any minor informalities.

Please accept this as my/our formal bid proposal for the complete specifications in all areas as specified by MDMR.

All of the foregoing is true and correct:

Bidder: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Typed/Printed

Title: \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me, this the \_\_\_\_ day of \_\_\_\_\_,  
20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

[SEAL]

\_\_\_\_\_

**Attachment D  
Bid Form**

**MDMR – DEER ISLAND CHENIER AND CELL 3**

**1. BID RECIPIENT**

This Bid is submitted by \_\_\_\_\_ (hereinafter called "Bidder") doing business as a \_\_\_\_\_ (insert "a corporation," "an individual" applicable; if a corporation, indicate state of incorporation; or a "joint venture") to:

**Mississippi Department of Marine Resources  
Attention: Rick Kinnard  
1141 Bayview Avenue  
Biloxi, Mississippi 39530**

The undersigned Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with Mississippi Department of Marine Resources (hereinafter called "MDMR") in the form(s) included in the Invitation for Bids to perform all Work as specified or indicated in the Invitation for Bids for the prices and within the times indicated in this Bid and in accordance with the other terms and conditions of the Invitation for Bids.

**2. BIDDER'S ACKNOWLEDGEMENTS**

Bidder accepts all of the terms and conditions of the Invitation for Bids, including without limitation those dealing with the disposition of Bid security. This Bid will remain subject to acceptance for ninety (90) days after the Bid opening, or for such longer period of time that Bidder may agree to in writing upon request of MDMR.

**3. BIDDER'S REPRESENTATIONS**

In submitting this Bid, Bidder represents that:

- A. Bidder has examined and carefully studied the Invitation for Bids and the following addenda, receipt of which is hereby acknowledged:

<u>Addendum</u>	<u>Addendum Date</u>
_____	_____
_____	_____
_____	_____

- B. Bidder has reviewed the requirements to bid this Project and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, and performance of the Work.
- C. Bidder is familiar with and is satisfied as to all laws and regulations that may affect cost, progress, and performance of the Work.
- D. Bidder has considered the information known to Bidder; information commonly known to contractors doing business in the locality of the work site; information and observations obtained from visits to the work site; the Invitation for Bids; and the site-related reports and drawings identified in the Invitation for Bids with respect to the effect of such information, observations, and documents on (1) the cost, progress, and performance of the Work; (2) the means, methods, techniques, sequences, and procedures of construction to be employed by Bidder, including applying the specific means, methods, techniques,

sequences, and procedures of construction expressly required by the Contract Documents; and (3) the Bidder's safety precautions and programs.

- E. Based on the information and observations referred to above, Bidder does not consider that further examinations, investigations, explorations, tests, studies, or data are necessary for the determination of this Bid for performance of the Work at the price(s) bid and within the times required, and in accordance with the other terms and conditions of the Invitation for Bids.
- F. Bidder is aware of the general nature of work to be performed at the site that relates to the Work as indicated in the Invitation for Bids.
- G. Bidder has given MDMR written notice of all conflicts, errors, ambiguities, or discrepancies that Bidder has discovered in the Invitation for Bids, and the written resolution thereof by MDMR is acceptable to Bidder.
- H. The Invitation for Bids is generally sufficient to indicate and convey understanding of all terms and conditions for the performance of the Work for which this Bid is submitted.

#### **4. BID FORM INSTRUCTIONS**

All blank spaces for the bid prices must be filled in ink or typewritten, and this Bid Form must be fully completed and executed when submitted. Alterations and erasures of the entries made by bidder shall be initialed by the individual who signed this Bid Form. Bids shall state the legal name of bidder and be signed by the person or persons legally authorized to bind bidder to a contract. Bids submitted by a corporation shall indicate state of incorporation and bear a corporate seal. Bids submitted by an agent of a bidder shall have a current power of attorney attached that certifies the agent's authority to bind the bidder.

Measurement and payment procedures corresponding to the Bid Form can be found in Section 00 52 15 Agreement and Section 01 20 00 Measurement and Payment Procedures, and Section 01 29 00 Payment Procedures of the Contract Documents.

**BID FORM:  
DEER ISLAND CHENIER AND CELL 3  
Schedule of Prices**

Item No.	Description of Item	Unit of Measure	Estimated Quantity	Unit Price	Total
1	Mobilization and Demobilization	LS	1		
Written _____ per unit					
2	Layout and As Build Survey	LS	1		
Written _____ per unit					
3	Side-cast Chenier (Outer and Shoreline)	LF	6,400		
Written _____ per unit					
4	Imported Sand Outer Chenier	TON	50,000		
Written _____ per unit					
5	Pipeline Access Corridor	LS	1		
Written _____ per unit					

Total Bid for Project Construction \$ \_\_\_\_\_

---

Written Total Bid

Note: Bids shall include sales tax and all other applicable taxes and fees. All blanks shall be filled in. Total amount of Bid shall be the sum of the Items. Contract Award will be made according to the Invitation for Bids. In case of discrepancy between the sum of the items and Total Amount of Bid, the sum of the items shall be considered to be the Total Amount of Bid. Award will be made to only one Bidder based upon the Base Bid as applicable from this Bid Form and determination of the lowest and best, responsive, responsible bidder according to the Invitation for Bids.

1. The Bidder agrees that the containment dike construction Work shall be completed within 120 calendar days as stipulated in the Agreement.
2. The following documents are attached to and made a condition of this Bid:
  - a. Bid Security (surety bond, cashier's check, or certified check)



- b. Power of Attorney (For Surety Bond only)
- c. Authority to Execute Contract (any corporate employee other than the president or vice-president)
- d. A list of all subcontractors, surveyors and suppliers associated with this Bid that are anticipated by Bidder to contribute over \$5,000.00 worth of services or supplies to complete the work identified on this Bid Form. MDMR shall not be responsible for payment for any services or supplies provided by any such subcontractor, surveyor or supplier not identified.

The undersigned, having read and understood the Bidding Documents and examined the Project site and adjoining areas, and being familiar with the obstacles and conditions that will affect proposed Work, hereby offers and agrees to furnish all labor, equipment and materials and to perform all the Work required for the **Project**, as described in this Invitation for Bids in accordance with the Contract Documents and at the prices stated in the preceding Bid Schedule.

This Bid is submitted by:

If Bidder is:

**An Individual**

Name \_\_\_\_\_  
(typed or printed):

By: \_\_\_\_\_  
(Individual's Signature)

Doing business as: \_\_\_\_\_

State Contractor License No. \_\_\_\_\_

Contractor UEI # \_\_\_\_\_

MBE/WBE Status: Yes:  No:

**A Partnership**

Partnership Name: \_\_\_\_\_  
(typed or printed)

By: \_\_\_\_\_  
(Signature of General Partner – attach evidence of authority to sign)

Name: \_\_\_\_\_  
(typed or printed)

State Contractor License No. \_\_\_\_\_

Contractor UEI # \_\_\_\_\_

MBE/WBE Status: Yes:  No:

**A Corporation**

Corporation Name: \_\_\_\_\_

(Seal)

State of Incorporation: \_\_\_\_\_

Type (General Business, Professional, Service, Limited Liability): \_\_\_\_\_

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

(Signature, attach evidence of authority to sign)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(Corporate Seal)

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

Date of Qualification to do business in Mississippi is \_\_\_ / \_\_\_ / \_\_\_.

State Contractor License No. \_\_\_\_\_

Contractor UEI # \_\_\_\_\_

MBE/WBE Status: Yes:  No:

**A Joint Venture**

Name of Joint Venture: \_\_\_\_\_

First Joint Venture Name: \_\_\_\_\_  
(Seal)

By: \_\_\_\_\_  
(Signature of first Joint Venture Partner, attach evidence of authority to sign)

Name: \_\_\_\_\_  
(typed or printed)

Title: \_\_\_\_\_  
(Each Joint Venture Partner must sign. The manner of signing for each individual, partnership, and corporation that is a party to the joint venture should be in the manner indicated above.)

Bidder's Business Address: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Email: \_\_\_\_\_

Submitted on \_\_\_\_\_, 20\_\_\_\_

State Contractor License No. \_\_\_\_\_

Contractor UEI # \_\_\_\_\_

MBE/WBE Status: Yes:  No:

**Attachment E**  
**Instructions for MAGIC**

**TO:** Vendors for the State of Mississippi  
**FROM:** Mississippi Department of Marine Resources  
Office of Administrative Services  
**SUBJECT:** Instructions to register as Supplier

Effective July 1, 2014, the State of Mississippi requires vendors to register in MAGIC for the State to execute a contract and/or pay for services/products.

Please complete the online registration at this address:

[http://www.mmrs.state.ms.us/vendors/Supplier\\_\(Vendor\)\\_Self-Service.shtml](http://www.mmrs.state.ms.us/vendors/Supplier_(Vendor)_Self-Service.shtml)

Should you have any questions concerning the registration process, please call the Department of Finance and Administration at 601-359-3538.

Thank you for your time and attention to this matter.

Mississippi Department of Marine Resources  
Procurement Department

**Attachment F**  
**Standard Contract Terms and Conditions**

***APPLICABLE TO ALL WORK***

1. Availability of Funds.

It is expressly understood and agreed that the obligation of MDMR to proceed under this Agreement is conditioned upon the receipt of funds from the RESTORE Council and the Mississippi Department of Environmental Quality (“MDEQ”) under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act). If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDMR, MDMR shall have the right upon ten (10) working days written notice to the Contractor, to terminate this Agreement without damage, penalty, cost or expenses to MDMR of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

2. Representatives.

For all matters pertaining to the Work, unless otherwise provided, MDMR will be represented by its Executive Director, or a designated representative, in all administrative matters and by the designated “Engineer” in all technical matters. When MDMR is referenced singularly in these Standard Contract Terms and Conditions, it shall be construed to include MDMR’s Executive Director and its designated representative(s) for the Project.

Before commencement of the Work, Contractor shall notify MDMR and Engineer of the name of the person(s) (“Contractor's Representative”) who shall be on-site at all times when the Work is being performed, who shall directly superintend the Work and shall be the duly authorized Representative of Contractor empowered to make decisions for, and on behalf of Contractor, and to execute Change Orders on behalf of Contractor, and to whom orders and directions by MDMR and Engineer to Contractor may be given.

At all times when any performance of the Work at any site is being conducted by any employee or representative of the Contractor or his subcontractors, the Contractor shall have a Contractor’s Representative present at each site who has the capability of receiving instructions in the English language, fluently speak the English language and can explain the Work operations to persons performing the Work in the language that those performing the Work are capable of understanding. MDMR or its designated Engineer shall have the right to determine whether the proposed representative has sufficient technical and bilingual capabilities, and the Contractor shall immediately replace any individual not acceptable to MDMR or its designated Engineer.

3. Authority of Engineer.

If designated by MDMR, the designated Engineer shall decide any and all questions which may arise as to (1) the quality or acceptability of materials furnished and the Work performed, (2) the manner of performance of the Work, and (3) interpretation of technical matters within the Contract Documents.

4. Authority to Contract.

Contractor warrants (a) that it is a validly organized business with valid authority to enter into this Agreement; (b) that it is qualified and registered to do business and is in good standing in the State of Mississippi; (c) that entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other Agreement of any kind, and (d) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Contract.

5. Employment Status.

Contractor shall, at all times, be regarded as and shall be legally considered an independent contractor and shall at no time act as an agent for MDMR. Nothing contained herein shall be deemed or construed by MDMR, Contractor, or any third party as creating the relationship of principal and agent, master and servant, partners, joint ventures, employer, and employee, or any similar such relationship between MDMR and Contractor. Neither the method of computation of fees or other charges nor any other provision contained herein nor any acts of MDMR or Contractor hereunder creates or shall be deemed to create a relationship other than the independent relationship of MDMR and Contractor.

Contractor's personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDMR. Neither Contractor nor its employees shall, under any circumstances, be considered servants, agents, or employees of MDMR, and MDMR shall be at no time legally responsible for any negligence or other wrongdoing by Contractor, its servants, agents, or employees. MDMR shall not withhold from the Contract payments to Contractor any federal or state unemployment taxes, federal or state income taxes, Social Security tax, or any other amounts for benefits to Contractor. Further, MDMR shall not provide to Contractor any insurance coverage or other benefits, including Worker's Compensation, normally provided by MDMR or the State for its employees.

6. Contractor's Personnel.

MDMR shall, throughout the life of the Contract, have the right of reasonable rejection and approval of staff or subcontractors assigned to the Work by Contractor. If MDMR reasonably rejects staff or subcontractors, Contractor must provide replacement staff or subcontractors satisfactory to MDMR in a timely manner and at no additional cost to MDMR. The day-to-day supervision and control of Contractor's employees and subcontractors is the sole responsibility of Contractor. Contractor must receive pre-approval from MDMR prior to subcontracting with any company and/or individual not listed as a subcontractor in the bid submittal. In order to receive pre-approval, Contractor shall complete and submit a Request to Subcontract form provided by MDMR.

7. Drug-Free Work Force.

A. The Contractor agrees to institute and maintain a program for achieving the objective of a drug-free work force. MDMR and the Engineer will not be responsible for implementing, overseeing, or enforcing the Contractor's drug-free work force program.

B. Contractor programs shall include the following, or appropriate alternatives:

- i. Employee assistance programs emphasizing high level direction, education, counseling, rehabilitation, and coordination with available community resources.

- ii. Supervisory training to assist in identifying and addressing illegal drug use by Contractor employees.
- iii. Provision for self-referrals as well as supervisory referrals to treatment with maximum respect for individual confidentiality consistent with safety and security issues.
- iv. Provision for identifying illegal drug users, including testing on a controlled and carefully monitored basis. Employee drug testing programs shall be established taking account of the following:
  - a. The Contractor shall establish a program that provides for testing for the use of illegal drugs by employees in sensitive positions. The extent of and criteria for such testing shall be determined by the Contractor based on considerations that include the nature of the Work being performed under the Contract, the employee's duties, and efficient use of Contractor resources, and the risks to health, safety, or national security that could result from the failure of an employee adequately to discharge his or her position.
  - b. In addition, the Contractor may establish a program for employee drug testing.
    - 1. When there is a reasonable suspicion that an employee uses illegal drugs.
    - 2. When an employee has been involved in an accident or unsafe practice.
    - 3. As part of or as a follow-up to counseling or rehabilitation for illegal drug use;  
or
    - 4. As part of a voluntary employee drug testing program.
  - c. The Contractor may establish a program to test applicants for employment for illegal drug use.
- C. Contractor shall adopt appropriate personnel procedures to deal with employees who are found to be using drugs illegally. Contractor shall not allow any employee to remain on duty or perform in a sensitive position who is found to use illegal drugs until such times as the Contractor, in accordance with procedures established by the Contractor, determines that the employee may perform in such a position.
- D. The provisions of this section pertaining to drug testing program shall not apply to the extent that they are inconsistent with state or local law.

8. Notification of Ownership Changes.

Contractor shall make the following notifications in writing:

- A. When Contractor becomes aware that a change in its ownership has occurred, or is certain to occur, that could result in changes in the valuation of its capitalized assets in the accounting records, Contractor shall notify MDMR within 30 days.
- B. Contractor shall also notify MDMR within 30 days whenever changes to asset valuations or any other cost changes have occurred or are certain to occur as a result of a change in ownership.

## C. Contractor shall:

- i. Maintain current, accurate, and complete inventory records of assets and their costs.
- ii. Provide MDMR or its designated representative ready access to records reasonably related to the performance of the Work performed hereunder upon request.
- iii. Ensure that all individual and grouped assets, their capitalized values, accumulated depreciation or amortization, and remaining useful lives are identified accurately before and after each of Contractor's ownership changes; and
- iv. Retain and continue to maintain depreciation and amortization schedules based on the asset records maintained before each Contractor ownership change.

9. Examination of Site, Plans and Specifications.

It is the sole responsibility of Contractor to visit the site of the Work and to thoroughly examine the Contract Documents and to fully acquaint Contractor with the conditions to be encountered as to the character, quality and quantity of Work to be performed and materials to be furnished. Contractor shall fully understand the facilities, difficulties and restrictions that may be encountered in performing the Work.

By execution of the Contract, Contractor represents to MDMR that Contractor has made the necessary examination referred to in the preceding paragraph and can perform the Work for the Contract Price.

Contractor is advised that any report or other information (hereafter called "Additional Information") given to Contractor by MDMR or Engineer or obtained by Contractor from the records of MDMR (except for the Contract Documents) is not a part of the Contract unless specifically referenced to be used in conjunction with the Contract and is given solely for the convenience of Contractor for whatever use Contractor may wish to make of it. It is expressly understood and agreed that MDMR assumes no responsibility whatsoever in respect to the sufficiency or accuracy of the Additional Information or of any interpretations made thereof by any person. Availability or use of such additional information shall not be a waiver of Contractor's duty to examine the site of the Work, and Contractor is cautioned to make such independent investigation as Contractor deems necessary to satisfy Contractor as to the conditions to be encountered in the performance of the Work, including but not limited to: (1) conditions bearing upon transportation, disposal, handling and storage of materials; (2) the availability of labor, water, electric power and roads; (3) uncertainties of weather, tides or similar physical conditions at the site; (4) the conformation and conditions of the ground; and (5) other site conditions that may affect the Work performance.

10. Interpretation of Plans and Specifications.

Should it appear that the Work to be done, or any matter relative thereto, is not sufficiently detailed or explained in the Contract Documents, Contractor shall apply in writing to the Engineer for such further explanations as may be necessary for Contractor to accomplish the Work, and Contractor shall conform to such explanation or interpretation of the Contract by Engineer so far as may be consistent with the intent of the Contract Documents. In the event of doubt or question relative to the true meaning of the Contract Documents as explained or interpreted by the Engineer, reference shall be made to MDMR, whose decision thereof shall be final.



In the event there is a discrepancy between the Specifications and the Plans or Drawings, the Drawings take precedence over the Specifications. In the event of any discrepancy between any Plans or Drawing and the figures written thereon, the figures shall be taken as correct.

11. Inspection.

MDMR and Engineer or its designee shall at all times have access to the Work during construction and shall be furnished with every reasonable facility for obtaining full knowledge respecting the progress, workmanship and character of materials used and employed in the Work. Whenever Contractor varies the period during which Work is carried on each day, Contractor shall give due notice to and obtain approval from MDMR and Engineer so that proper inspection may be provided. Any Work done in the absence of Engineer or Engineer's designee will be subject to rejection.

The inspection of the Work shall not relieve Contractor of any of Contractor's obligations to fulfill the Contract as prescribed. Defective Work shall be made good, and unsuitable materials may be rejected, notwithstanding the fact that such defective Work and unsuitable materials have been previously overlooked by Engineer in inspection and accepted for payment.

12. Public Convenience and Safety.

Contractor shall so conduct its operations and Work as to cause the least possible obstruction and inconvenience to public traffic. Contractor shall furnish, erect, and maintain such fences, barriers, lights, temporary and permanent aids to navigation, notice to fishermen, warning and directional signs as deemed necessary by Engineer to give adequate warning to the public at all times of the construction and of any dangerous conditions to be encountered as a result thereof, and Contractor shall also erect and maintain such signs as may be furnished by MDMR.

All equipment shall be fully equipped with marine safety equipment as required by applicable state or federal law. Contractor shall have a program in place for inspecting and documenting the condition of equipment used on the Project and shall certify that the equipment is in compliance with applicable Occupational Safety and Health Administration (OSHA) and United States Coast Guard inspection requirements. A copy of such certification shall be submitted to MDMR prior to mobilization.

13. Removal of Defective and Unauthorized Work.

All Work which is defective in its construction or deficient in any way of the requirements of the Contract, or Work done by Contractor that is considered by MDMR to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi or MDMR, shall be remedied, or removed and replaced by Contractor in an acceptable manner, and no compensation will be allowed for such correction.

Any Work done beyond the Plans or Specifications, or established by Engineer, or any extra Work done without the written authority of MDMR, will be considered as unauthorized and Contractor will not be compensated. Furthermore, any material that is deposited in places not designated or approved by the Engineer or MDMR may be required to be removed, and the Contractor will be required to deposit such misplaced material where directed at his expense. Additional clean-up and environmental damage mitigation requirements may be directed by MDMR. Such efforts will be entirely at the expense of the Contractor and any fines or penalties will be the responsibility of the Contractor.

Upon failure on the part of Contractor to comply forthwith with any order of MDMR or Engineer made under the provisions of this Section or Sections 3 or 21, MDMR shall have authority to cause the defective Work to be remedied, or removed and replaced, and unauthorized Work to be removed, and to deduct the costs thereof from any moneys due or to become due the Contractor.

14. Contractor's Responsibility for Work.

Until written final acceptance of the Work by MDMR, Contractor shall use all commercially reasonable means to secure and protect the Work from injury, loss or damage to all or any part thereof by an actual or anticipated Force Majeure Event, as that term is defined in Section 23 of the Standard Contract Terms and Conditions, whether arising from the execution of the Work, mobilization, and demobilization or otherwise. Contractor will not be compensated for any costs associated with procuring, utilizing, or carrying out commercially reasonable means to secure and protect the Work from an actual or anticipated Force Majeure Event.

In the event the Work or any portion thereof is damaged or destroyed by a Force Majeure Event, Contractor shall rebuild, repair, restore and make good all damage to such Work. Without limiting the foregoing, Contractor shall not be responsible for payment for loss or damage to "Completed Work" proximately caused by a Force Majeure Event. For purposes of this Section 14, "Completed Work" means Work or any portion thereof that has been surveyed by Contractor and verified by Engineer as being compliant with the Contract Drawings, including, but not limited to, the design sections and details shown in the Contract Drawings. Payment for additional fill material to rebuild, repair or restore damage to Completed Work shall be made in accordance with the submitted Attachment D, Contractor's Schedule of Prices for Base Bid. After all Force Majeure Events, Contractor shall survey all "Completed Work" to identify damaged locations, calculate volumes to repair damages and determine methods for repair. Contractor shall submit a correction plan to Engineer for approval prior to proceeding with any repair work. All repairs and additional pay materials shall be approved by Engineer.

Notwithstanding, and prior to final acceptance of the Work by MDMR in accordance with Section 1.05 of 01 77 00 Closeout Procedures, Contractor shall be responsible for and bear the entire expense of rebuilding, repairing, restoring, and making good any damage or loss to all Work or any portion thereof that is not considered, in MDMR's sole discretion, "Completed Work" as defined herein.

15. Responsibility for Damage.

During the progress of the Work or any time before final acceptance, MDMR and Engineer shall not be liable to Contractor for any loss or damage to the Work or any part thereof, or to any material or equipment used or to be used in performing the Work or for injury or damage to any person (including workers) or damage to property from any cause.

Until final acceptance of the Work by MDMR in accordance with Section 1.05 of 01 77 00 Closeout Procedures, protection of the Work and materials and equipment used thereon shall be the sole responsibility of Contractor. Notwithstanding the foregoing, Contractor shall not be responsible for payment for loss or damage to "Completed Work" proximately caused by a Force Majeure Event, as those terms are defined in Sections 14 and 23 of the Standard Contract Terms and Conditions.

16. Ownership of Documents and Work Products.

MDMR shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Contract, except for Contractor's internal administrative and quality assurance files and internal documents. After giving thirty (30) days advance written notice to MDMR, Contractor shall deliver such documents and work papers to MDMR upon termination or completion of the Contract and shall certify such delivery in writing to MDMR. The foregoing notwithstanding, Contractor shall be entitled to retain a set of such work papers for its files. Contractor shall be entitled to use such work papers only after receiving written permission from MDMR and subject to any copyright protections.

Except as needed to perform hereunder, the Contractor is prohibited from use of the above-described information and/or materials without the express written approval of MDMR.

17. Copyrights.

Contractor agrees that MDMR shall determine the disposition of the title to and the rights under any copyright by Contractor or employees on copyrightable material first produced or composed under this Contract. Further, Contractor hereby grants to MDMR a royalty-free, nonexclusive, irrevocable license to reproduce, translate, publish, use and dispose of, and to authorize others to do so, all copyrighted (or copyrightable) work not first produced or composed by Contractor in the performance of this Contract, but which is incorporated in the material furnished under the Contract. This grant is provided that such license shall be only to the extent Contractor now has, or prior to the completion of full final settlements of Agreement may acquire, the right to grant such license without becoming liable to pay compensation to others solely because of such grant.

18. Record Retention and Access to Records.

Provided Contractor is given reasonable advance written notice and such inspection is made during normal business hours of Contractor, the State or any duly authorized representatives shall have unimpeded, prompt access to any of Contractor's books, documents, papers, and/or records which are maintained or produced as a result of the Project for the purpose of making audits, examinations, excerpts, and transcriptions. All records related to this Contract shall be retained by Contractor for ten (10) years after final payment is made under this Contract and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

However, the Contractor is not required to retain the above-mentioned materials for the ten-year period prescribed in this Section and Section 19 only if all of the following conditions are satisfied:

- A. The Contractor has provided **all** the documents described above to MDMR prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDMR.
- B. No audit, litigation, or other action arising out of or related in any way to this Project is commenced before the Contractor provides the records and corresponding certification to MDMR, in which case, MDMR shall retain the records until all issues arising out of the action(s) are finally resolved; and
- C. The Contractor provides MDMR a minimum of thirty (30) days' written notice before providing the above-mentioned records and corresponding certification.

19. Right to Audit.

Contractor shall maintain such financial records and other records as may be prescribed by MDMR or by applicable federal and state laws, rules, and regulations. Contractor shall retain these records for a period of ten (10) years after final payment or until they are audited by MDMR, whichever event occurs first. These records shall be made available during the term of the Contract and the subsequent ten-year period for examination, transcription, and audit by the Mississippi State Auditor's Office, its designees, or other authorized bodies.

20. Third Party Action Notification.

Contractor shall give MDMR immediate notice in writing of any action or suit filed, and prompt notice of any claim made against Contractor by any entity that may result in litigation related in any way to the Contract.

21. Orders of Engineer.

Whenever it is desirable by the Engineer and MDMR to give Contractor directions concerning the Work, orders will be given in writing to Contractor by delivery to Contractor's representative, or in the representative's absence, to Contractor's on-site superintendent or foreman in charge of the Work in reference to which the order is given, and such written orders shall be binding on Contractor and Contractor shall comply therewith.

Any provision of the Contract notwithstanding, all orders, directions or interpretations of the Engineer and MDMR to Contractor shall be in writing and shall be given to Contractor promptly after requested by Contractor.

Contractor shall not be bound to follow any orders, directions or interpretations of Engineer that are not in writing. MDMR shall not be liable to Contractor for Work performed by Contractor in reliance on verbal orders of Engineer and neither shall such reliance relieve Contractor from the responsibilities of Contractor set forth in the Contract.

If Contractor believes that the order issued by the Engineer entitles Contractor to a change in either the Contract Price or the Contract Time, or both, Contractor shall give Engineer and MDMR written notice of a request for a change order within two (2) days after receipt of the order by the Engineer. The written request shall state the requested change in Contract Price, or extension of the Contract Time, and shall detail the basis for the request. Upon such a request, Contractor shall not be required to carry out the order of the Engineer pending the execution of a Change Order unless Contractor is otherwise directed in writing. If Contractor has requested a Change Order and is ordered to proceed with the Work before a Change Order is executed, such proceeding with the Work shall be without prejudice to the Contractor's right, if any, to request equitable adjustment or an extension of time.

22. Change Orders.

- A. Generally, MDMR may order changes in the services consisting of additions, deletions, or other revisions within the general scope of the Contract. No claims may be made by Contractor that the scope of the Project or of Contractor's services has been changed, requiring changes to the amount of compensation to Contractor or other adjustments to the Contract, unless such changes or adjustments have been made by written amendment to the Contract signed by MDMR and Contractor. If Contractor believes that any particular work is not within the scope of the Project, is a material change, or will otherwise require more

compensation to Contractor, Contractor must immediately notify MDMR in writing of this belief. If MDMR believes that the particular work is within the scope of the Contract as written, Contractor will be ordered to and shall continue with the Work as changed and at the cost stated for the services within the Contract.

B. Procedures: The parties shall initiate a Change Order as follows:

i. Proposed by MDMR/Engineer.

MDMR or Engineer may initiate changes by submitting a proposed Change Order to Contractor. The request will include:

- a. Detailed description of the change, products, and location of the change in the Project.
- b. Supplementary or revised Drawings and Specifications.
- c. The projected time span for making the change and a specific statement as to whether overtime work is, or is not authorized.
- d. A specific period during which the requested price will be considered valid; and
- e. Such request is for information only and is not an instruction to execute the changes or to stop Work in progress.

ii. Proposed by Contractor.

Contractor may initiate changes by submitting a written notice to MDMR's Engineer, or directing to MDMR in the absence of a designated Engineer, containing:

- a. Description of the proposed changes.
- b. Statement of the reason for making the changes.
- c. Statement of the effect on the Contract Sum and the Contract Time.
- d. Statement of the effect on the work of separate contractors; and
- e. Documentation supporting any change in Contract Sum or Contract Time, as appropriate.

C. Documentation and information supporting Change Order.

- i. The Contractor shall support each quotation for a lump-sum proposal, and for each unit price which has not previously been established, with sufficient substantiating data to allow MDMR or its Engineer to evaluate the quotation.
- ii. The Contractor will provide the following additional data to support time and cost computations:
  - a. Labor required for Contractor and sub-contractors.

- b. Equipment required by Contractor and sub-contractors.
- c. Products and materials required by Contractor and sub-contractors, including the recommended sources of purchase and unit cost and the quantities required.
- d. Overhead (inclusive of insurance, bonds, and taxes) and profit on labor by the Contractor and sub-contractors.
- e. Overhead (inclusive of insurance, bonds and taxes) and profit on equipment by the Contractor and sub-contractors.
- f. Credit for work deleted from Contract, similarly documented; and
- g. Justification for any change in Contract Time.

D. Form of Change Order.

- i. The party initiating the request for a Change Order shall prepare the request on a form provided by MDMR.
- ii. A Change Order will describe changes in the Work, both additions and deletions, with attachments of revised Contract Documents to define details of the change.
- iii. A Change Order will provide an accounting of the adjustment in the Contract Sum and in the Contract Time.
- iv. MDMR and its Engineer, if designated for the Project, will sign and date the Change Order as authorization for the Contractor to proceed with the changes.
- v. Contractor will sign and date the Change Order to indicate agreement with the terms therein.
- vi. Changes in price will be based on:
  - a. Unit prices already established in the Bid Form.
  - b. Negotiated unit prices for items not previously established in the Bid Form; or
  - c. Negotiated lump sum prices for items not previously established in the Bid Form.

For negotiated unit or lump sum prices for items not previously established in the Bid Form, the total markup for profit and overhead for the Contractor, including all subcontractors and/or vendors shall not exceed fifteen percent (15%).

Changes in Contract Time will be justified based on the Extension of Contract Time provision below.

E. Final Summary Change Order.

- i. At the conclusion of the Project, the Engineer will perform a final quantity estimate of all unit price items and submit final quantities to the Contractor for review and verification.

- ii. After mutual acceptance of final quantities, the Engineer will prepare a summary Change Order that reflects all actual installed and accepted quantities.
- iii. MDMR and Contractor will sign and date the Final Summary Change Order to indicate their agreement with the terms therein.

F. Work Order Directive.

A Work Order Directive is a written order, instructions, or interpretations, signed by Engineer making minor changes in the Work not involving a change in Contract Sum or Contract Time.

23. Extension of Contract Time.

A. Time Extension

- i. The time within which to complete the Contract shall be extended by MDMR for a period of time, as may be reasonably necessary for Contractor to resume work, upon the occurrence of any of the following events: acts of God; strikes, lockouts, riots, acts of war, epidemics, fire, earthquakes, hurricanes, tropical storms, floods or other natural disasters (a “Force Majeure Event”).
- ii. Notwithstanding the foregoing, subparagraph (i) above, the time within which to complete the Contract may be extended by MDMR if any of the following two (2) requirements are met;
  - a. The delay is the result of documented causes beyond the control of Contractor or its Subcontractors or suppliers, including, but not limited to, unusually severe weather conditions not giving rise to a Force Majeure Event; or
  - b. Negotiated additional time for new work activities not included in the original Contract.
- iii. In the circumstances described in either subparagraph 23(A)(ii)(a) or (A)(ii)(b), Contractor shall notify the Engineer in writing within ten (10) days from the beginning of any such delay period of the cause of the delay and request an extension of the time within which to complete the Contract by reason of the delay and specify the length of such requested extension in accordance with the Change Order provisions above.
- iv. MDMR or its Engineer, upon investigation, may grant an increase in the Contract Time in accordance with the Change Order provisions above. MDMR may grant an increase in the Contract Time for unusually severe weather as described in subparagraph (ii)(a) above in accordance with subparagraph vi below.
- v. Contractor shall not be entitled to any increase in the Contract Price and waives any claim for damages as a result of any delay caused by such circumstances described in Section 23(A)(ii)(a) or (A)(ii)(b),
- vi. This provision specifies the procedure for determination for time extensions for unusually severe weather as described in subparagraph (ii)(a) above. In order for MDMR to award a time extension under this clause, the following conditions must be satisfied:

- a. The weather experienced at the project site during the contract period must be found to be unusually severe, that is, more severe than the adverse weather anticipated for the project location during any given month.
- b. The unusually severe weather must actually cause a delay to the completion of the project, or portion of the project (e.g., installation of geogrid). The delay must be beyond the control and without the fault or negligence of the Contractor.
- c. The following schedule of monthly anticipated adverse weather delays is based on National Oceanic and Atmospheric Administration (NOAA) or similar data for the project location and will constitute the base line for monthly weather time evaluations. The Contractor’s progress schedule must reflect these anticipated adverse weather delays in weather dependent activities.

Monthly Anticipated Adverse Weather Delay Work Days Based on 5 Day Work Week											
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC
4	5	4	3	4	5	6	6	4	3	4	5

- d. Upon acknowledgement of the Notice to Proceed (NTP) and continuing throughout the contract, the Contractor will record on the daily CQC report, the occurrence of adverse weather and resultant impact to normally scheduled work. Actual adverse weather delay days must prevent work on critical activities for 50 percent or more of the Contractor’s scheduled work day. The number of actual adverse weather delay days shall include days impacted by actual adverse weather (even if adverse weather occurred during the previous month), be calculated chronologically from the first to the last day of each month, and be recorded as full days. If the number of actual adverse weather delay days exceeds the number of days shown above, MDMR will convert any qualifying delays to calendar days, giving full consideration for equivalent fair weather work days, and issue a Change Order for contract extension in accordance with Section 22 above.

24. Modification or Amendment.

Modification, changes or amendments to the Contract may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of the Contract must be in writing and signed by both parties hereto.

25. Final Payment.

Upon satisfactory completion of the Work performed under the Contract, as a condition before final payment under the Contract or as a termination settlement under the Contract, Contractor shall execute and deliver to MDMR a release of all claims against MDMR arising under, or by virtue of, the Contract by completing the Release of Claims form provided by MDMR. Unless otherwise provided in the Contract, by state law or otherwise expressly agreed to by the parties in the Contract, final payment under the Contract or settlement upon termination of the Contract shall not constitute waiver of MDMR's claims against Contractor or his sureties under the Contract or applicable performance and payment bonds.

26. Conflict of Interest.



Contractor shall immediately notify MDMR in writing of any interests (financial, contractual, organizational, or otherwise) relating to the services to be performed under this Contract that would create any actual or potential conflict of interest (or apparent conflicts of interest) (including conflicts of interest for immediate family members: spouses, parents, children) with respect to MDMR or the Project that would impinge on Contractor's ability to render impartial, technically sound, and objective assistance or advice or result in it being given an unfair competitive advantage. In this section, the term "potential conflict" means reasonably foreseeable conflict of interest. Contractor further certifies that it has and will continue to exercise due diligence in identifying and removing or mitigating, to MDMR's satisfaction, such conflict of interest (or apparent conflict of interest). If such conflict cannot be resolved to MDMR's satisfaction, MDMR reserves the right to terminate this Contract per the Termination for Convenience section of this Contract.

27. Debarment and Suspension.

Contractor certifies to the best of its knowledge and belief that it, its corporate officers, principal owners, managers, auditors and others in a position of administering governmental funds:

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

28. Representation Regarding Contingent Fees.

Contractor represents that it has not retained a person to solicit or secure a State of Mississippi contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in the Contractor's bid.

29. Representation Regarding Gratuities.

The bidder or Contractor represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 9.105 (Gratuities) of the Mississippi Department of Finance and Administration's Procurement Manual (Public Procurement Review Board Regulations).

30. Tax Bonds.

A Tax Bond securing the prompt payment of taxes, licenses, assignments, contributions, damages, penalties, and interest thereon incurred in connection with the performance of the Contract shall also be provided and approved by MDMR prior to commencing Work under the Contract.

Attorneys-in-fact who sign Payment Bonds, Performance Bonds, and Tax Bonds must file with each Bond a certified and effective dated copy of their power of attorney.

31. Insurance Requirements.

Contractor shall maintain during the period of performance of the contract the following liability insurance coverage and shall require its subcontractors to maintain said coverage, related to the work of the Contractor and in connection with the contract.

- A. Workers' Compensation and Employer's Liability Insurance. This insurance shall protect Contractor against all claims under applicable State workers' compensation laws. Contractor shall also be protected against claims for injury, disease, or death of employees, which, for any reason, may not fall within the provisions of a workers' compensation law. The liability limits shall not be less than the required statutory limits for workers' compensation and employer's liability limits in the amount of One Million and 00/100 Dollars (\$1,000,000.00). Contractor shall supply MDMR endorsements from its carriers' evidencing waiver of subrogation in favor of MDMR.
- B. Longshore and Harbor Workers' Compensation Insurance. This insurance shall protect Contractor against all claims under the Jones Act, Death on the High Seas Act, Outer Continental Shelf Lands Act and Maritime Laws in which case minimum limits of Employers' Liability Insurance will be at least \$1,000,000.00 per occurrence, including transportation, wages, maintenance and cure.
- C. Comprehensive General Liability Insurance. This insurance shall include bodily injury, property damage, contractual and other standard coverage contained in comprehensive general liability insurance, in an amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence and Two Million and 00/100 Dollars (\$2,000,000.00) aggregate.
- D. Contractors Pollution Liability Insurance. This insurance shall protect Contractor for claims for bodily injury and property damage stemming from pollution caused by the Contractor's work or equipment. This insurance shall also cover remediation costs stemming from pollution incidents resulting from the Contractor's operations and Work under this Contract. This insurance shall have minimum limits of at least \$1,000,000.00 per occurrence and \$2,000,000.00 in the aggregate.
- E. Auto Liability Insurance. This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) Combined Single Limit to protect it from any and all claims arising from the use of the following: (1) Contractor's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by Contractors. The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.

For all of the insurance coverage required in Paragraph 31(A)-(E), MDMR and MDMR's Commissioners, officers, employees, agents, and representatives, and the State of Mississippi shall be named as additional insureds or loss payee on such policies as the circumstances may require. The Contractor shall provide that the insureds thereon waive subrogation against the State of Mississippi and the said political subdivisions thereof. The parties (and their respective insurers) agree that Contractor's respective policies shall provide primary coverage before any applicable policy otherwise covering MDMR, and any insurance covering MDMR shall be excess coverage over the Contractor's coverage. Endorsements so stating shall be provided to MDMR by the Contractor. The policies shall also provide for all additional insureds to be provided with a minimum 30-day written notice prior to a cancellation or modification of each respective policy.

Upon execution of the Contract, Contractor shall promptly furnish MDMR with endorsements showing the Contractor compliance with the insurance provisions of this paragraph. While Contractor shall provide MDMR with endorsements as set forth in this paragraph, the failure to do so, or the failure of the endorsements or insurance provided to conform to the Agreement, does not constitute waiver or estoppels as to MDMR of their respective legal and equitable rights, including but not limited to, the right to enforce the terms of the Contract. These contractual insurance provisions are intended to be, and shall be interpreted to be, separate and independent contractual obligations from the provisions addressing the indemnity of MDMR by Contractor.

32. Indemnification.

To the fullest extent allowed by law, Contractor hereby agrees to defend, indemnify and hold harmless MDMR, its Commissioners, Board Members, officers, employees, agents, and representatives, and the State of Mississippi from and/or against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorneys' fees, arising out of or caused by the Contractor and/or its partners, principals, agents, employees and/or Subcontractor's in the performance of or failure to perform this Agreement. In MDMR's sole discretion, Contractor may be allowed to control the defense of any such claim, suit, etc. In the event Contractor defends said claim, suit, etc., Contractor shall use legal counsel acceptable to MDMR; Contractor shall be solely responsible for all costs and/or expenses associated with such defense, and MDMR shall be entitled to participate in said defense. Contractor shall not settle any claim, suit, etc., without MDMR's concurrence, which MDMR shall not unreasonably withhold. This indemnity obligation is intended to be, and shall be interpreted to be, a separate and independent contractual obligation from the contractual provisions addressing the requirements and placement of insurance, including, but not limited to, insurance covering MDMR.

33. No Limitation of Liability.

Nothing in this Contract shall be interpreted as excluding or limiting any tort liability of Contractor for harm caused by the intentional or reckless conduct of Contractor or for damages incurred through the negligent performance of duties by Contractor or the delivery of products that are defective due to negligent construction.

34. Recovery of Money.

Whenever, under the Contract, any sum of money shall be recoverable from or payable by Contractor to MDMR, the same amount may be deducted from any sum due to Contractor under the Contract or under any other Contract between Contractor and MDMR. The rights of MDMR are in addition and without prejudice to any other right MDMR may have to claim the amount of any loss or damage suffered by MDMR on account of the acts or omissions of Contractor.

Any funds that are paid by MDMR to the Contractor that are deemed ineligible or not necessary for the completion of the tasks in this Contract must be returned to MDMR within 30 days from receiving MDMR's written notification for return of funds.

35. Anti-Assignment/Subcontracting.

Contractor acknowledges that it was selected by MDMR to perform the services required hereunder based, in part upon Contractor's special skills and expertise. Unless subcontractors are otherwise identified and approved in accordance with this Section, Contractor shall not assign, subcontract, or otherwise transfer this Contract, in whole or in part, without the prior written consent of MDMR, which MDMR may in its sole discretion, approve or deny without reason. Accordingly, Contractor shall abide by the following for all subcontracts:

- a. Bid Form. Contractor is required to identify on the Bid Form all subcontractors, surveyors and suppliers anticipated by Contractor to contribute over \$5,000.00 worth of services or supplies to complete the work identified on the Bid Form.
- b. Post-Award. For any subcontract anticipated by Contractor, not identified on the Bid Form, to contribute over \$5,000.00 worth of services or supplies to complete the Work, Contractor must notify MDMR in writing and submit a Request to Subcontract in the form provided by MDMR and obtain MDMR's written approval of same prior to entering such contract. Prior to submitting its request to MDMR, Contractor shall abide by the procedures set forth in Section 2.7 of the Invitation for Bids to encourage the participation of MBE/WBE for such subcontract.

The failure of Contractor to comply with this Section shall render any subcontract, assignment or transfer of Contractor's obligations null and void. MDMR shall in no way be responsible for payment for any services or supplies provided by subcontractors not identified and/or approved in accordance with this Section. Approval by MDMR of any subcontract shall not be deemed in any way to provide for the incurrence of any obligation of MDMR in addition to the total fixed price agreed upon in this Contract. Subcontracts shall be subject to the terms and conditions of this Contract and to any conditions of approval that MDMR may deem necessary. Further, MDMR may assign its obligations under this Contract to another entity, upon such entity's agreement, in accordance with applicable state laws and regulations. Subject to the foregoing, this Contract shall be binding upon the respective successors and assigns of the parties.

36. Confidential Information.

- A. Information Designated by Contractor as Confidential. Any disclosure of those materials, documents, data and other information, which Contractor has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Contract, the personal or professional services to be provided, the price to be paid, and the term of the Contract shall not be deemed to be a trade secret or confidential commercial or financial information. Any liability resulting from the wrongful disclosure of Confidential Information on the part of Contractor, or its subcontractor shall rest with Contractor. Disclosure of any Confidential Information by Contractor or its subcontractor without the express written approval of MDMR shall result in the immediate termination of this Contract.

- B. Public Records. Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDMR is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDMR pursuant to this Contract and designated by the Contractor in writing as trade secrets or other proprietary confidential information, MDMR shall following provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDMR shall not be liable to Contractor for disclosure of information required by court order or required by law.
- C. Disclosure of Confidential Information. In the event that either party to this Contract receives notice that a third-party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Contract. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*
- D. Exceptions to Confidential Information. Contractor and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“**Disclosing Party**”) which is:
- i. Rightfully known to the recipient prior to negotiations leading to this Contract, other than information obtained in confidence under prior engagements.
  - ii. Generally known or easily ascertainable by nonparties to this Contract.
  - iii. Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction.
  - iv. Independently developed by the recipient without any reliance on confidential information.
  - v. Part or later becomes part of the public domain or may be lawfully obtained by the State or Contractor from any nonparty; or
  - vi. Disclosed with the Disclosing Party’s prior written consent; or
  - vii. vii. Otherwise required to be disclosed by law.

37. Temporary Suspension of Work.

MDMR or the United States Coast Guard or any other governmental agency with jurisdiction shall have the authority to suspend the Work wholly or in part, for such period as it may deem necessary due to: (1) unsuitable weather, (2) such other conditions as are considered unfavorable for the suitable prosecution of the Work. For these circumstances, the Contractor may be entitled to an adjustment in Contract Times if the delay prohibits the Contractor from completing the Work within the Contract Times but no increase in Contract Price. Any such suspension ordered by MDMR shall be within its sole discretion. MDMR, Engineer, Army Corps of Engineers (COE), Environmental Protection Agency, NOAA or any other governmental agency with jurisdiction may temporarily suspend work for failure on part of Contractor or any Subcontractor to carry out orders given by Engineer pursuant to the Contract or to perform any provisions of the

Work in the manner prescribed by the Contract and/or permits. Any such suspension by MDMR shall be within its sole discretion. Contractor shall immediately cease Work upon such order of MDMR's Executive Director or representative and shall not resume the Work until ordered in writing by MDMR. Contractor shall not be entitled to additional time or increase in the Contract Price and waives any claim for damages as a result of any such suspension of work for these reasons.

38. Termination.

The Contract may be terminated as follows:

- A. Termination Upon Bankruptcy or Default:
- B. The Contract may be terminated in whole or in part by MDMR upon written notice to Contractor, if Contractor should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by Contractor of an assignment for the benefit of its creditors. In the event of such termination, Contractor (or Bonding Company) shall be paid an amount for satisfactory work actually performed pursuant to the Contract, but in no case shall said compensation exceed the total Contract price.
- C. Termination Due to Non-Performance By Third Party:
- D. The Contract may be terminated in whole or in part by MDMR upon written notice to Contractor if the purpose, performance, or completion of the Work becomes materially altered, frustrated or impossible due to a third party, (public or private entity) outside of the control of MDMR, not performing or satisfying an activity or operation necessary for the Work to be accomplished. This provision shall not apply to the subcontractors or suppliers of Contractor, which are addressed separately. MDMR shall specify the effective date of such termination. In the event of a termination under this provision, the Contractor shall be paid an amount for satisfactory work actually performed in connection with the Contract if a Notice to Proceed has been issued. If a Notice to Proceed has not been issued prior to such termination, the termination will be without damage, penalty, costs or expenses to MDMR of any kind whatsoever and the Contractor waives any claim for payment or damages as a result.
- E. Termination for Convenience:
- F. MDMR may terminate the Contract, in whole or in part, for any reason after giving written notice to Contractor of such termination and specifying the effective date thereof, at least ten (10) days before the effective date of such termination. Contractor shall be paid an amount for satisfactory work actually performed in connection with the Contract, but in no case shall said compensation exceed the total Contract price.
- G. Upon receiving notice of termination, Contractor shall incur no further obligations in connection with the terminated work, and on the date set in the notice of termination Contractor will stop work to the extent specified. Contractor shall also terminate outstanding orders and subcontracts as they relate to the terminated work. Contractor shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. MDMR may direct Contractor to assign Contractor's right, title, and interest under terminated orders or subcontracts to MDMR. Contractor must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

## H. Termination for Default:

- i. Default. If Contractor refuses or fails to perform any of the provisions of this Contract with such diligence as will ensure its completion within the time specified in this Contract or any extension thereof or otherwise fails to timely satisfy the Contract provisions or commits any other substantial breach of this Contract, MDMR may notify Contractor in writing of the delay or nonperformance. If delay or nonperformance is not cured in ten (10) days or any longer time specified in writing by the MDMR officer or representative, MDMR may terminate Contractor's right to proceed with the Contract or such part of the Contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the procurement officer may procure similar supplies or services in a manner and upon terms deemed appropriate by MDMR. Contractor shall continue performance of the Contract to the extent it is not terminated and shall be liable to MDMR for excess costs incurred in procuring similar goods or services.
- ii. Contractor's Duties. Notwithstanding termination of the Contract and subject to any directions from MDMR, Contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of Contractor in which the State has an interest.
- iii. Compensation. Payment for completed services delivered and accepted by the State shall be at the Contract Price. The State may withhold from amounts due Contractor such sums as MDMR deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- iv. Excuse for Nonperformance or Delayed Performance. Except with respect to defaults of subcontractors, Contractor shall not be in default by reason of any failure in performance of this Contract in accordance with its terms (including any failure by Contractor to make progress in the prosecution of the work hereunder which endangers such performance) if Contractor has notified MDMR within 10 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress and if such failure arises out of causes similar to those set forth above, Contractor shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit Contractor to meet the Contract requirements. Upon request of Contractor, MDMR shall ascertain the facts and extent of such failure. If MDMR determines that any failure to perform was occasioned by any one or more of the excusable causes and that, but for the excusable cause, Contractor's progress and performance would have met the terms of the Contract, the delivery schedule be revised accordingly, subject to the rights of MDMR under the section entitled "Termination for Convenience." (As used in this paragraph of this section, the term "subcontractor" means subcontractor at any tier.)
- v. Erroneous Termination for Default. If, after notice of termination of Contractor's right to proceed under the provisions of this section, MDMR determines for any reason that the Contract was not in default under the provisions of this section or that the delay was

excusable under the provisions of subparagraph (iv) (Excuse for Nonperformance or Delayed Performance) of this section, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to such section.

- vi. Notwithstanding any of the foregoing provisions, Contractor shall not be relieved of liability to MDMR for damages sustained by MDMR by virtue of any breach of the Contract by Contractor, and MDMR may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due MDMR from Contractor are determined. MDMR may also pursue any remedy available to it in law or in equity.

39. Use and Possession Prior to Completion.

- A. MDMR shall have the right to take possession of or use any completed or partially completed part of the Work. Before taking possession of or using any Work, the MDMR or its designated Engineer shall furnish the Contractor a list of items of Work remaining to be performed or corrected on those portions of the Work that the MDMR intends to take possession of or use. However, failure of the MDMR or its Engineer to list any item of Work shall not relieve the Contractor of responsibility for complying with the terms of the Contract Documents. MDMR's possession or use shall not be deemed an acceptance of any Work under the Contract Documents.
- B. While MDMR has such possession or use, the Contractor shall be relieved of the responsibility for the loss of or damage to the Work resulting from MDMR's possession or use. If prior possession or use by MDMR delays the progress of the Work or causes additional expense to the Contractor, an equitable adjustment shall be made in the Contract Price or the Contract Time pursuant to the Change Order provisions above.

40. Antitrust.

By entering into this Contract, Contractor conveys, sells, assigns, and transfers to MDMR all rights, titles, and interest it may now have, or hereafter acquire, under the antitrust laws of the United States and the State that relate to the services purchased or acquired by MDMR under this Contract.

41. Procurement Regulations.

The Contract shall be governed by the applicable provisions of the Public Procurement Review Board Regulations.

42. Small, Minority and Women Businesses.

It is MDMR's policy to solicit participation from small, minority and women businesses. Contractor shall ensure that reasonable efforts are made to utilize Minority Business Enterprises (MBE)/Women Business Enterprises (WBE). For any subcontracting not included in the original bid, the Contractor must follow the conditions listed in the section entitled "Minority and Women Businesses" of the Invitation for Bids, and then submit a Request to Subcontract in the form provided by MDMR prior to assigning or subcontracting any portion of this Contract.

43. Compliance with Miss. Code. Ann. § 31-5-37.

Pursuant to Miss. Code. Ann. § 31-5-37, from the date written notice of the contract award is received and until ten (10) business days after the receipt of the employment plan by the



Mississippi Department of Employment Security (“MDES”), the Contractor and any subcontractor shall not hire any personnel to fill vacant positions for this project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contractor or subcontractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contractor or subcontractor. During the ten (10) day period, the MDES shall submit qualified individuals to the Contractor to consider for the vacant positions. The Contractor shall review the individuals submitted by MDES before hiring individuals who are not submitted by MDES. The contract award shall be vacated if the Contractor fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

44. E-Verification.

If applicable, Contractor represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term “employee” as used herein means any person that is hired to perform work within the State. As used herein, “status verification system” means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. Contractor agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, Contractor agrees to provide a copy of each such verification. Contractor further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Contract may subject Contractor to the following:

- A. Termination of this Contract for services and ineligibility for any state or public Contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public.
- B. The loss of any license, permit, certification, or other document granted to Contractor by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or
- C. Both. In the event of such termination/cancellation, Contractor would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

45. E-Payment.

Contractor agrees to accept all payments in United States currency via the State of Mississippi’s electronic payment and remittance vehicle. MDMR agrees to make payment in accordance with Mississippi law on “Timely Payments for Purchases by Public Bodies,” which generally provides for payment of undisputed amounts by the Agency within forty-five (45) days of receipt of invoice. Mississippi Code Annotated 31-7-301, *et seq.*

46. Pay Mode.

Payments by state agencies using the State’s accounting system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited

into the bank account of Contractor's choice. The State, may at its sole discretion, require Contractor to electronically submit invoices and supporting documentation at any time during the term of this Agreement. Contractor understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

47. Transparency.

This Contract, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983" and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Contract is required to be posted to the Department of Finance and Administration's independent agency Contract website for public access at <http://www.transparency.mississippi>. Information identified by Contractor as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted. The personal or professional services to be provided, the price to be paid, and the terms of this Contract shall not be deemed to be a trade secret or confidential commercial or financial information.

48. Waiver.

Failure by MDMR, at any time, to enforce the provisions of the Contract shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of the Contract or any part thereof or the right of MDMR to enforce any provision at any time in accordance with its terms.

49. Governing Law.

The Contract shall be construed and governed in accordance with the laws of the State of Mississippi, without regard to its conflicts of laws, and the laws of the United States of America, and venue for the resolution of any dispute shall be brought in the appropriate state or federal court located in Jackson, Hinds County, Mississippi.

50. Compliance with Laws.

Contractor understands that MDMR is an equal opportunity employer and therefore maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and Contractor agrees during the term of the Contract that Contractor will strictly adhere to this policy in its employment practices and provision of work performed pursuant to the Contract. Contractor shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified. Contractor shall immediately report in writing to MDMR any discrepancy or inconsistency in the Contract Documents that appear to violate or be contrary to the then existing applicable federal, state and local laws. Contractor shall ensure that any person assigned to perform services hereunder meets the employment eligibility requirements of the immigration and naturalization laws including but not limited to the Immigration Reform and Control Act of 1986.

51. Reference to Statutes.

Whenever reference is made to the provision of any statute or law in the Contract Documents, such reference applies to any amendment or change in such statute or law now existing, but to become operative sometime after the signing of the Contract.

52. Headings.

The captions or headings in the Contract are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of the Contract.

53. Severability.

If any part of this Contract is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the parties shall amend the Agreement as necessary to reflect the original intent of the parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

54. Disputes.

Before pleading to any judicial system at any level, Contractor must exhaust all administrative remedies. A written complaint of any claim or dispute not otherwise resolved by the procedures outlined in the Contract Documents must first be sent to the Executive Director of MDMR within thirty (30) days of the Contractor being aggrieved by the decision of MDMR or its representative(s). The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to Contractor. Pending non-resolution of the complaint at this point, successive administrative remedies will include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Mississippi Code Annotated Section 49-17-35, with appeals from the Commission's decision following procedures as outlined in Miss. Code Ann. Section 49-17-41.

For any disputed claim over \$100,000, and as a prerequisite to the claim proceeding through MDMR's administrative remedies and in court, a registered officer of the Contractor shall provide the following certification to MDMR upon filing the initial written complaint with the Executive Director:

"I certify that the claim is made in good faith; that the supporting data are accurate and complete to the best of my knowledge and belief; that the amount requested accurately reflects the contract adjustment for which the Contractor believes MDMR is liable; and that I am duly authorized to certify the claim on behalf of the Contractor."

55. Professional Fees and Expenses.

If MDMR incurs attorneys' fees, costs or expenses (including, without limitation, court costs, investigative fees, engineering fees, accounting fees, and other professional service fees) in order to enforce any of the terms or conditions of this Contract or because of the breach of this Contract by the Contractor, MDMR shall be entitled to recover its reasonable attorneys' fees, costs and such expenses from Contractor if MDMR is the prevailing party (whether by suit, negotiation or settlement).

56. Oral Statements.

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Contract.

57. Delivery of Contract.

A signed copy of this Contract delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Contract.

## **Attachment G**

### **Miss. Code Ann. § 31-5-37**

§ 31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions.

(1) All public works projects utilizing funds received by state or local governmental entities resulting from a federally declared disaster or a spill of national significance, including damages, penalties, fines or supplemental projects paid or financed by responsible parties pursuant to a court order, negotiated settlement, or other instrument, including under any law distributing such fines and penalties including the federal Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.), the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act or similar legislation, shall be subject to the hiring policies established by this section.

(2) Contractors submitting bids for public works projects that involve an expenditure of Five Thousand Dollars (\$ 5,000.00) or more and that are financed, in whole or in part, through the use of funds described in subsection (1) of this section shall submit with their bid a certification that they will comply with the provisions of this section if they are awarded a contract. The contractor shall submit to the agency or governing authority that solicited the bid and the Mississippi Department of Employment Security an employment plan within seven (7) days after the award of the contract which shall include the following:

- (a) The types of jobs involved in the public works project.
- (b) The skill level of the jobs involved in the project.
- (c) Wage information on the jobs involved in the project.
- (d) The number of vacant positions that the contractor and any subcontractor need to fill;
- (e) How the contractor and any subcontractor will recruit, low-wage and unemployed individuals for job vacancies.
- (f) Such other information as may be required by the Mississippi Department of Employment Security; and
- (g) Proof of registration with the Mississippi Department of Employment Security for taxation in accordance with the provisions of Title 71.

(3) From the date written notice of the contract award is received and until ten (10) business days after the receipt of the employment plan by the Mississippi Department of Employment Security, the contractor and any subcontractor shall not hire any personnel to fill vacant positions necessary for the public works project except residents of the State of Mississippi who are to be verified by the Mississippi Department of Employment Security and/or those qualified individuals who are submitted by the Mississippi Department of Employment Security. For purposes of this subsection, the contractor or subcontractor is authorized to employ Mississippi residents to begin work immediately, and such persons are to be verified by the Mississippi Department of Employment Security after employment by the contractor or subcontractor. During the ten-day period the Mississippi Department of Employment Security shall submit qualified individuals to the contractor to consider for the vacant positions. The contractor shall review the individuals submitted by the department

before hiring individuals who are not submitted by the department. The contract award shall be vacated if the contractor fails to comply with the provisions of this subsection.

**HISTORY:** SOURCES: Laws, 2012, ch. 505, § 1; Laws, 2013, ch. 479, § 1, eff from and after passage (approved April 1, 2013.)

**Miss. Code Ann. § 31-5-33**

§ 31-5-33. Amount of retainage which may be withheld; exemptions

(1) In any contract for the construction, repair, alteration or demolition of any building, structure or facility awarded by the State of Mississippi, or any agency, unit or department of the State of Mississippi, or by any political subdivision thereof, which contract provides for progress payments in installments based upon an estimated percentage of completion with a percentage of the contract proceeds to be retained by the state agency, unit or department, or by the political subdivision or contractor pending completion of the contract, such retainage shall be five percent (5%), and the amount retained by the prime contractor from each payment due the subcontractor shall not exceed the percentage withheld by the state, or any agency, unit or department of the state, or by any political subdivision thereof, from the prime contractor.

On any contract as described herein, of which the total amount is Two Hundred Fifty Thousand Dollars (\$ 250,000.00) or greater, or on any contract with a subcontractor, regardless of amount, five percent (5%) shall be retained until the work is at least fifty percent (50%) complete, on schedule and satisfactory in the architect's and/or engineer's opinion, at which time fifty percent (50%) of the retainage held to date shall be returned to the prime contractor for distribution to the appropriate subcontractors and suppliers. Provided, however, that future retainage shall be withheld at the rate of two and one-half percent (2 1/2%).

(2) The provisions of this section shall not apply to contracts let by the Mississippi Transportation Commission for the construction, improvement or maintenance of roads and bridges.

**HISTORY:** SOURCES: Laws, 1979, ch. 454, § 1; Laws, 1984, ch. 406, § 1; Laws, 2002, ch. 519, § 2, eff from and after July 1, 2002.

## Miss. Code Ann. § 31-7-305

### **§ 31-7-305. Recordkeeping and notice requirements; time for mailing check in payment of invoice; time for payment in event of dispute; interest penalties.**

(1) All public bodies of the state, including those which issue checks and those which file requisitions for payment with the State Fiscal Management Board, shall keep a record of the date of receipt of the invoice, dates of receipt, inspection and approval of the goods or services, date of issuing the check or date of filing the requisition for payment, as the case may be, and date of mailing or otherwise delivering the warrant or check in payment thereof. In the event that the State Fiscal Management Board mails or otherwise delivers the warrant directly to the claimant, pursuant to Section 7-7-35, Mississippi Code of 1972, the State Fiscal Management Board shall notify the public body of the date thereof. The provisions of this section are supplemental to the requirements of Sections 19-13-29, 21-39-7, 21-39-13 and 37-5-93, Mississippi Code of 1972.

(2) All public bodies that are authorized to issue checks in payment of goods and services and are not required to issue requisitions for payment to the State Fiscal Management Board shall mail or otherwise deliver such checks no later than forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods or services; however, in the event of a bona fide dispute, the public body shall pay only the amount not disputed.

(3) If a warrant or check, as the case may be, in payment of an invoice is not mailed or otherwise delivered within forty-five (45) days after receipt of the invoice and receipt, inspection and approval of the goods and services, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1-1/2 %) per month or portion thereof on the unpaid balance from the expiration of such forty-five-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. The provisions of this paragraph shall apply only to undisputed amounts for which payment has been authorized. In the case of an error on the part of the vendor, the forty-five-day period shall begin to run upon receipt of a corrected invoice by the public body and upon compliance with the other provisions of this section. The various public bodies shall be responsible for initiating the penalty payments required by this subsection and shall use this subsection as authority to make such payments. Also, at the time of initiating such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be.

(4) (a) In the event of a bona fide dispute as to an invoice, or any portion thereof, the dispute shall be settled within thirty (30) days after interest penalties could begin to be assessed, if it were not for the dispute.

(b) If a warrant or check, as the case may be, in payment of an invoice, subject to a prior dispute, is not mailed or otherwise delivered within thirty (30) days after settlement of the dispute, the public body shall be liable to the vendor, in addition to the amount of the invoice, for interest at a rate of one and one-half percent (1-1/2 %) per month or portion thereof on the unpaid balance from the expiration of said thirty-day period until such time as the warrant or check is mailed or otherwise delivered to the vendor. At the time of initiating



such penalty payment, the public body shall specify in writing an explanation of the delay and shall attach such explanation to the requisition for payment of the penalty or to the file copy of the check issued by the public body, as the case may be. The interest penalty prescribed in this paragraph shall be in lieu of the penalty provided in subsection (3).

**END**

ATTACHMENT H

**Mississippi First Act – Employment Plan Form for Public Works Projects**

This form may be digitally downloaded from

<http://www.mdes.ms.gov/employers/mississippi-first-act-and-public-works-contracts-employment-plans/>.

**Mississippi First Act  
Employment Plan Form for Public Works Projects\***

Project Number:

Bid Date:

Project Title:

Institution / Agency:

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**Please provide the information requested below regarding the contractor and its subcontractors.**

1. List the types of jobs that will be involved in the project:

2. List the skill level of the jobs involved in the project:

3. List the wages for each job involved in the project:

4. List the number of vacant positions that will need to be filled for each job involved in the project:

5. Explain how low wage and unemployed individuals will be recruited for job vacancies:

[Redacted area]

6. Attach proof of registration with the Mississippi Department of Employment Security (MDES) for taxation purposes.

I certify that the information provided above is true and accurate to the best of my knowledge.

Contractor Name and Authorized Representative: [Redacted]

Title: [Redacted]

Date: [Redacted]

*\*Note: This form must be submitted if Miss. Code Ann 31-5-37 (Mississippi First Act) applies to the project.*

*This law requires a contractor awarded a contract for a public works project utilizing specified funding to submit an employment plan to the public agency or authority that awarded the contract and to MDES.*

Please submit a copy of your employment plan to MDES via fax at 601-321-6080 or via email at [recoveryjobs@mdes.ms.gov](mailto:recoveryjobs@mdes.ms.gov).

Signature: [Redacted]

*To sign digitally, click and add your digital signature above. You may also print and sign this by hand to fax.*

This form may be digitally downloaded from

<http://www.mdes.ms.gov/employers/mississippi-first-act-and-public-works-contracts-employment-plans/>.

**ATTACHMENT I**  
**Bidder Certificate of Commitment to Comply with Miss. Code Ann. § 31-5-37**

State of \_\_\_\_\_

County of \_\_\_\_\_

I, \_\_\_\_\_, individually, and in my capacity as \_\_\_\_\_ of \_\_\_\_\_ (Bidder), being first duly sworn, on oath depose and state the following on behalf of the company:

Bidder represents as a part of such Bidder's bid that it will fully comply with the requirements of Miss. Code Ann. § 31-5-37 by submitting to the Mississippi Department of Marine Resources and the Mississippi Department of Employment Security an employment plan within seven (7) days after the award of the Contract which shall include all of the information required in Miss. Code Ann. § 31-5-37(2)(a)-(g).

All of the foregoing is true and correct:

Bidder: \_\_\_\_\_

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

Authorized Signature: \_\_\_\_\_

Name: \_\_\_\_\_  
Typed/Printed

Title: \_\_\_\_\_

SWORN TO AND SUBSCRIBED before me, this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

My Commission Expires:

[SEAL]

\_\_\_\_\_



**2. Select one the following:**

- The offeror is a MBE/WBE firm and at least one or more MBE/WBE firms were solicited and selected for the proposed contract, as indicated above. Prior to contract award, the offeror shall supply MDEQ with proof of offeror's and offeror's subcontractor's MBE/WBE status by providing the documentation required in 2.7 of the IFB.
- The offeror is a MBE/WBE firm and no other MBE/WBE firms were solicited for the proposed contract. Prior to contract award, the offeror shall supply MDEQ with proof of offeror's MBE/WBE status by providing the documentation required in 2.7 of the IFB.
- The offeror is not a MBE/WBE firm. However, at least one or more MBE/WBE firms were solicited and selected, as indicated above, for the proposed contract. Prior to contract award, the offeror shall supply MDEQ with proof of offeror's subcontractor's MBE/WBE status by providing the documentation required in 2.7 of the IFB.
- The offeror is not a MBE/WBE firm. However, at least one or more MBE/WBE firms were solicited (but not selected), as indicated above, for the proposed contract.
- The prime firm submitting for the proposed contract is not a MBE/WBE firm and no MBE/WBE firms were solicited for the proposed contract. If so, please explain.

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**PERFORMANCE BOND**

KNOWN ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ hereinafter called "Principal", and  
(Corporation, Partnership, Limited Liability Company or Individual)

\_\_\_\_\_ hereinafter called "Surety",  
(Name of Surety)

are held and firmly bound unto the **MDMR**, hereinafter called "**OWNER**" in the penal sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_

NOW, THEREFORE, the Contractor and the Surety, jointly and severally, bond themselves, their heirs, executors, administrators, successors and assigns to the Owner for the performance of the Contract, which is incorporated herein by reference. If the Principal shall well, truly and faithfully perform its duties, all the undertakings, covenants, terms, conditions, and agreements of said Contract during the Original term thereof, and any extensions thereof which may be granted by the OWNER, with or without notice to the Surety and if he shall satisfy all claims and demands incurred under such Contract, and shall fully indemnify and save harmless the OWNER from all costs and damages which it may suffer by reason of failure to do so, and shall reimburse and repay the OWNER all of outlay and expense which the OWNER may incur in making good any default, then this obligation shall be void; otherwise to remain in full force and effect. PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed hereunder or the CONTRACT DOCUMENTS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the loans of this Contract or to the WORK or to the CONTRACT DOCUMENTS. PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may not yet be satisfied.



The following conditions apply to this Bond:

1. The Performance Bond is for an amount equal to the full amount of said Contract.
2. If any changes are made in the work, or any extensions of time are granted, or any increases in the total dollar amount of the Contract are made, such changes, extensions, increases, or other forbearance on the part of either the Owner or the Principal will not, in any way, release the Principal and Surety, or either of them, from their liability hereunder, or any portion thereof, notice to the Surety of any such change, extension, increase, or forbearance being expressly waived.
3. This Bond is governed by and shall be construed in accordance with Mississippi law. Any inconsistency with this Bond and any provision of Mississippi law shall be remedied by deleting the inconsistent portion of this Bond and leaving the remaining consistent portions in full force and effect.

WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_.

**ATTEST:**

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
(Principal)

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

(SEAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_

\_\_\_\_\_  
(Address)

\_\_\_\_\_

**ATTEST:**  
(SEAL)

\_\_\_\_\_  
(Surety)

By

\_\_\_\_\_  
Attorney-in-Fact, MS Resident Agent

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Phone Number (include Area Code)

**NOTE:** Date of BOND **must not be prior** to date of CONTRACT.  
If CONTRACTOR is Partnership, all partners should execute BOND.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located. This Performance Bond shall be accompanied by a certified and currently dated copy of the Attorney-in-Fact's Power of Attorney

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**PAYMENT BOND**

KNOWN ALL MEN BY THESE PRESENTS:

That \_\_\_\_\_  
(Name of Contractor)

\_\_\_\_\_  
(Address of Contractor)

a \_\_\_\_\_ hereinafter called "Principal", and  
(Corporation, Partnership, Limited Liability Company or Individual)

\_\_\_\_\_ hereinafter called "Surety",  
(Name of Surety)

are held and firmly bound unto the **MDMR**, hereinafter called "**OWNER**" in the penal sum of  
\_\_\_\_\_ Dollars (\$ \_\_\_\_\_)

in lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, successors, and assigns, jointly and severally, firmly by these presents.

THE CONDITION OF THIS OBLIGATION is such that whereas, the Principal entered into a certain Contract with the OWNER, dated the \_\_\_\_\_ day of \_\_\_\_\_, a copy of which is hereto attached and made a part hereof for the construction of:

\_\_\_\_\_  
NOW, THEREFORE, the Contractor and the Surety, jointly and severally, bond themselves, their heirs, executors, administrators, successors and assigns to the Owner to pay for labor, materials and equipment furnished for use in the performance of the Contract, which is incorporated herein by reference. If the Principal shall promptly make payment to all persons, firms, SUBCONTRACTORS, SUB-SUBCONTRACTORS, SUPPLIERS and corporations furnishing materials for or performing labor or equipment in the prosecution of the WORK provided for in such Contract, and any authorized extension or modification thereof, including all amounts due for materials, lubricants, oil, gasoline, coal and coke, repairs on machinery, equipment and tools, consumed or used in connection with the construction of such WORK, and all insurance premiums on said WORK, and for all labor, performed in such WORK whether by SUBCONTRACTOR, SUB-SUBCONTRACTOR or otherwise, then this obligation shall be void; otherwise to remain in full force and effect. PROVIDED, FURTHER, that the said Surety for value received hereby stipulates and agrees that no change, extension of time, alteration or addition to the terms of the Contract or to the WORK to be performed hereunder or the CONTRACT DOCUMENTS accompanying the same shall in any wise affect its obligation on this BOND, and it does hereby waive notice of any such change, extension of time, alteration or addition to the terms of this Contract or to the WORK or to the CONTRACT DOCUMENTS. PROVIDED, FURTHER, that no final settlement between the OWNER and the CONTRACTOR shall abridge the right of any beneficiary hereunder, whose claim may not yet be satisfied.

Furthermore, the Owner shall not be liable for the payment of any costs or expenses of any suit described in Subsections (2) or (3) of Mississippi Code Annotated Section 31-5-51.

The following conditions apply to this Bond:

1. This Payment Bond is for an amount equal to the full amount of said Contract.
2. If any changes are made in the work, or any extensions of time are granted, or any increases in the total dollar amount of the Contract are made, such changes, extensions, increases, or other forbearance on the part of either the Owner or the Principal will not, in any way, release the Principal and Surety, or either of them, from their liability hereunder, or any portion thereof, notice to the Surety of any such change, extension, increase, or forbearance being expressly waived.
3. This Bond is governed by and shall be construed in accordance with Mississippi law. Any inconsistency with this Bond and any provision of Mississippi law shall be remedied by deleting the inconsistent portion of this Bond and leaving the remaining consistent portions in full force and effect.

WITNESS WHEREOF, this instrument is executed in five (5) counterparts, each of which shall be deemed an original, this the \_\_\_\_\_ day of \_\_\_\_\_.

**ATTEST:**

\_\_\_\_\_  
(Principal) Secretary

\_\_\_\_\_  
(Principal)

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

(SEAL)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Witness as to Principal

\_\_\_\_\_

\_\_\_\_\_  
(Address)

**ATTEST:**  
(SEAL)

\_\_\_\_\_  
(Surety)

By

\_\_\_\_\_  
Attorney-in-Fact, MS Resident Agent

\_\_\_\_\_  
Witness as to Surety

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
Phone Number (include Area Code)

**NOTE:** Date of BOND **must not be prior** to date of CONTRACT.  
If CONTRACTOR is Partnership, all partners should execute BOND.

**IMPORTANT:** Surety companies executing BONDS must appear on the Treasury Department's most current list (Circular 570 as amended) and be authorized to transact business in the State where the Project is located. This Performance Bond shall be accompanied by a certified and currently dated copy of the Attorney-in-Fact's Power of Attorney

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DEPARTMENT OF REVENUE  
JACKSON, MISSISSIPPI

Bond Number \_\_\_\_\_

**RIDER**  
**(SALES, USE, INCOME, FRANCHISE, WITHHOLDING, AND**  
**SPECIAL FUEL [DIESEL FUEL] TAX BOND)**

This Rider is attached to and becomes a part of a certain performance and/or payment bond executed by \_\_\_\_\_ as Principal,

(Name and Address)

in favor of \_\_\_\_\_ as Obligee, (Name

and Address)

and covering a contract dated \_\_\_\_\_, 20\_\_\_\_\_, for the construction of

(Name Project and Describe)

WHEREAS, under the provisions of Miss Code Ann. § 27-65-21, the said Principal is required to and has furnished the attached bond guaranteeing payment of all taxes, damages, interest and penalties which may accrue to the State of Mississippi under Miss Code Ann. § 27-65-1 et seq, and § 27-67-1 et seq., and § 27-7-1 et seq., and § 27-13-1 et seq., and § 27-7-301 et seq., and § 27-55-313 et seq, and amendments thereto, on account of entering into said contract.

NOW, THEREFORE, in addition to the obligations set forth in the attached bond, there is hereby imposed the additional obligation by this Rider that the Contractor shall promptly make payment when due of all taxes, damages, interest and penalties which may accrue to the State of Mississippi under Miss Code Ann. § 27-65-1 et seq., and § 27-67-1 et seq., and § 27-7-1 et seq., and § 27-13-1 et seq., and § 27-7-301 et seq., and § 27-55-313, and amendments thereto, on account of the execution of the aforesaid contract.

NOTWITHSTANDING any provision in the performance and/or payment bond, the expiration date for the sureties' responsibilities and/or liabilities under this Rider shall be sixty (60) months from the date the final payment for the project described herein is made, except in the existence of fraud there shall be no expiration date for this Rider.

NOTWITHSTANDING the tax information and return confidentiality provisions contained within Miss Code Ann. § 27-65-1 et seq., § 27-67-1 et seq., § 27-7-1 et seq., § 27-13-1 et seq., § 27-7-301 et seq., and § 27-55-301 et seq., and amendments thereto, principal hereby authorizes the Department of Revenue to release to surety any information relating to any claim against said surety made by the Department of Revenue which is covered by this bond.

SIGNED, SEALED AND DELIVERED, This the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

Filed and Approved this the \_\_\_\_\_ day.

of \_\_\_\_\_, 20\_\_\_\_\_.

\_\_\_\_\_  
Commissioner and Chairman of the DEPARTMENT OF REVENUE

\_\_\_\_\_  
Principal

\_\_\_\_\_  
Surety

By \_\_\_\_\_  
Attorney in Fact

COUNTERSIGNATURE:

By \_\_\_\_\_  
Licensed Mississippi Agent

\_\_\_\_\_  
(Type or Print Name of Agent)

\_\_\_\_\_  
(Telephone Number)

(SEAL)



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MISSISSIPPI DEPARTMENT OF  
ENVIRONMENTAL QUALITY

**Required Attachments for  
RESTORE COMPREHENSIVE PLAN COMPONENT  
Construction Contracts**

*Non-State and State Agency – Template version 1.29.2019*

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

Requirements applicable to any contract issued as a result of this solicitation include, but are not limited to:

- CERTIFICATIONS RELATED TO RESTORE ACT COMPREHENSIVE PLAN COMPONENT
- RESTORE COUNCIL SPECIAL AWARD CONDITIONS, AS APPLICABLE
- RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS
- MDEQ STANDARD SUB-AWARD TERMS AND CONDITIONS
- APPENDIX II TO 2 CFR PART 200: CONTRACT PROVISIONS FOR NON-FEDERAL ENTITY CONTRACTS UNDER FEDERAL AWARDS
- PROCUREMENT OF RECOVERED MATERIALS
- CONTRACTING WITH SMALL AND MINORITY BUSINESSES, WOMEN’S BUSINESS ENTERPRISES, AND LABOR SURPLUS AREA FIRMS
- SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS
- 41 CFR §60-1.4(b) EQUAL OPPORTUNITY CLAUSE (*for Federally Assisted Construction Contracts*)
- 41 CFR §60-4.2(d) NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (Executive Order 11246)

- 41 CFR §60-4.3(a) STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (Executive Order 11246)
- MISSISSIPPI FIRST ACT (Miss. Code Annotated §31-5-37)
- MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008 (Miss. Code Annotated §§71-11-1, et seq.)
- EXAMPLE OF E-VERIFY AND MISSISSIPPI FIRST ACT CERTIFICATION LETTER
- SUBCONTRACTOR LISTING FORM (*The Lowest Responsive and Responsible Bidder MUST submit with required documentation.*)

By signing below, I am acknowledging that I have read the requirements applicable to any contract issued as a result of this solicitation.

Prime Contractor's Signature: \_\_\_\_\_

Signer's Title: \_\_\_\_\_

## **CERTIFICATIONS RELATED TO RESTORE ACT COMPREHENSIVE PLAN COMPONENT FUNDING**

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**By submitting a bid for this contract, bidders expressly acknowledge that:**

- 1) This project is funded in whole or in part with grant funding from the RESTORE Council and the Mississippi Department of Environmental Quality under the Resources and Ecosystems Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act);
- 2) Any contract resulting from this bid will be subject to the terms and conditions of said funding award, the RESTORE Council Financial Assistance Standard Terms and Conditions, the Standard Sub-Award Terms and Conditions, the RESTORE Act, 33 USC 1321(t), Treasury Regulations 31 CFR § 34 et seq., all applicable terms and conditions in 2 CFR Part 200 (including Appendix II to Part 200), and all other OMB circulars, executive orders or other federal laws or regulations, as applicable.;
- 3) Any contract awarded will be subject to 31 CFR Part 19 – Governmentwide Debarment and Suspension (Nonprocurement); and,
- 4) Any contract awarded will be subject to the laws and regulations of the United States and the State of Mississippi.

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

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

**RESTORE ACT**

**RESTORE COUNCIL STANDARD TERMS AND CONDITIONS**

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

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*Gulf Coast Ecosystem Restoration Council  
August 2015*

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## RESTORE COUNCIL FINANCIAL ASSISTANCE STANDARD TERMS AND CONDITIONS

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

## A. STATUTORY AND NATIONAL POLICY REQUIREMENTS

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

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

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

## B. PROGRAMMATIC REQUIREMENTS

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

---

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

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

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

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

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

## .01 Performance (Technical) Reports

- a. Non-Federal entities must use OMB-approved governmentwide standard information collections when providing financial and performance information and, as appropriate and in accordance with such information collections, are required to relate financial data to the performance accomplishments of the Federal award. When applicable, recipients must also provide cost information to demonstrate cost effective practices (e.g., through unit cost data). The Non-Federal entity's performance will be measured in a way that will help the Council and other non-Federal entities to improve program outcomes, share lessons learned and spread the adoption of promising practices. Recipients will be provided with clear performance goals, indicators and milestones as described in 2 C.F.R. § 200.210 “Information contained in a Federal award.”
- b. Recipients must submit performance (technical) reports, which may be Form SF-PPR “Performance Progress Report” or any successor form, or another format as required by the Council, to the Council-designated grants officer (Grants Officer). Performance reports should be submitted electronically, unless the recipient makes an arrangement with the Grants Officer for submission in hard copy (no more than one original and two copies) in accordance with the award conditions.
- c. Performance Reports must be submitted with the same frequency as the Federal Financial Report (Form SF-425), unless otherwise authorized by the Grants Officer. If events occur between scheduled performance reporting dates that have significant impact upon the activity, project or program, the recipient must notify the Grants Officer as soon as possible.
- d. Performance (technical) reports shall contain brief information as prescribed in the *Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards* (2 C.F.R. part 200, specifically 2 C.F.R. § 200.328) incorporated into the award, unless otherwise specified in the award provisions. Specifically, in the “performance narrative” (item 10 on the SF-PPR), the recipient must provide the following information.
  1. Activities and Accomplishments:
    - i. Summarize activities undertaken during the reporting period;
    - ii. Summarize any key accomplishments, including milestones and metrics completed for the period;
    - iii. List any contracts awarded during the reporting period, along with the name of the contractor and its principal, the DUNS number of the contractor, the value of the contract, the date of award, a brief description of the services to be provided, and whether or not local preference was used in the selection of the contractor; and
    - iv. If the recipient is authorized to make subawards, list any subawards executed during the reporting period, along with the name of the entity and its principal, the DUNS number of the entity, the value of the agreement, the date of award, and a brief description of the scope of work.
  2. Adaptive Management:
    - i. Indicate if any operational, legal, regulatory, budgetary, and/or ecological risks, and/or any public controversies, have materialized; if so, indicate what mitigation strategies have been undertaken to attenuate these risks or controversies; and
    - ii. Summarize any challenges that have impeded the recipient’s ability to accomplish the approved scope of work on schedule and on budget.

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

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

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

## **.03 Unsatisfactory Performance**

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

## **.04 Programmatic Changes**

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

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

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

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

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

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

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

## **.08 Disclaimer Provisions**

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

# **C. FINANCIAL REQUIREMENTS**

## **.01 Financial Reports**

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



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

## **.02 Financial Management**

- a. In accordance with 2 C.F.R. § 200.302(a), each State, including a state’s administrative agents and the Gulf Consortium of Florida counties, must expend and account for the Federal award in accordance with state laws and procedures for expending and accounting for the state’s own funds. In addition, the state’s and other non-Federal entities’ financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the Federal award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions – including preparation of accurate, current and complete SF-425, Performance (Technical) Report, reporting on subawards, and any additional reports required by any additional award conditions. The financial management system also must be sufficient to trace funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, regulations – including without limitation the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (RESTORE Act), Council and Treasury RESTORE Act regulations – and the terms and conditions of the Federal award. *See also* 2 C.F.R. § 200.450 “Lobbying.”
- b. The financial management system of each non-Federal entity must provide all information required by 2 C.F.R. § 200.302(b) and maintain detailed records sufficient to account for the receipt, obligation and expenditure of grant funds in accordance with the requirements in 31 C.F.R. § 34.803(b). *See also* 2 C.F.R. §§ 200.333 “Retention requirements for records”; 200.334 “Requests for transfer of records”; 200.335 “Methods for collection, transmission and storage of information”; 200.336 “Access to records”; and 200.337 “Restrictions on public access to records.” Specifically, the financial management system must provide for:
  1. Identification and tracking of all Council awards received and expended by the Catalog of Federal Domestic Assistance (CFDA) title and number, Federal award identification number and year, name of the Federal agency, and name of the pass-through entity, if any;
  2. Records that adequately identify the source and application of all funds for Federally-funded activities, including information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, expenditures, income and interest, and are supported by source documentation; and
  3. Effective control over, and accountability for, all Federal funds, and all property and assets acquired with Federal funds. The recipient must adequately safeguard all assets and ensure that they are used solely for authorized purposes.
- c. The recipient must establish written procedures to implement the requirements set forth in Subsection, C.03 “Award Payments,” below, as well as written procedures to determine the allowability of costs in accordance with 2 C.F.R. Part 200, subpart E “Cost Principles,” and the terms and conditions of this award.

### .03 Award Payments

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### **.09 Tax Refunds**

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

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

## D. INTERNAL CONTROLS

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

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

## E. PROPERTY STANDARDS

### .01 Standards

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

### .02 Insurance coverage

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

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

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



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

### **.03 Real Property**

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

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

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

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

#### **.05 Equipment**

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

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

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

## **.06 Supplies**

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

## **.07 Intangible Property**

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

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

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

## **.08 Property Trust Relationship**

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

## **F. PROCUREMENT STANDARDS**

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

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

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

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

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

## **G. NON-DISCRIMINATION REQUIREMENTS**

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

### **.01 Statutory Provisions**

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d *et seq.*) and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the grounds of race, color, or national origin under programs or activities receiving Federal financial assistance;
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. §§ 1681 *et seq.*) prohibits discrimination on the basis of sex under Federally assisted education programs or activities;
- c. The Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12101 *et seq.*) prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto, as well as public or private entities that provide public transportation;
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), and any Council regulations and policies promulgated pursuant to its authority prohibit discrimination on the basis of handicap under any program or activity receiving or benefiting from Federal assistance.
- e. Revised ADA Standards for Accessible Design for Construction Awards revised regulations implementing Title II of the Americans with Disabilities Act (ADA) (28 C.F.R. part 35; 75 FR 56164, as amended by 76 FR 13285) and Title III of the ADA (28 C.F.R. part 36; 75 FR 56164, as amended by 76 FR 13286) which adopted new enforceable accessibility standards called the “2010 ADA

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

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

## **.02 Other Provisions**

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

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

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

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

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

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

## **H. RECORDS RETENTION**

- a. The recipient must retain all records pertinent to this award for a period of no less than three years, beginning on a date as described in 2 C.F.R. § 200.333. While electronic storage of records (backed up as appropriate) is preferable, the recipient has the option to store records in hardcopy (paper) format. For the purposes of this section, the term "records" includes but is not limited to:
  1. Copies of all contracts and all documents related to a contract, including the Request for Proposal (RFP), all proposals/bids received, all meeting minutes or other documentation of the evaluation and selection of contractors, any disclosed conflicts of interest regarding a contract, all signed conflict of interest forms (if applicable), all conflict of interest and other procurement rules governing a particular contract, and any bid protests;
  2. Copies of all subawards, including the funding opportunity announcement or equivalent, all applications received, all meeting minutes or other documentation of the evaluation and selection of subrecipients, any disclosed conflicts of interest regarding a subaward, and all signed conflict of interest forms (if applicable);
  3. All documentation of site visits, reports, audits, and other monitoring of contractors (vendors) and subrecipients (if applicable);
  4. All financial and accounting records, including records of disbursements to contractors (vendors) and subrecipients, and documentation of the allowability of Administrative Costs charged to this award;
  5. All supporting documentation for the performance outcome and other information reported on the recipient's Financial Reports and Performance (Technical) Reports; and
  6. Any reports, publications, and data sets from any research conducted under this award.
- b. If any litigation, claim, investigation, or audit relating to this award or an activity funded with award funds is started before the expiration of the three year period, the records must be retained until all litigation, claims, investigations, or audit findings involving the records have been resolved and final action taken.

## I. AUDITS

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

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

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

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

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

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



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

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

## **.02 Audit Resolution Process**

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

## J. DEBTS

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

- a. The non-Federal entity must promptly pay any debts determined to be owed the Federal Government. Council debt collection procedures are set out in 2 C.F.R. part 200, Subpart D. In accordance with 2 C.F.R. § 200.345, delinquent debt includes any funds paid to the non-Federal entity in excess of the amount to which the non-Federal entity is finally determined to be entitled under the terms of the Federal award, constituting a debt to the Federal government (this includes a post-delinquency payment agreement) unless other satisfactory payment arrangements have been made. In accordance with 2 C.F.R. § 200.345, failure to pay a debt by the due date, or if there is no due date, within 90 calendar days after demand, shall result in the assessment of interest, penalties and administrative costs in accordance with the provisions of 31 U.S.C. § 3717 and 31 C.F.R. parts 900 through 999. The Council will transfer any debt that is more than 180 days delinquent to the Bureau of the Fiscal Service for debt collection services, a process known as “cross-servicing,” pursuant to 31 U.S.C. § 3711(g), 31 C.F.R. § 285.12 and any Council regulations and policies promulgated pursuant to its authority, and may result in the Council taking further action as specified in Section B.06 “Non-Compliance With Award Provisions” Above. Funds for payment of a debt shall not come from other Federally-sponsored programs. Verification that other Federal funds have not been used will be made (e.g., during on-site visits and audits).
- b. If a non-Federal entity fails to repay a debt within 90 calendar days after the demand, the Council may reduce the debt by: (1) Making an administrative offset against other requests for reimbursements; (2) Withholding advance payments otherwise due to the non-Federal entity; or (3) Other action permitted by Federal statute. *See* 2 C.F.R. § 200.345(a).

### .02 Late Payment Charges

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

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

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

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

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

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

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

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

## **L. LOBBYING RESTRICTIONS**

### **.01 Statutory Provisions**

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

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

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

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

## M. REMEDIES FOR NONCOMPLIANCE

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

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

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

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

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

### .01 Code of Conduct for Recipients

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

### .02 Applicability of Award Provisions to Subrecipients

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

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

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

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

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

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

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



*Applicants or bidders for a lower tier covered transaction (except procurement contracts for goods and services under \$25,000 not requiring the consent of a Council official) are subject to 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement).” In addition, applicants or bidders for a lower tier covered transaction for a subaward, contract, or subcontract greater than \$100,000 of Federal funds at any tier are subject to relevant statutes, including among others, the provisions of 31 U.S.C. 1352, as well as the common rule, “New Restrictions on Lobbying,” published at 55 FR 6736 (February 26, 1990), including definitions, and the Office of Management and Budget “Governmentwide Guidance for New Restrictions on Lobbying,” and notices published at 54 FR 52306 (December 20, 1989), 55 FR 24540 (June 15, 1990), 57 FR 1772 (January 15, 1992), and 61 FR 1412 (January 19, 1996).*

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

- b. Pursuant to 2 C.F.R. Appendix II to part 200, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards,” and in addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable:
  1. Contracts for more than the Simplified Acquisition Threshold (\$150,000 as of 12-26-2013), which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. § 1908, must address administrative, contractual or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.
  2. All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.
  3. Equal Employment Opportunity. Except as otherwise provided under 41 C.F.R. part 60, all contracts that meet the definition of “Federally assisted construction contract” in 41 C.F.R. part 60-1.3 must include the equal opportunity clause provided under 41 C.F.R. 60-1.4(b), in accordance with EO 11246, “Equal Employment Opportunity” (30 F.R. 12319, 12935, 3 C.F.R. part, 1964-1965 Comp., p. 339), as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 C.F.R. part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
  4. Davis-Bacon Act. When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Council. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 U.S.C. § 3145), as supplemented by Department of

Labor regulations (29 C.F.R. part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Council.

5. Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. part 5). Under 40 U.S.C. § 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.
6. Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 C.F.R. § 401.2(a) and the non-Federal entity or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the non-Federal entity or subrecipient must comply with the requirements of 37 C.F.R. part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.
7. Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. § 6201).
8. Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (*see* 2 C.F.R. § 180.220) must not be made to parties listed on the governmentwide Excluded Parties List System in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 C.F.R. part 180 that implement Executive Orders 12549 (3 C.F.R. part 1986 Comp., p. 189) and 12689 (3 C.F.R. part 1989 Comp., p. 235), “Debarment and Suspension.” The Excluded Parties List System in [SAM](#)<sup>15</sup> contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
9. Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352). Contractors that apply or bid for an award of \$100,000 or more must file the required certification, a “Disclosure of Lobbying Activities” (Form SF-LLL or successor form). Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal

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

contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier-to-tier up to the Federal award recipient. The Form SF-LLL must be submitted within 15 days following the end of the calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed. The non-Federal entity must submit all disclosure forms received, including those that report lobbying activity on its own behalf, to the Grants Officer within 30 days following the end of the calendar quarter.

10. Procurement of recovered materials (section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act). A state agency or agency of a political subdivision of a State and its contractors must comply with requirements of Section 6002 including procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 C.F.R. part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
  11. Pilot Program for Enhancement of Employee Whistleblower Protections. The National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2013 (Pub. L. No. 112-239, enacted January 2, 2013 and codified at 41 U.S.C. § 4712) includes a pilot program of whistleblower protection. It applies to all Council awards, subawards, or contracts under awards issued beginning July 1, 2013 through January 1, 2017. Non-Federal entities and contractors under Federal awards and subawards shall inform their employees in writing of the rights and remedies provided under 41 U.S.C. § 4712, in the predominant native language of the workforce. *See* section G.02 (c) of this document.
- c. The recipient must include in its legal agreement or contract with the subrecipient a requirement that the subrecipient make available to the Council, the Treasury OIG, and the GAO any documents, papers or other records, including electronic records, of the subrecipient, that are pertinent to this award, in order to make audits, investigations, examinations, excerpts, transcripts, and copies of such documents. This right also includes timely and reasonable access to the subrecipient's personnel for the purpose of interview and discussion related to such documents. This right of access shall continue as long as records are required to be retained.
  - d. The recipient and any subrecipients, contractors, or subcontractors must comply with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328), as applicable, which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.
  - e. When contracting, the non-Federal entity must take all necessary affirmative steps, as prescribed in 2 C.F.R. § 200.321(b), to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

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

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

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

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

## **O. AMENDMENTS AND CLOSEOUT**

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

## **P. ENVIRONMENTAL COMPLIANCE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

## **Q. MISCELLANEOUS REQUIREMENTS**

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

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

### **.02 Political Activities**

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

### .03 Drug-Free Workplace

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

### .04 Foreign Travel

- a. The non-Federal entity may not use funds from this award for travel outside of the United States unless the Grants Officer provides prior written approval. The non-Federal entity shall comply with the provisions of the Fly America Act (49 U.S.C. § 40118). The implementing regulations of the Fly America Act are found at 41 C.F.R. §§ 301-10.131 through 301-10.143.
- b. The Fly America Act requires that Federal travelers and others performing U.S. Government-financed air travel must use U.S. flag air carriers, to the extent that service by such carriers is available. Foreign air carriers may be used only in specific instances, such as when a U.S. flag air carrier is unavailable, or use of U.S. flag air carrier service will not accomplish the agency's mission.
- c. One exception to the requirement to fly U.S. flag carriers is transportation provided under a bilateral or multilateral air transport agreement, to which the United States Government and the government of a foreign country are parties, and which the Department of Transportation has determined meets the requirements of the Fly America Act pursuant to 49 U.S.C. § 40118(b). The United States Government has entered into bilateral/multilateral "Open Skies Agreements" (U.S. Government Procured Transportation) that allow Federally-funded transportation services for travel and cargo movements to use foreign air carriers under certain circumstances. There are multiple "Open Skies Agreements" currently in effect. For more information about the current bilateral and multilateral agreements, visit the [GSA website](#).<sup>17</sup> Information on the Open Skies agreements (U.S. Government Procured Transportation) and other specific country agreements may be accessed via the [Department of State's website](#).<sup>18</sup>
- d. If a foreign air carrier is anticipated to be used for any portion of travel under a Council financial assistance award the non-Federal entity must obtain prior written approval from the Grants Officer. When requesting such approval, the non-Federal entity must provide a justification in accordance with guidance provided by 41 C.F.R. § 301-10.142, which requires the non-Federal entity to provide the Grants Officer with the following: name; dates of travel; origin and destination of travel; detailed itinerary of travel; name of the air carrier and flight number for each leg of the trip; and a statement explaining why the non-Federal entity meets one of the exceptions to the regulations. If the use of a foreign air carrier is pursuant to a bilateral agreement, the non-Federal entity must provide the Grants Officer with a copy of the agreement or a citation to the official agreement available on the GSA website. The Grants Officer shall make the final determination and notify the non-Federal entity in writing. Failure to adhere to the provisions of the Fly America Act will result in the non-Federal entity not being reimbursed for any transportation costs for which the non-Federal entity improperly used a foreign air carrier.

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

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

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

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

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

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

## **.07 Federal Employee Expenses**

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

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

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

## **.09 Research Misconduct**

The Council adopts, and applies to financial assistance awards for research, the Federal Policy on Research Misconduct (Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 FR 76260). As provided for in the Federal Policy, research misconduct refers to the fabrication, falsification or plagiarism in proposing, performing or reviewing research, or in reporting research results. Research misconduct does not include honest errors or differences of opinion. Non-Federal entities that conduct extramural research funded by the Council must foster an atmosphere conducive to the responsible conduct of sponsored research by safeguarding against and resolving allegations of research misconduct. Non-Federal entities also have the primary responsibility to prevent, detect and investigate allegations of research misconduct and, for this purpose, may rely on their internal policies and procedures, as appropriate, to do so. Federal award funds expended on an activity that is determined to be invalid or unreliable because of research misconduct may result in appropriate enforcement action under the award, up to and including award termination and/or suspension or debarment. The Council requires that any allegation that contains sufficient information to proceed with an inquiry be submitted to the Grants Officer, who will also notify the Treasury OIG of such allegation. Once the non-Federal entity has investigated the allegation, it shall submit its findings to the Grants Officer. The Council may accept the non-Federal entity’s findings or proceed with its own investigation. The Grants Officer will inform the non-Federal entity of the Council’s final determination.

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

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

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

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

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

Recipients must comply with the Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. § 2131 *et seq.*) (animal acquisition, transport, care, handling, and use in projects), and implementing regulations, 9 C.F.R. Parts 1, 2, and 3; the Endangered Species Act (16 U.S.C. § 1531 *et seq.*); Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*) (taking possession, transport, purchase, sale, export or import of wildlife and plants); the Nonindigenous Aquatic Nuisance Prevention and Control Act (16 U.S.C. § 4701 *et seq.*) (ensure preventive measures are taken or that probable harm of using species is minimal if there is an escape or release); and all other applicable statutes pertaining to the care, handling and treatment of warm-blooded animals held for research, teaching or other activities supported by Federal financial assistance. No research involving vertebrate animals is permitted under any Council financial assistance award without the prior written approval of the Grants Officer.

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

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

- a. *The subrecipient or contractor shall comply with the Council personal identity verification procedures identified in the subaward or contract that implement Homeland Security Presidential Directive 12 (HSPD-12), Office of Management and Budget (OMB) Guidance M-05-24, as amended, and Federal Information Processing Standards Publication (FIPS PUB) Number 201, as amended, for all employees under this subaward or contract who require routine physical access to a Federally-controlled facility or routine access to a Federally-controlled information system.*
- b. *The subrecipient or contractor shall account for all forms of Government-provided identification issued to the subrecipient or contractor employees in connection with performance under this subaward or contract. The subrecipient or contractor shall return such identification to the issuing agency at the earliest of any of the following, unless otherwise determined by the Council: (1) When*

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

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

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

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

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

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

The Trafficking Victims Protection Act of 2000 authorizes termination of financial assistance provided to a private entity, without penalty to the Federal Government, if the non-Federal entity engages in certain activities related to trafficking in persons. The Council incorporates the following award term required by [2 C.F.R. § 175.15\(b\)](#).<sup>19</sup>

Award Term from 2 C.F.R. § 175.15(b):

##### I. Trafficking in persons.

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

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

- ii. Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. Part 180, “OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 2 C.F.R. Part 1326, “Nonprocurement Debarment and Suspension.”
- c. Provisions applicable to any non-Federal entity.
  - 1. You must inform us immediately of any information you receive from any source alleging a violation of a prohibition in paragraph a.1 of this award term.
  - 2. Our right to terminate unilaterally that is described in paragraph a.2 or b of this section:
    - i. Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and
    - ii. Is in addition to all other remedies for noncompliance that are available to us under this award.
  - 3. You must include the requirements of paragraph a.1 of this award term in any subaward you make to a private entity.
- d. Definitions. For purposes of this award term:
  - 1. Employee means either:
    - i. An individual employed by you or a subrecipient who is engaged in the performance of the project or program under this award; or
    - ii. Another person engaged in the performance of the project or program under this award and not compensated by you including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.
  - 2. Forced labor means: labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.
  - 3. Private entity:
    - i. Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. 175.25;
    - ii. Includes: (A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. 175.25(b); and (B) A for-profit organization.
  - 4. “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. 7102).

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

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

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



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

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

I. Reporting Subawards and Executive Compensation.

- a. Reporting of first-tier subawards.
  1. Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (*see* definitions in paragraph e. of this award term).
  2. Where and when to report.
    - i. You must report each obligating action described in paragraph a.1 of this award term to the FFATA Subaward Reporting System ([FSRS](#)).<sup>22</sup>
    - ii. For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)
  3. What to report. You must report the information about each obligating action that the submission instructions posted at the [FSRS](#) website specify.
- b. Reporting Total Compensation of Non-Federal Entity Executives.
  1. Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—
    - i. the total Federal funding authorized to date under this award is \$25,000 or more;
    - ii. in the preceding fiscal year, you received—
      - (A) 80 percent or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
      - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and

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

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

- iii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the [U.S. Security and Exchange Commission](#) total compensation filings.<sup>23</sup>)
  - 2. Where and when to report. You must report executive total compensation described in paragraph b.1 of this award term:
    - i. As part of your registration profile in the System for Award Management ([SAM](#)),<sup>24</sup> and
    - ii. By the end of the month following the month in which this award is made, and annually thereafter.
- c. Reporting of Total Compensation of Subrecipient Executives.
  - 1. Applicability and what to report. Unless you are exempt as provided in paragraph d. of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
    - i. In the subrecipient's preceding fiscal year, the subrecipient received—
      - (A) 80 percent or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. 170.320 (and subawards); and
      - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
    - ii. The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, *see* the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/execomp.htm>.)
  - 2. Where and when to report. You must report subrecipient executive total compensation described in paragraph c.1. of this award term:
    - i. To the non-Federal entity.
    - ii. By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (i.e., between October 1 and 31), you must report any required compensation information of the subrecipient by November 30 of that year.
- d. Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report: i. Subawards, and ii. The total compensation of the five most highly compensated executives of any subrecipient.
- e. Definitions. For purposes of this award term:
  - 1. Entity means all of the following, as defined in 2 C.F.R. part 25:
    - i. A Governmental organization, which is a State, local government, or Indian tribe;
    - ii. A foreign public entity;
    - iii. A domestic or foreign nonprofit organization;
    - iv. A domestic or foreign for-profit organization;

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

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

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

3. Definitions for purposes of this award term:

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

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

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

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

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

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

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

## **R. CERTIFICATIONS**

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

**MDEQ STANDARD SUB-AWARD TERMS AND CONDITIONS**  
(V07152022)

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## **STANDARD SUB-AWARD TERMS AND CONDITIONS**

### **1. APPLICABLE LAW**

The Agreement shall be governed by and construed in accordance with the laws of the State of Mississippi and applicable federal law excluding, its conflicts of laws provisions, and any litigation with respect thereto shall be brought in the courts of the State. SUB-RECIPIENT shall comply with applicable federal, state, and local laws and regulations.

### **2. AVAILABILITY OF FUNDS**

It is expressly understood and agreed that the obligation of MDEQ to proceed under this Agreement is conditioned upon the availability of the funds from state, federal, and/or other funding sources. If the funds anticipated for the continuing fulfillment of the Agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the SUB-RECIPIENT, to terminate this Agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

### **3. REPRESENTATION REGARDING CONTINGENT FEES**

SUB-RECIPIENT represents that it has not retained a person to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee.

### **4. REPRESENTATION REGARDING GRATUITIES**

SUB-RECIPIENT represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the *Mississippi Public Procurement Review Board Office of Personal Service Contract Review Rules and Regulations* and Section 9.105 (Gratuities) of the Mississippi Procurement Manual.

### **5. PROCUREMENT REGULATIONS**

The SUB-RECIPIENT shall comply with current federal law, rules and regulations, and, in particular, 2 C.F.R. §§ 200.318, General Procurement Standards, through 200.327, Contract Provisions, in any procurement required to complete the tasks in the Scope of Work. The SUB-RECIPIENT shall also ensure that every purchase order or contract includes any clauses required by 2 C.F.R. § 200.327 Contract provisions, as identified in Appendix II to 2 C.F.R. Part 200.

## 6. SUB-AWARDS

If the SUB-RECIPIENT is authorized to make a sub-award, the SUB-RECIPIENT must include and incorporate the terms and conditions of the Federal Award, and any Special Award Conditions, the terms and conditions of this Agreement and any attachments, in all lower tier sub-awards. Further, the SUB-RECIPIENT, who makes a sub-award, must follow and carry out all the responsibilities of a pass-through entity described at 2 C.F.R. Part 200.

## 7. COMPLIANCE WITH LAWS

The SUB-RECIPIENT understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful, and the SUB-RECIPIENT agrees during the Period of Performance of the Agreement that the SUB-RECIPIENT will strictly adhere to this policy in its employment practices and work performance under this Agreement. The SUB-RECIPIENT shall comply with, and all activities under this Agreement shall be subject to, all applicable federal, state, and local laws and regulations, as now existing and as may be amended or modified.

## 8. STOP WORK ORDER

- A. *Order to Stop Work:* MDEQ may, by written order to SUB-RECIPIENT at any time and without notice to any surety, require SUB-RECIPIENT to stop all or any part of the work called for by this Agreement. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to SUB-RECIPIENT, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, SUB-RECIPIENT shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the Parties shall have agreed, MDEQ shall either:
- i. cancel the stop work order; or,
  - ii. terminate the work covered by such order as provided in the Termination for Default clause or the Termination for Convenience clause of this Agreement.
- B. *Cancellation or Expiration of the Order:* If a stop work order issued under this clause is canceled at any time during the period specified in the order or if the period of the order or any extension thereof expires, SUB-RECIPIENT shall have the right to resume work. An appropriate adjustment may be made in the Period of Performance or Maximum Amount, or both, and the Agreement shall be modified in writing accordingly if:



- i. The stop work order results in an increase in the time required for, or in SUB-RECIPIENT's cost properly allocable to, the performance of any part of this Agreement; and
  - ii. SUB-RECIPIENT provides a written claim for such an adjustment within thirty (30) days after the end of the period of work stoppage; provided that MDEQ decides that the facts justify such action and any such claim asserted may be received and acted upon at any time prior to final payment under this Agreement.
- C. *Termination of Stopped Work*: If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order may be allowed by adjustment or otherwise.

## 9. E-PAYMENT

SUB-RECIPIENT agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305.

## 10. E-VERIFICATION

If applicable, SUB-RECIPIENT represents and certifies that it will ensure its compliance with the Mississippi Employment Protection Act of 2008 and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1, *et seq.* The term "employee" as used herein means any person that is hired to perform work within the State. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. SUB-RECIPIENT agrees to maintain records of such compliance. Upon request of the State of Mississippi and after approval of the Social Security Administration or Department of Homeland Security, when required, SUB-RECIPIENT agrees to provide a copy of each such verification. SUB-RECIPIENT further represents and certifies that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws.

## 11. TRANSPARENCY

This Agreement, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983" and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* and Miss. Code Ann. § 79-23-1. In addition, this Agreement is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, *et seq.* Unless exempted from disclosure due to a court-issued protective order, a copy of this executed Agreement may be posted to the Department of Finance and Administration's independent agency Agreement website for public access at

<http://www.transparency.mississippi.gov>. Information identified by SUB-RECIPIENT as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted.

## 12. PAYMODE

Payments by state agencies using the statewide accounting system shall be made and remittance information provided electronically as directed by MDEQ. These payments shall be deposited into the bank account of SUB-RECIPIENT's choice. MDEQ may, at its sole discretion, require the SUB-RECIPIENT to submit invoices and supporting documentation electronically at any time during the Period of Performance of this Agreement. The SUB-RECIPIENT understands and agrees that MDEQ is exempt from the payment of taxes. All payments shall be in United States currency.

## 13. TERMINATION

The Agreement may be terminated as follows:

### A. TERMINATION FOR CONVENIENCE

- i. *Termination.* The MDEQ may, when the interests of the State so require, terminate this Agreement in whole or in part, for the convenience of the State. MDEQ shall give written notice of the termination to SUB-RECIPIENT specifying the part of the Agreement terminated and when termination becomes effective.
- ii. *SUB-RECIPIENT's Obligations.* SUB-RECIPIENT shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination SUB-RECIPIENT will stop work to the extent specified. SUB-RECIPIENT shall also terminate outstanding orders and contracts as they relate to the terminated work. SUB-RECIPIENT shall settle the liabilities and claims arising out of the termination of contracts and orders connected with the terminated work. MDEQ may direct SUB-RECIPIENT to assign SUB-RECIPIENT's right, title, and interest under terminated orders or contracts to MDEQ. SUB-RECIPIENT must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

### B. TERMINATION FOR DEFAULT

If SUB-RECIPIENT refuses or fails to perform any of the provisions of this Agreement with such diligence as will ensure its completion within the time specified in this Agreement or any extension thereof or otherwise fails to satisfy the Agreement provisions or commits any other substantial breach of this Agreement, MDEQ may notify SUB-RECIPIENT in writing of the delay or nonperformance, and if not cured in ten (10) days or any longer time specified in writing by MDEQ, MDEQ may terminate SUB-RECIPIENT's right to proceed with the Agreement or such part of the Agreement as to which there has been delay or a failure to properly perform. In the event of termination in

whole or in part, MDEQ may procure similar supplies or services in a manner and upon terms deemed appropriate by MDEQ. SUB-RECIPIENT shall continue performance of the Agreement to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

Notwithstanding termination of the Agreement and subject to any directions by MDEQ, SUB-RECIPIENT shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUB-RECIPIENT in which the State has an interest.

### **C. TERMINATION UPON BANKRUPTCY**

This Agreement may be terminated in whole or in part by MDEQ upon written notice to SUB-RECIPIENT, if SUB-RECIPIENT should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by SUB-RECIPIENT of an assignment for the benefit of its creditors. In the event of such termination, SUB-RECIPIENT shall be entitled to recover just and equitable compensation for satisfactory work performed under this Agreement, but in no case shall said compensation exceed the total Maximum Amount.

## **14. DISPUTES**

Before pleading to any judicial system at any level, the SUB-RECIPIENT must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the SUB-RECIPIENT within fourteen (14) days after receipt of information requested by MDEQ or the Executive Director. If the decision of the Executive Director does not resolve the matter, successive administrative remedies may, at the SUB-RECIPIENT's option, include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Miss. Code Ann. Section 49-17-35 and -41. In the alternative, at the SUB-RECIPIENT's option, the decision of the Executive Director may be deemed the final agency action on the complaint. Appeals from the decision of the Executive Director or the Commission shall follow procedures outlined in Miss. Code Ann. Section 49-17-41.

## **15. ANTI-ASSIGNMENT/CONTRACTING**

SUB-RECIPIENT acknowledges that it was selected by MDEQ to perform the Work required hereunder based, in part, upon SUB-RECIPIENT's special skills and expertise. Unless contractors are otherwise identified and approved in accordance with the "Contracts" provision of this Agreement, SUB-RECIPIENT shall not assign, contract, or otherwise transfer this Agreement, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the Maximum Amount agreed upon in this Agreement, nor create any contractual relationship between MDEQ and any Contracted Parties. Contracts shall be subject to the terms and conditions of this Agreement and to any conditions of approval that MDEQ may deem

necessary. Subject to the foregoing, this Agreement shall be binding upon the respective successors and assigns of the parties.

## **16. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT**

The SUB-RECIPIENT certifies that (a) it is a Mississippi governmental entity; (b) entry into and performance under this Agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (c) notwithstanding any other provision of this Agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this Agreement.

## **17. DEBARMENT AND SUSPENSION**

SUB-RECIPIENT certifies to the best of its knowledge and belief, that it, and its Contracted Parties:

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

## **18. CONFIDENTIALITY**

- A. *Information Designated by Contractor as Confidential.* Any disclosure of those materials, documents, data and other information, which SUB-RECIPIENT has designated in writing as proprietary and confidential shall be subject to the provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1. As provided in this Agreement, the personal or professional services to be provided, the price to be paid, and the term of the Agreement shall not be deemed to be a trade secret or confidential commercial or financial information.

- B. *Public Records.* Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this Agreement and designated by the SUB-RECIPIENT in writing as trade secrets or other proprietary confidential information, MDEQ shall follow provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to SUB-RECIPIENT for disclosure of information required by court order or required by law.
- C. *Disclosure of Confidential Information.* In the event that either party to this Agreement receives notice that a third party requests divulgence of Confidential Information or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of Confidential Information or otherwise protected information, that party shall promptly inform the other party and thereafter respond in conformity with such subpoena to the extent mandated by law. This section shall survive the termination or completion of this Agreement. The parties agree that this section is subject to and superseded by Mississippi Code Annotated §§ 25-61-1 *et seq.*
- D. *Wrongful Disclosure of Confidential Information.* Any liability resulting from the wrongful disclosure of Confidential Information on the part of SUB-RECIPIENT or its contractor shall rest with SUB-RECIPIENT. Disclosure of any Confidential Information by SUB-RECIPIENT or its subcontractor without the express written approval of MDEQ may result in the immediate termination of this Agreement.
- E. *Exceptions to Confidential Information.* SUB-RECIPIENT and the State shall not be obligated to treat as confidential and proprietary any information disclosed by the other party (“**Disclosing Party**”) which is:
- (1) Rightfully known to the recipient prior to negotiations leading to this Agreement, other than information obtained in confidence under prior engagements;
  - (2) Generally known or easily ascertainable by nonparties to this Agreement;
  - (3) Released by the Disclosing Party to any other person, firm, or entity (including governmental agencies or bureaus) without restriction;
  - (4) Independently developed by the recipient without any reliance on confidential information;
  - (5) Part or later becomes part of the public domain or may be lawfully obtained by the State or SUB-RECIPIENT from any nonparty; or
  - (6) Disclosed with the Disclosing Party’s prior written consent; or

(7) As otherwise required to be disclosed by law.

## **19. FAILURE TO ENFORCE**

Failure by MDEQ, at any time, to enforce the provisions of this Agreement shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the validity of this Agreement or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

## **20. FORCE MAJEURE**

Each Party shall be excused from performance for any period and to the extent that it is prevented from performing any obligation or service, in whole or in part, as a result of causes beyond the reasonable control and without the fault or negligence of such party and/or its contractors. Such acts shall include without limitation acts of God, strikes, lockouts, riots, acts of war, epidemics, governmental regulations superimposed after the fact, fire, earthquakes, floods, or other natural disasters (“force majeure events”). When such a cause arises, SUB-RECIPIENT shall notify MDEQ immediately in writing of the cause of its inability to perform, how it affects its performance, and the anticipated duration of the inability to perform. Delays in delivery or in meeting completion dates due to force majeure events shall automatically extend such dates for a period equal to the duration of the delay caused by such events, unless MDEQ determines it to be in its best interest to terminate the Agreement.

## **21. INDEMNIFICATION**

The SUB-RECIPIENT agrees to maintain responsibility for the Project and agrees to provide proper operation and maintenance of all facilities for the life of the Project. SUB-RECIPIENT’s tort liability, as an entity of the State of Mississippi, is determined and controlled in accordance with Mississippi Code Annotated §§ 11-46-1 *et seq.*, including all defenses and exceptions contained therein. Nothing in this Agreement shall have the effect of changing or altering this liability or of eliminating any defense available to the State under statute.

## **22. SUB-RECIPIENT STATUS**

The SUB-RECIPIENT shall, during the entire Period of Performance of this Agreement, be construed to be an independent SUB-RECIPIENT. Nothing in this Agreement is intended to nor shall be construed to create an employer-employee relationship or a joint venture relationship.

The SUB-RECIPIENT represents that it is qualified to perform the duties to be performed under this Agreement and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this Agreement. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by the SUB-RECIPIENT to perform the services hereunder shall be an employee or independent contractor of the SUB-RECIPIENT, who shall have the sole right to hire and discharge its employees and/or independent contractors under this Agreement.

The SUB-RECIPIENT shall pay, when due, all salaries and wages of its employees and accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required. This provision is solely for the benefit of MDEQ, and nothing herein shall be construed to create or impose any contractual or agency relationship between MDEQ and SUB-RECIPIENT'S contractors, subcontractors, employees or agents.

### **23. INSURANCE**

SUB-RECIPIENT is self-insured for liability under the Mississippi Tort Claims Act, Miss. Code Ann. § 11-46-1, et seq. The SUB-RECIPIENT must also maintain appropriate insurances to cover property, this includes equipment purchased under this Agreement. Should SUB-RECIPIENT procure additional insurance against liability for injury to persons or property, it should have MDEQ named as additional insureds on all such policies for any work performed by SUB-RECIPIENT pursuant to this Agreement and provide MDEQ with appropriate Certificates of Insurance and endorsements reflecting such additions within thirty (30) days after this Agreement is fully-executed.

Notwithstanding this Section, the Sub-recipient and its Contracted Parties agree to and shall maintain insurance that is required by applicable state, federal, and local laws and regulations.

### **24. ENTIRE AGREEMENT**

This Agreement, including all attachments, represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations or agreements, irrespective of whether written or oral. This Agreement may be altered, amended, or modified only by a written document executed by MDEQ and the SUB-RECIPIENT. SUB-RECIPIENT acknowledges that it has thoroughly read this Agreement and all its attachments and has had the opportunity to receive competent advice and counsel necessary for it to form a full and complete understanding of all rights and obligations herein.

### **25. AMENDMENTS OR MODIFICATION**

This Agreement may only be amended, modified, or supplemented by written agreement signed by the Parties hereto.

### **26. ORAL STATEMENTS**

No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in this Agreement. All modifications to the Agreement must be made in writing by the MDEQ and agreed to by SUB-RECIPIENT.

## 27. OWNERSHIP OF DOCUMENTS AND WORK PAPERS

MDEQ shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project which is the subject of this Agreement, except for SUB-RECIPIENT's internal administrative and quality assurance files and internal project correspondence. SUB-RECIPIENT shall deliver such documents and work papers to MDEQ. The foregoing notwithstanding, SUB-RECIPIENT shall be entitled to retain a set of such work papers for its files.

## 28. RECORD RETENTION AND ACCESS TO RECORDS

Provided SUB-RECIPIENT is given reasonable advance written notice and such inspection is made during normal business hours of SUB-RECIPIENT, Treasury, the Government Accountability Office, MDEQ, the State or any duly authorized representatives shall have unimpeded, prompt access to any of SUB-RECIPIENT's books, documents, papers, and other records which are maintained or produced as a result of the Project for the purpose of making audits, investigations, examinations, excerpts, transcriptions, and copies of such documents. This right also includes timely and reasonable access to the SUB-RECIPIENT's personnel for the purpose of interview and discussion related to such documents. All records related to this Agreement shall be retained by SUB-RECIPIENT for a minimum of ten (10) years after final payment is made under this Agreement and all pending matters are closed; however, if any audit, litigation or other action arising out of or related in any way to this Project is commenced before the end of the ten (10) year period, the records shall be retained for one (1) year after all issues arising out of the action are finally resolved or until the end of the ten (10) year period, whichever is later.

SUB-RECIPIENT is not required to retain the above-mentioned records for the ten-year period prescribed in this Section and the "Right to Audit" provision only if all of the following conditions are satisfied:

- A. SUB-RECIPIENT has provided all of the documents described above and in the "Right to Audit" provision to MDEQ prior to the expiration of the ten (10) year retention period and a certification stating the same is simultaneously provided in writing to MDEQ;
- B. no audit, litigation or other action arising out of or related in any way to this Project is commenced before SUB-RECIPIENT provides the records and corresponding certification to MDEQ, in which case, SUB-RECIPIENT shall retain the records until all issues arising out of the action are finally resolved; and
- C. SUB-RECIPIENT provides MDEQ a minimum of thirty (30) days' written notice before providing the above-mentioned records and corresponding certification.

## 29. RIGHT TO AUDIT



SUB-RECIPIENT shall maintain such financial records and other records as may be prescribed by the MDEQ or by applicable federal and state laws, rules, and regulations. SUB-RECIPIENT shall retain these records for a period of ten years after final payment. These records shall be made available during the term of the Agreement and the subsequent ten-year period for examination, transcription, and audit by MDEQ, the Mississippi State Auditor's Office, its designees, or other authorized bodies, including the Office of Inspector General and Treasury.

### **30. RIGHT TO INSPECT WORK; ACCESS**

Treasury, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants shall have access and the right to conduct announced and unannounced onsite and offsite physical visits to inspect all Work hereunder. Notwithstanding any review or inspection by Treasury, the Government Accountability Office, MDEQ and their representatives, invitees, and consultants, SUB-RECIPIENT shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this Agreement solely by virtue of such inspection or review of the Work. SUB-RECIPIENT shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUB-RECIPIENT's performance of the Work.

### **31. SEVERABILITY**

If any part of this Agreement is declared to be invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of the Agreement that can be given effect without the invalid or unenforceable provision, and to this end the provisions hereof are severable. In such event, the Parties shall amend the Agreement as necessary to reflect the original intent of the Parties and to bring any invalid or unenforceable provisions in compliance with applicable law.

### **32. THIRD PARTY ACTION NOTIFICATION**

SUB-RECIPIENT shall give the MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against SUB-RECIPIENT by any entity that may result in litigation related in any way to this Agreement.

### **33. UNSATISFACTORY WORK**

If, at any time during Period of Performance, the service performed or work done by SUB-RECIPIENT is considered by MDEQ to be unsatisfactory, MDEQ shall notify the SUB-RECIPIENT of such and the SUB-RECIPIENT will be required to correct such service or work. If, at any time during Period of Performance, the service performed or work done by SUB-RECIPIENT is considered by MDEQ to create a condition that threatens the health, safety, or welfare of the environment, citizens and/or employees of the State of Mississippi, SUB-RECIPIENT shall, on being notified by MDEQ, immediately correct such deficient service or work. In the event SUB-RECIPIENT fails, after notice, to correct the deficient

service or work immediately, MDEQ shall have the right to order the correction of the deficiency by separate Agreement or with its own resources at the expense of SUB-RECIPIENT.

### **34. WAIVER**

No delay or omission by either Party to this Agreement in exercising any right, power, or remedy hereunder or otherwise afforded by Agreement, at law, or in equity shall constitute an acquiescence therein, impair any other right, power or remedy hereunder or otherwise afforded by any means, or operate as a waiver of such right, power, or remedy. No waiver by either Party to this Agreement shall be valid unless set forth in writing by the Party making said waiver. No waiver of or modification to any term or condition of this Agreement will void, waive, or change any other term or condition. No waiver by one Party to this Agreement of a default by the other Party will imply, be construed as or require waiver of future or other defaults.

### **35. COMPLIANCE WITH MISS. CODE ANN. § 31-5-37**

If applicable, SUB-RECIPIENT shall ensure that Contracted Parties and bidders solicited for contract awards pursuant to this Agreement comply with the requirements of Miss. Code. Ann. § 31-5-37. SUB-RECIPIENT shall require all bidders for any contract of Five Thousand Dollars (\$5,000.00) or more procured or to be procured with funds received pursuant to this Agreement to submit a certification with their bid that said bidder will comply with the provisions of Miss. Code. Ann. § 31-5-37. In addition, within seven (7) days of any such contract award procured or to be procured with funds received pursuant to this Agreement, SUB-RECIPIENT shall require the Contracted Party to submit to both SUB-RECIPIENT and the Mississippi Department of Employment Security (“MDES”) an employment plan which conforms to the requirements contained in Miss. Code. Ann. § 31-5-37(2).

From the date written notice of any such contract award is received and until ten (10) business days after the receipt of the employment plan by MDES, the Contracted Party and any subcontractors shall not hire any personnel to fill vacant positions for the project except residents of the State of Mississippi who are to be verified by MDES and/or those qualified individuals who are submitted by MDES. However, the Contracting Party or contractor is authorized to employ Mississippi residents to begin work immediately if such persons are verified by MDES after employment by the Contracting Party or contractor. SUB-RECIPIENT shall vacate the contract award in the event the Contracting Party fails to comply with the provisions of Miss. Code Ann. § 31-5-37.

### **36. CONFLICT OF INTEREST**

The SUB-RECIPIENT shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients or otherwise affecting this Agreement in any way. If any such conflict occurs before it is discovered, the SUB-RECIPIENT shall notify MDEQ of such conflict within five (5) working days of such discovery. If such conflict cannot be resolved to MDEQ’s satisfaction, MDEQ reserves the right to terminate this Agreement per the “Termination for Convenience” clause.

**37. SUCESSORS AND ASSIGNS**

This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors and permitted assigns.

**38. NO THIRD-PARTY BENEFICIARIES**

This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns, and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

**39. EVALUATION**

SUB-RECIPIENT agrees to cooperate with MDEQ by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and this Agreement for a period of ten (10) years after the date on which the Final Reports are provided.

**40. VENUE**

Venue for the resolution of any dispute, according to Disputes Clause of this Agreement, and any subsequent litigation shall be in Jackson, Hinds County, Mississippi.

**41. HEADINGS**

The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

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

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

(A) Contracts for more than the simplified acquisition threshold currently set at \$150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 USC 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) All contracts in excess of \$10,000 must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be effected and the basis for settlement.

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

(D) Davis-Bacon Act, as amended (40 USC 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 USC. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland “Anti-Kickback” Act (40 USC. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 USC 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment

of mechanics or laborers must include a provision for compliance with 40 USC 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 USC 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 USC 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of “funding agreement” under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 USC 7401-7671q.) and the Federal Water Pollution Control Act (33 USC 1251-1387), as amended—Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 USC 7401-7671q) and the Federal Water Pollution Control Act as amended (33 USC 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

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

(J) See §200.322 Procurement of recovered materials.

## PROCUREMENT OF RECOVERED MATERIALS

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

2 CFR §200.322 requires the Project Owner and its contractors to comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

40 CFR §247.12 designates the following Construction Products:

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

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

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

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

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

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

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

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

(a) The prime contractor must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.

(b) Affirmative steps must include:

- (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
- (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and,
- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce.

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

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

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

- A written certification that no subcontracts will be issued.
- OR -
- The Subcontractor Listing Form detailing all subcontractors from whom quotes were received including name, contact person, address, phone, and status (MBE, WBE or Non).

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



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

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

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

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

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

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

## SAMPLE LETTER FROM CONTRACTOR TO MBE/WBE FIRMS

### (CONTRACTOR'S LETTERHEAD)

[DATE]

[MBE/WBE COMPANY NAME]

[ADDRESS]

[CITY, STATE ZIP]

RE: [NAME OF PROJECT]

Dear [MBE/WBE FIRM]:

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

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

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

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

Sincerely,

[NAME OF REPRESENTATIVE]

[NAME OF COMPANY]

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

**41 CFR §60-1.4(b) EQUAL OPPORTUNITY CLAUSE**  
*(for Federally Assisted Construction Contracts)*

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

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

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

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

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

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

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

(7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled,

terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

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

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

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

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

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

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

<b>Time-tables</b>	<b>Covered Area</b> (Geographical area where the contract is to be performed)	<b>Goals for minority participation for each trade</b>	<b>Goals for female participation in each trade</b>
Until Further Notice	George County, MS	26.4%	6.9% for all Covered Areas
	Hancock County, MS	19.2 %	
	Harrison County, MS	19.2 %	
	Jackson County, MS	16.9 %	
	Pearl River County, MS	27.7 %	
	Stone County, MS	19.2 %	

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

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

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

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

1. As used in these specifications:

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

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

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

d. "Minority" includes:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

# MISSISSIPPI FIRST ACT

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## TITLE 31. PUBLIC BUSINESS, BONDS AND OBLIGATIONS CHAPTER 5. PUBLIC WORKS CONTRACTS IN GENERAL

Miss. Code Ann. § 31-5-37

§ 31-5-37. Contractors submitting bids for public works projects utilizing specified funding required to submit employment plan with bid; contents of plan; review of individuals for vacant positions

(1) All public works projects utilizing funds received by state or local governmental entities resulting from a federally declared disaster or a spill of national significance, including damages, penalties, fines or supplemental projects paid or financed by responsible parties pursuant to a court order, negotiated settlement, or other instrument, including under any law distributing such fines and penalties including the federal Resources and Ecosystems Sustainability, Tourist Opportunities and Revived Economy of the Gulf Coast Act of 2011 (R.E.S.T.O.R.E.), the Oil Pollution Act of 1990 or the Federal Water Pollution Control Act or similar legislation, shall be subject to the hiring policies established by this section.

(2) Contractors submitting bids for public works projects that involve an expenditure of Five Thousand Dollars (\$ 5,000.00) or more and that are financed, in whole or in part, through the use of funds described in subsection (1) of this section shall submit with their bid a certification that they will comply with the provisions of this section if they are awarded a contract. The contractor shall submit to the agency or governing authority that solicited the bid and the Mississippi Department of Employment Security an employment plan within seven (7) days after the award of the contract which shall include the following:

- (a) The types of jobs involved in the public works project;
- (b) The skill level of the jobs involved in the project;
- (c) Wage information on the jobs involved in the project;
- (d) The number of vacant positions that the contractor and any subcontractor needs to fill;
- (e) How the contractor and any subcontractor will recruit, low-wage and unemployed individuals for job vacancies;
- (f) Such other information as may be required by the Mississippi Department of Employment Security; and
- (g) Proof of registration with the Mississippi Department of Employment Security for taxation in accordance with the provisions of Title 71.

(3) From the date written notice of the contract award is received and until ten (10) business days after the receipt of the employment plan by the Mississippi Department of Employment Security, the contractor and any subcontractor shall not hire any personnel to fill vacant positions necessary for the public works project except residents of the State of Mississippi who are to be verified by the Mississippi Department of Employment Security and/or those qualified individuals who are submitted by the Mississippi Department of

Employment Security. For purposes of this subsection, the contractor or subcontractor is authorized to employ Mississippi residents to begin work immediately, and such persons are to be verified by the Mississippi Department of Employment Security after employment by the contractor or subcontractor. During the ten-day period the Mississippi Department of Employment Security shall submit qualified individuals to the contractor to consider for the vacant positions. The contractor shall review the individuals submitted by the department before hiring individuals who are not submitted by the department. The contract award shall be vacated if the contractor fails to comply with the provisions of this subsection.

# MISSISSIPPI EMPLOYMENT PROTECTION ACT OF 2008

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

Miss. Code Ann. § 71-11-1

### § 71-11-1. Legislative findings

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

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

Miss. Code Ann. § 71-11-3

### § 71-11-3. Definitions; verification of work eligibility status of new hires; employer liability; exemptions; penalties for violation.

(1) This chapter shall be known as the "Mississippi Employment Protection Act."

(2) The provisions of this section shall be enforced without regard to race, gender, religion, ethnicity or national origin.

(3) For the purpose of this section only, the following words shall have the meanings ascribed herein unless the content clearly states otherwise:

(a) "Employer" is any person or business that is required by federal or state law to issue a United States Internal Revenue Service Form W-2 or Form 1099 to report income paid to employed or contracted personnel in Mississippi.

(b) "Employee" is any person or entity that is hired to perform work within the State of Mississippi and to whom a United States Internal Revenue Service Form W-2 or Form 1099 must be issued.

(c) "Third-party employer" is any person or company that provides workers for another person or company. This includes, but is not limited to, leasing companies and contract employers.

(d) "Status verification system" means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996,

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

(e) "Unauthorized alien" means an alien as defined in Section 1324a(h)(3) of Title 8 of the United States Code.

(f) "Public employer" means every department, agency or instrumentality of the state or a political subdivision of the state.

(g) "Subcontractor" means a subcontractor, contract employee, staffing agency or any contractor regardless of its tier.

(4) (a) Employers in the State of Mississippi shall only hire employees who are legal citizens of the United States of America or are legal aliens. For purposes of this section, a legal alien is an individual who was lawfully present in the United States at the time of employment and for the duration of employment, or was permanently residing in the United States under color of law at the time of employment and for the duration of employment.

(b) (i) Every employer shall register with and utilize the status verification system to verify the federal employment authorization status of all newly hired employees.

(ii) No contractor or subcontractor shall hire any employee unless the contractor or subcontractor registers and participates in the status verification system to verify the work eligibility status of all newly hired employees.

(iii) No contractor or subcontractor who enters into a contract with a public employer shall enter into such a contract or subcontract unless the contractor or subcontractor registers and participates in the status verification system to verify information of all newly hired employees.

(c) The provision of this section shall not apply to any contracts entered into on or before July 1, 2008.

(d) It shall be a discriminatory practice for an employer to discharge an employee working in Mississippi who is a United States citizen or permanent resident alien while retaining an employee who the employing entity knows, or reasonably should have known, is an unauthorized alien hired after July 1, 2008, and who is working in Mississippi in a job category that requires equal skill, effort and responsibility, and which is performed under similar working conditions, as defined by 29 USC, Section 206(d) (1), as the job category held by the discharged employee.

(e) An employing entity which, on the date of the discharge in question, was enrolled in and used the status verification system to verify the employment eligibility of its employees in Mississippi hired after July 1, 2008, shall be exempt from liability, investigation or suit arising from any action under this section.

(f) No cause of action for a violation of this section shall lie under any other Mississippi law but shall arise solely from the provisions of this section.

(5) Any employer that complies with the requirements of this section shall be held harmless by the Mississippi Department of Employment Security, provided the employer is not directly involved in the creation of any false documents, and provided that the employer did

not knowingly and willfully accept false documents from the employee.

(6) (a) All third-party employers that conduct business in Mississippi shall register to do business in Mississippi with the Mississippi Department of Employment Security before placing employees into the workforce in Mississippi.

(b) Third-party employers shall provide proof of registration and any participation in the status verification system to any Mississippi employer with whom they do business.

(7) (a) State of Mississippi agencies and political subdivisions, public contractors and public subcontractors and private employers with two hundred fifty (250) or more employees shall meet verification requirements not later than July 1, 2008.

(b) Employers with at least one hundred (100) but less than two hundred fifty (250) employees shall meet verification requirements not later than July 1, 2009.

(c) Employers with at least thirty (30) but less than one hundred (100) employees shall meet verification requirements not later than July 1, 2010.

(d) All employers shall meet verification requirements not later than July 1, 2011.

(e) (i) Any employer violating the provisions of this section shall be subject to the cancellation of any state or public contract, resulting in ineligibility for any state or public contract for up to three (3) years, the loss of any license, permit, certificate or other document granted to the employer by any agency, department or government entity in the State of Mississippi for the right to do business in Mississippi for up to one (1) year, or both.

(ii) The contractor or employer shall be liable for any additional costs incurred by the agencies and institutions of the State of Mississippi, or any of its political subdivisions, because of the cancellation of the contract or the loss of any license or permit to do business in the state.

(iii) Any person or entity penalized under this section shall have the right to appeal to the appropriate entity bringing charges or to the circuit court of competent jurisdiction.

(f) The Department of Employment Security, State Tax Commission, Secretary of State, Department of Human Services and the Attorney General shall have the authority to seek penalties under this section and to bring charges for noncompliance against any employer or employee.

(8) (a) There shall be no liability under this section in the following circumstances:

(i) An employer who hires an employee through a state or federal work program that requires verification of the employee's social security number and provides for verification of the employee's lawful presence in the United States in an employment-authorized immigration status;

(ii) Any candidate for employment referred by the Mississippi Department of Employment Security, if the Mississippi Department of Employment Security has verified the social security number and provides for verification of the candidate's lawful presence in the United States in an employment-authorized immigration status; or

(iii) Individual homeowners who hire workers on their private property for noncommercial purposes, unless required by federal law to do so.

(b) (i) Compliance with the sections of this statute shall not exempt the employer from regulations and requirements related to any federal laws or procedures related to employers.

(ii) This section shall not be construed as an attempt to preempt federal law.

(c) (i) It shall be a felony for any person to accept or perform employment for compensation knowing or in reckless disregard that the person is an unauthorized alien with respect to employment during the period in which the unauthorized employment occurred. Upon conviction, a violator shall be subject to imprisonment in the custody of the Department of Corrections for not less than one (1) year nor more than five (5) years, a fine of not less than One Thousand Dollars (\$ 1,000.00) nor more than Ten Thousand Dollars (\$ 10,000.00), or both.

(ii) For purposes of determining bail for persons who are charged under this section, it shall be a rebuttable presumption that a defendant who has entered and remains in the United States unlawfully is deemed at risk of flight for purposes of bail determination.



**EXAMPLE OF E-VERIFY AND MISSISSIPPI FIRST ACT  
CERTIFICATION LETTER**

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Date \_\_\_\_\_

TO: Project Owner  
P. O. Box 12345  
Anytown, MS 12345

RE: Compliance with Mississippi Employment Protection Act of 2008 and the United States  
Illegal Immigration Reform and Immigration Responsibility Act of 1996 (E-Verify);  
Compliance with the Mississippi First Act

Project Name \_\_\_\_\_  
Project Number \_\_\_\_\_

The purpose of this letter is to inform you that \_\_\_\_\_ (Contractor and/or Subcontractor's  
Company Name \_\_\_\_\_) is in compliance with the Mississippi Employment Protection Act of 2008  
as described in Senate Bill 2988 of the 2008 Regular Session of the Mississippi Legislature and  
the United States Illegal Immigration Reform and Immigration Responsibility Act of 1996. Our  
E-verify registration number is \_\_\_\_\_.

If awarded a contract for this project, we certify that we will comply with the provisions of the  
Mississippi First Act (Miss. Code Annotated §31-5-37).

Attached, for your review, is a copy of the documentation showing our companies  
participation in the E-Verify program and upon request, copies of employee's certifications will  
be provided as they are kept in the employee's personnel file.

Our company understands if compliance with the above-mentioned Acts are not followed  
consequences may occur as contemplated in those Acts.

Should you have any questions, please do not hesitate to contact me.

Sincerely,

President of Company

**If you are not already enrolled you may enroll by going to the E-Verify Web site at  
[www.uscis.gov/e-verify](http://www.uscis.gov/e-verify) follow the directions and tutorial.**

## SUBCONTRACTOR LISTING FORM (v.10.22.2020)

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

<b>Subcontractor Name and Contact Person</b>	<b>Subcontractor Address and Phone Number</b>	<b>Subcontractor Sam.gov UEI #</b>	<b>MBE (Y/N)</b>	<b>WBE (Y/N)</b>	<b>On Site during this period (Y/N)</b>

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

**SECTION 00 52 15**

**AGREEMENT**

This Agreement (hereinafter "Agreement" or "Contract") is entered by and between the Mississippi Department of Marine Resources (hereinafter called "MDMR" or "Agency") and \_\_\_\_\_ (hereinafter called "Contractor").

MDMR and Contractor, in consideration of the mutual covenants hereinafter set forth, agree as follows:

**ARTICLE 1 - WORK**

Contractor shall complete all work as specified or indicated in the Contract Documents as defined in ARTICLE 7 below ("Work"). Contractor shall furnish all labor, materials, equipment, appliances, services, tools, bonds, insurance, taxes and other things necessary for the complete and timely performance of the Work. The Work is generally described as follows:

Deer Island Chenier and Beneficial Use Cell 3 ("Project"). The Project consists of creating a 70-acre Beneficial Use (BU) site by constructing a chenier and containment dike as shown in the Construction Drawings and identified in the Notice of Award. The major categories of Work include, but are not limited to, the following:

1. Pre-construction bathymetric survey
2. Dredging and construction of chenier and Cell 3 dike
3. Installing pipeline access corridor
4. Moving sand from the Corps site to the project dike; and chenier
5. As-built surveys

**ARTICLE 2 - AGENCY AND ENGINEER**

Anchor QEA, LLC (hereinafter called "Engineer") is to act as MDMR's representative, assumes all duties and responsibilities and has the rights and authority assigned to Engineer in accordance with Standard Contract Terms and Conditions, including Section 3 of the same, in connection with the completion of the Work in accordance with the Contract Documents.

**ARTICLE 3 - CONTRACT TIME AND LIQUIDATED DAMAGES**

- 3.01 The Contractor will commence and complete the construction of the Project within the period of performance defined in Section 3.02.
- 3.02 The Performance Period for contract award of the Work has been established at 120 calendar days from issuance of the Notice to Proceed ("Contract Time") to complete all containment dike construction. The Contract Time is inclusive of anticipated adverse weather days as described in Paragraph 23 of Attachment F (Standard Contract Terms and Conditions).

Contractor must complete the respective Contract Work, as defined in the Invitation for Bids and the Contract Documents, within the applicable Contract Time prescribed above.

- 3.03 Liquidated Damages: MDMR and Contractor recognize that time is of the essence for this Agreement and that MDMR may suffer financial loss if the Work is not completed within the time specified in Section 3.02 above, plus any extensions thereof allowed in accordance with Section 23 – Extension of Contract Time provisions in the Standard Contract Terms and Conditions. The parties recognize the delays, expense, and difficulties involved in proving the actual loss suffered by MDMR if the Work is not completed on time. Accordingly, instead of requiring any such proof, MDMR and Contractor agree that as liquidated damages for delay,

Contractor shall pay MDMR \$1,650 for each day that expires after the time specified in Section 3.02 to complete all containment dike construction, subject to any extensions granted.

#### ARTICLE 4 - COMPENSATION

The Contractor agrees to furnish all materials in place and to faithfully complete all said Work described by this Contract in good and workmanlike manner, strictly in accordance with said Contract Documents, Contract Drawings, and other requirements of the Agency, under the direct observation of and to the complete satisfaction of the Agency or its authorized representatives, and in accordance with the laws of the State of Mississippi, for which the Agency hereby agrees to pay, and the Contractor agrees to accept, a sum of money in current funds equal to the total value of the Work complete in place, computed by multiplying the final quantities of each item of Work by the Contract unit prices and the amounts established by the approved Schedule of Values for Lump Sum prices as stated in the Bid Form, attached hereto and made a part hereof which is estimated as being the sum of

(\$ \_\_\_\_\_) ("Contract Sum" or "Contract Price") in full compensation for furnishing all materials, doing of all the Work described under the Contract for the Project, as well as all loss or damage, if any, arising out of the nature of the Work.

#### ARTICLE 5 - PAYMENTS

- 5.01 Contractor shall submit Applications for Payment to Engineer in accordance with the Standard Contract Terms and Conditions, Section 01 20 00 – Measurement and Payment Procedures of the Contract Documents, and Section 01 29 00 – Payment Procedures. The Contractor will be paid for all Work satisfactorily completed on the basis of the number of units completed for Unit Price Work and the Schedule of Values for Lump Sum Work, minus retainage in accordance with Mississippi Code § 31-5-33 (Attachment G) and any liquidated damages in accordance with Section 3.03. All Payment Applications submitted by the Contractor, may be subject to audit by MDMR and its representatives.
- 5.02 Contractor will be paid in arrears after the rendition of services on a monthly basis on presentation of a complete and certified Application for Payment to the Engineer for Work performed pursuant to the Schedule of Values and the Contractor's Bid. Pursuant to Mississippi Code § 31-5-33, retainage in the amount of five percent (5%) shall be withheld until the Project is certified by Contractor and the Engineer as being fifty percent (50%) complete, at which time fifty percent (50%) of the retainage shall be released to Contractor for proportional distributions to Contractor and its subcontractors of the retainage withheld through the first half of the Project. Pursuant to Mississippi Code § 31-5-33, following fifty percent (50%) completion of the Project, retainage may be withheld in the amount of two and one-half percent (2.5%). The final payment and remaining retainage shall be paid to Contractor when the Project is certified by Contractor, MDMR and its Engineer as having been completed. At no point shall the retainage withheld by Contractor from a subcontractor exceed the retainage withheld by MDMR from Contractor. Contractor is not required by this section to withhold a retainage from its subcontractors, particularly those that have completed their portion of the Project.
- 5.03 Contractor shall provide the Engineer with a monthly Application for Payment by the 25th of each month. Applications for Payment must be approved by the Engineer prior to being submitted to the Agency for payment. Payments will be made by MDMR in accordance with Mississippi Code § 31-7-305 (Attachment G). All payments are subject to the availability of funding as stated in the Standard Contract Terms and Conditions.
- 5.04 Upon final completion and acceptance of the Work and completion of all punch list items from the Final Inspection and approval of Project closeout requirements as defined by Section 01 77 00 – Closeout Procedures, the Engineer will recommend final payment to the Agency. Final Payment will be made by MDMR, minus any liquidated damages in accordance with Mississippi Code § 31-7-305 which will be inclusive of withheld retainage in accordance

with Mississippi Code § 31-5-33.

#### **ARTICLE 6 - CONTRACTOR'S REPRESENTATIONS**

In order to induce MDMR to enter into this Agreement, Contractor makes the following representations:

- 6.01 Contractor has examined and carefully studied the Contract Documents and the other related data identified in the Contract Documents.
- 6.02 Contractor has visited the site and become familiar with and is satisfied as to the general, local, and site conditions that may affect cost, progress, performance, or furnishing of the Work.
- 6.03 Contractor is familiar with and is satisfied as to all federal, state, and local laws and regulations that may affect cost, progress, performance, and furnishings of the Work.
- 6.04 Contractor has read and fully understands all requirements and conditions of all environmental permits that pertain to this Work.
- 6.05 Contractor has obtained all required insurance policies, payment bonds, tax bonds and performance bonds required by the Contract Documents.
- 6.06 Contractor has carefully studied all reports of explorations and tests of subsurface conditions at or contiguous to the site and all drawings of physical conditions in or relating to existing surface or subsurface structures at or contiguous to the site which have been identified as "additional information" in Section 9 of the Standard Contract Terms and Conditions. Contractor does not consider that any additional examinations, investigations, explorations, tests, studies, or data are necessary for the performance and furnishing of the Work at the Contract Price, within the Contract Time and in accordance with the other terms and conditions of the Contract Documents.
- 6.07 Contractor is aware of the general nature of Work to be performed by MDMR and others at the site that relates to the Work as indicated in the Contract Documents.
- 6.08 Contractor has correlated the information known to Contractor, information and observations obtained from visits to the site, reports, and drawings identified in the Contract Documents and all additional examinations, investigations, explorations, tests, studies, and data with the Contract Documents.
- 6.09 Contractor has given MDMR written notice of all conflicts, errors, ambiguities, or discrepancies that Contractor has discovered in the Contract Documents and the written resolution thereof by MDMR is acceptable to Contractor, and the Contract Documents are generally sufficient to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work. When said conflicts, errors, ambiguities, or discrepancies have not been resolved through interpretation or clarification by MDMR for whatever reason, Contractor has included in its Bid the greater quantity or better quality of Work, or compliance with the more stringent requirement resulting in a greater cost; and such is included in the Contract Price.

#### **ARTICLE 7 - CONTRACT DOCUMENTS**

The Contract Documents which comprise the entire agreement between MDMR and Contractor concerning the Work includes the following:

- 1. Change Orders, Supplemental Agreements and/or other modifications to the Agreement
- 2. This Agreement
- 3. Standard Contract Terms and Conditions
- 4. Contract Drawings

5. Specifications, including Division 00 through 35 and Appendices
6. Contractor's Bid, including all subparts and documents submitted therewith
7. Notice of Award
8. Notice to Proceed
9. Addenda to the Invitation for Bids
10. Invitation for Bids
11. Performance Bond
12. Payment Bond
13. Tax Bond
14. Insurance Certificates and Endorsements
15. All permits and environmental conditions pertaining to the Work
16. Required Attachments for RESTORE Comprehensive Plan Component Construction Contracts

The documents listed above are attached to this Agreement (except as expressly noted otherwise above). The Contract Documents may only be amended, modified, or supplemented as provided in Sections 22 through 24 of the Standard Contract Terms and Conditions. In the event of a conflict in the provisions of the Contract Documents, the terms of the document listed first above shall control.

IN WITNESS WHEREOF, MDMR and Contractor have signed this Agreement in triplicate. One counterpart each has been delivered to MDMR, Contractor, and the Engineer.

This Agreement will be effective on \_\_\_\_\_, 20\_\_\_\_

(Which is the Effective Date of the Agreement)

MDMR \_\_\_\_\_ CONTRACTOR \_\_\_\_\_

By \_\_\_\_\_ By \_\_\_\_\_

(CORPORATE SEAL)

Address for giving notices to MDMR:

Address for giving notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Mississippi License No. \_\_\_\_\_

\_\_\_\_\_

(If Contractor is a corporation, attach evidence of authority to sign).

**END OF SECTION 00 52 15**

**SECTION 01 20 00****MEASUREMENT AND PAYMENT PROCEDURES****PART 1 - GENERAL**

## 1.01 SUMMARY

- A. This section includes requirements to be used for the basis of measurement and payment. The Contractor shall receive and accept the compensation provided in the Bid Form as full payment for furnishing all materials, labor, tools, and equipment for performing all operations necessary to complete the Work under the Contract. Responsibility and payment for any loss or damage to the Work or any portion thereof shall be governed by Sections 14 and 15 of the Standard Contract Terms and Conditions. Payment for all loss or damages arising from the nature of the Work, or from the action of the elements or any unforeseen difficulties, encountered during the Work until final acceptance by MDMR will be the responsibility of the Contractor.
- B. Bid prices for the various work items are to establish a total price for completing the Project in its entirety. The Contractor shall include in the Bid any item for which a separate pay item has not been established in the Bid Form, to reflect the total price for completing the Project in its entirety as depicted on the Construction Drawings and specified herein. The Contractor must include all costs for this Project to complete all work, in total, designated in the Construction Drawings, Specifications, and Bid Form.

## 1.02 SUBMITTALS

- A. The following submittals shall be submitted in accordance with **Section 01 33 00 – Submittal Procedures**.
- B. Schedule of Values
  - 1. The Contractor will submit a Schedule of Value on Contractor's standard form acceptable to MDMR in PDF for review and approval prior to the first Application for Payment. List payment items sequentially in the same order as they appear in the Bid Form.
  - 2. Lump sum items are to have adequate breakdown of components to facilitate evaluating completeness for payment in accordance with Section 01 29 73 – Schedule of Values. Breakdown components shall appear directly under the payment item heading to which they apply.
  - 3. The Contractor will revise the schedule to list approved Change Orders with each Application for Payment. The Contractor will submit revised Schedule of Values in accordance with this Specification.
- C. Construction Schedule



1. Within 10 calendar days after effective date of Contract, the Contractor shall prepare and submit to the Engineer for approval, a construction schedule in the form of a progress chart. The Contractor shall indicate on the progress chart the bid items contained in the Contract showing the amount of the item and its relative weighted percentage of the total Contract. The Contractor may separate features of work under each item to show salient work elements such as procurement of materials, personnel and equipment, and supplemental work elements such as excavation, fill, etc. These salient features shall total to the cost and weighted percentages shown for the major bid item. When quantity variations impact the weighted percentages of a separate item by five percent (5%) or more, the Contractor shall revise the contract progress charts to accurately reflect the impact of such variations.
2. Submit copies of the updated construction schedule to the Engineer for each Application for Payment. Changes that have occurred since the last update shall be clearly marked.

### 1.03 MEASUREMENT

- A. Measurement for Payment for this Project is based upon completion of the Work in accordance with Construction Drawings and Specifications for each of the items. Field measurements will determine the percent complete of work components when listed on the approved Schedule of Values. Measurements will be made using linear, area, volumetric units, or by unit quantity counts, as listed on the ATTACHMENT D – BID FORM for unit quantity items and at the Engineer's sole discretion for lump sum items.
- B. The Contractor will take all measurements and compute quantities. The Engineer will verify measurements and quantities as appropriate.
- C. The Contractor will assist MDMR by providing necessary equipment, workers, and survey personnel as required.
- D. Measurement Devices:
  1. Weigh Scales: Inspected, tested, and certified by the applicable State Weights and Measures department within the past year.
  2. Platform Scales: Of sufficient size and capacity to accommodate the conveying vehicle.
  3. Metering Devices: Inspected, tested, and certified by the applicable State department within the past year.
- E. Measurement of imported sand Tonnage using Barge Displacement Tables
  1. If the sand is delivered by barge, the weight (tonnage) for payment will be determined by barge displacement.
    - a. Suitably mark each barge with a displacement gaging location at or near each corner of the barge. For hopper barges, two amidships on opposite sides should also be marked. Mark each gaging location with orange paint on the deck and side of the barge. For barges with rakes, place the displacement gaging marks at each corner of the box section between the rakes. If a barge has a box end or ends, place the gaging locations approximately 4 feet from the box end(s).
    - b. Measure the freeboard at the six gaging locations on hopper barges or the four gaging locations on deck barges and determine the displacement using "Standard Barge Table" (SBT) from the average of these measurements. The SBT for each barge shall be certified by a licensed marine architect or other approved certifying official.

- c. Calculate the displacement before and after barge unloading; the difference between these values will be the measure of quantity delivered.
  - d. Load barges so that the readings taken at the gaging locations do not vary more than 3.0 feet port to starboard fore and aft and do not vary more than 1.0 foot port to starboard. If such is not the case, trim the barge by shifting the material until this limit is reached, before the measurement will be accepted. For deck barges, calculate the draft from the average of all four readings. For hopper barges, calculate the draft from the average of all six readings, weighting the readings of the middle gage at double those of the end gages:  $(G1 + G2 + 2xG3 + 2xG4 + G5 + G6)$  divided by 8 = average draft.
  - e. All barges used in transporting material shall be free of leaks that would render accurate gauging difficult. Provide facilities for inspecting the hold of each barge to determine whether leakage is occurring. Provide each barge with adequate pumping facilities, and if water is found to be accumulating in the hold, pump the barge dry before each gaging, both before and after unloading. Leave rejected and unacceptable material aboard the barge until after the final readings have been taken.
2. If barge tables are furnished for fresh water and if it is believed that barge displacement measurements made within the contract limits of the work are being taken in water that has salinity, the Contractor has the option of obtaining water samples and determining densities or unit weights of these samples.
- a. Take these water samples in accordance with ASTM D3370 (Practice A – Grab Samples) at depths of 4 and 8 feet in the area where measurements are made.
  - b. Perform water sampling when the barges are measured for quantities, both when fully loaded and when empty.
  - c. Take water samples, as witnessed by the Engineer, with the use of "Polypro" 2000 milliliters water sampler, or equal. Determine densities as specified in ASTM D1429 (Method D-Hydrometer Method).
  - d. Testing shall be done for the Contractor by a certified testing laboratory, and test results certified by the laboratory.
  - e. After review and approval of the test results by the Engineer, the average of the densities obtained at 4 and 8 feet will be used as the suitable saltwater conversion factor. In all calculations (fully loaded and empty), the unit weight of 62.4 pounds per cubic foot will be used for fresh water.
- F. Linear Measurement: Measured by linear dimension, at the item centerline or mean chord, in feet and hundredths of a foot.
- G. Measurement by Area: Measurement by square dimension using mean length and width or radius, in feet and hundredths of a foot. When measuring items in acres, use 43,560 square feet per acre and provide acreage in acres and hundredths of an acre.
- H. Measurement of Volume: Measured by cubic dimension using mean length, width, and height or thickness, in feet and hundredths of a foot.
- I. Stipulated Sum/Price Measurement: Items measured by weight, volume, area, or linear means or combination, as appropriate, as a completed item or unit of the Work.

#### 1.04 BASIS FOR PAYMENT

- A. Unless indicated on the Contract Documents, all work indicated on the Construction Drawings and specified in the Contract Documents shall be included in the Contract Sum indicated on the Bid Form.
- B. Prices stated in the Bid Form shall include all costs and expenses for taxes (inclusive of applicable Contractor's tax per Miss. Code Ann. § 27-65-21), labor, equipment, materials, commissions, transportation charges and expenses, patent fees and royalties, labor for handling materials during inspection, together with any and all other costs and expenses for performing and completing the Work as depicted on the Construction Drawings and specified herein. The basis of payment for an item in the amount shown in the Bid Form shall be in accordance with the description of that item provided in this section.
- C. The Contractor's attention is again called to the fact that the quotations for the various items of work are intended to establish a total price for completing the Work in its entirety. Should the Contractor feel that the cost for any item of work has not been established by the Bid Form, the Contractor shall include the cost for that work in another applicable bid item, in order that the Bid for the project reflects the total price to be paid by MDMR for completing the Work in its entirety.
- D. Changes in the Contract Price and Contract Time require prior authorization in writing from MDMR and the Engineer, in the form of a Change Order. Refer to Section 22 of the Standard Contract Terms and Conditions for Change Order Procedures. The Contractor is responsible for verification of all bid quantities and to report to the Engineer any discrepancies found prior to ordering materials and/or equipment for construction. Refer to Sections 9 and 10 of the Standard Contract Terms and Conditions.
- E. The various major items of Work will be paid for either by 1) the quantity of the actual Work completed by the Contractor and accepted by the Engineer multiplied by the unit price or 2) a pro rata amount based on the percentage complete of any lump sum Bid Item. The Work shall include all miscellaneous and ancillary items necessary to construct a complete and functional Project.

#### 1.05 SCHEDULE OF VALUES

- A. The below descriptions generally outline the scope of work required for those elements of the Work to be paid for under each item listed in the Bid Form. The Contractor shall submit a Schedule of Values per Section 01 29 73 – Schedule of Values and shall be consistent with Section 01 33 00 – Submittal Procedures.

#### 1.06 PAYMENT OPTIONS

- A. Basis of Payment for Unit Price Items
  - 1. Quantities indicated in the Bid Form are for bidding and contract purposes only. Quantities and measurements supplied or placed in the Work and verified by the Engineer determine payment.
  - 2. If the actual Work requires more or fewer quantities than those quantities indicated, the Contractor will provide the required quantities at the unit prices contracted.

- B. Basis of Payment for Lump Sum Items – Payment for lump sum items for this Project will be made at the lump sum price named in the Contract. The contract price shall constitute full compensation for each item, including all required labor, products, tools, equipment, plant, transportation, services and incidentals, erection, application, or installation of an item of the Work, overhead, and profit as required to complete the item as indicated in the Construction Drawings and Specifications.
- C. Progress Payments
1. Application for Payment shall be submitted to MDMR or the Engineer at the times specified in Paragraph 5.03 of the Agreement (Section 00 52 15).
  2. Progress payments will be made upon receipt and acceptance of the post-construction surveys and daily quality control surveys. Surveys will be evaluated based on conformance with the Engineer-Approved Contractor Work Plan and the Construction Documents, including elevations, alignments, allowable tolerances, and minimum lines and grades. The Contractor is required to have all pre-construction and post-construction surveys performed by a third-party independent Mississippi-licensed professional surveyor.
  3. Progress and final payment for Work governed by unit prices will be made on the basis of the actual measurements and quantities accepted by the Engineer multiplied by a unit price of the item. Final payment for unit price Work will be accomplished by reconciliation of Change Orders to adjust quantities at the end of the Project.
  4. Progress payment for Work governed by lump sum prices will be made in accordance with the approved Schedule of Values.
  5. No payment, partial or complete, will be made for defective or rejected work. The Contractor will not receive payment for any material placed outside of the horizontal or vertical limits (allowable tolerances) of the placement limits shown and noted in the Construction Drawings and Specifications. Any material that is deposited in places not designated or approved by the Engineer or MDMR may be required to be removed and the Contractor will be required to deposit such misplaced material where directed at Contractor's expense or will be deducted from the payment quantity. Additional clean-up and environmental damage mitigation requirements may be directed by MDMR. Such efforts will be entirely at the expense of the Contractor and any fines or penalties will be the responsibility of the Contractor.
  6. No separate payment will be made for additional labor and materials required for accomplishing the Project in its entirety, unless a Change Order is entered. All labor, materials, and incidental costs shall be included for payment as part of the Bid and the Contract, under the several scheduled items of the Project.

#### 1.07 DESCRIPTION OF WORK ITEMS AND SCHEDULE OF VALUES

- A. The Work items are described in order to assist the Contractor in the preparation of the Bid and to assist the Engineer in the evaluation of Bids and progress payments during construction. The Contractor shall submit a Schedule of Values containing the Work components of each lump sum Bid Item in the Contractor's Bid for approval prior to the first Application for Payment for work in progress.
- B. No separate payment will be made for any testing and/or surveying performed to complete the Work, except for the surveying as shown on Bid Form. Costs for testing and/or surveying (as applicable), except for pre-construction layout and post-construction surveying, shall be included in the cost to complete the work item.

- C. No separate payment will be made for furnishing a fully operated boat with capacity for transporting at least six people for unfettered transportation of MDMR and Engineer personnel for the entire duration of the construction project as described in Section 01 31 00 – Project Management and Coordination.
- D. Submittals are considered part of the Contractor’s administrative and overhead costs. The Contractor will not be compensated separately for submittals required by these specifications or those listed on the Construction Drawings.
- E. Separate payment will not be made for providing and maintaining an effective quality control program or ensuring environmental compliance, and all costs associated there with shall be included in the applicable unit prices or lump-sum prices contained in the Bid Schedule.
- F. For the purpose of the work items listed below, complete installation will mean the inclusion of mobilization and demobilization, quality control documentation of materials, photographic documentation, delivery of materials to the Project site, installation of materials and any ancillary components, surveying during and after construction, and any overhead-related items associated with Division 01 of the Contract Documents.
- G. Below is a description of the Work listed in the **Bid Form (Attachment D)**. This description is not intended to be a complete and all-inclusive record of the required work items. Work includes but is not limited to the following:
1. Lump Sum Items:
    - a. **Mobilization and Demobilization (Bid Item No. 1)** – Payment for this item will be made as a lump sum (LS) for costs associated with or incidental to mobilization, demobilization, and establishment of initial project management and coordination. The Contractor shall breakdown the cost for Mobilization and Demobilization in the Schedule of Values for Engineer's approval prior to the first Application for Payment. Payment for Mobilization and Demobilization shall be in accordance with the following rules and schedule:
      - 1) No more than sixty percent (60%) of the entire lump sum amount will be payable to the Contractor upon completion of the mobilization subject to the following:
      - 2) No more than twenty five percent (25%) of the entire lump sum amount can be claimed for reimbursement in the first Application for Payment.
      - 3) The remaining forty percent (40%) of the entire lump sum will be payable upon the completion of demobilization.
      - 4) Failure to justify the cost for Mobilization and Demobilization in the Schedule of Values to the satisfaction of MDMR will result in non-payment, as determined by MDMR.
    - b. **Pre-Construction (Bid Item No. 2)** – Payment for this item will be as lump sum (LS) for costs associated with or incidental to performing the pre-construction survey, layout and As-Build Survey as required by the plans and specifications
    - c. **Pipeline Access Corridor (Bid Item 5)** – Payment for this item will be made as a lump sum for all associated or incidental costs for constructing this item in accordance with the plans and specifications.
  2. Unit Price Items

- a. Side-cast Chenier – (Bid Item No. 3) Payment will be made as a unit price linear foot for costs associated with or incidental to the inner and outer cheniers. The price shall include all labor, equipment, materials, transporting, handling, operational costs, environmental compliance, Quality Control surveys, and daily quality control required to complete the cheniers shown in the Construction Drawings.
- b. Imported Sand (Bid Item No. 4) – Payment will be made as a unit price (TON) for costs associated with or incidental to all armor stone installation. The price shall include all labor, equipment, materials, transporting, handling, geotextiles and geogrids, operational costs, environmental compliance, and settlement, daily quality control, and as-built surveys required to complete the armor stone installation to final slopes and grades as shown in the Construction Drawings. See Section 35 41 00 – Chenier Construction.

1.08 DEFECTIVE WORK

- A. The Contractor shall replace the Work, or portions of the Work, not conforming to specified requirements as directed by the Engineer in accordance with Section 13 of the Standard Contract Terms and Conditions (Attachment F).
- B. If, in the opinion of the Engineer or of MDMR, it is not practical to remove and replace the Work, the Engineer will direct one of the following remedies:
  - 1. The defective Work may remain, but the unit or lump sum price for the item will be adjusted to a new price. The adjustment will be performed at the sole discretion of MDMR. The determination for the adjustment will be done by the Engineer, whose determination will be final.
  - 2. The defective Work will be partially repaired according to the instructions of the Engineer, and the unit or lump sum price will be adjusted to a new price at the sole discretion of MDMR. The determination for the adjustment will be done by the Engineer, whose determination will be final.
  - 3. The individual specification sections may modify these options or may identify a specific formula or percentage sum/price reduction.
  - 4. The authority of the Engineer to assess the defect and identify payment adjustment is final.

1.09 NON-PAYMENT

- A. Notwithstanding any of the foregoing, payment will not be made for any of the following:
  - 1. Products wasted or disposed of in a manner that is not acceptable.
  - 2. Products determined as unacceptable before or after placement.
  - 3. Products damaged in transit, during handling, or due to improper storage.
  - 4. Products not completely unloaded from the transporting vehicle.
  - 5. Products placed beyond the tolerance of the required Work.
  - 6. Loading, hauling, and disposing of rejected products.

**PART 2 - PRODUCTS (NOT APPLICABLE)**

**PART 3 - EXECUTION**

3.01 REQUESTING PROGRESS PAYMENT

- A. Provide PDFs or other electronic copies of supporting invoices and quantity measurements to support all requested earnings. Ensure the sum of payment activities does not exceed the contract award funding amounts.

**END OF SECTION 01 20 00**

**SECTION 01 29 00**

**PAYMENT PROCEDURES**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. This section includes administrative and procedural requirements necessary to prepare and process applications for payments.

1.02 RELATED SECTIONS

- A. Attachment F – Standard Contract Terms and Conditions
- B. Section 00 52 15 – Agreement
- C. Section 01 32 00 – Construction Progress Documentation
- D. Section 01 32 23 – Survey and Layout Data
- E. Section 01 32 33 – Photographic Documentation
- F. Section 01 33 00 – Submittal Procedures
- G. Section 01 35 43 – Environmental Protection
- H. Section 01 77 00 – Closeout Procedures

1.03 SUBMITTALS

- A. Submit one (1) searchable PDF file of the Application for Payment to Engineer by the 25th of each month in accordance with the requirements set forth in Section 00 52 15 – Agreement and Section 01 33 00 – Submittal Procedures.

1.04 FORMAT AND DATA REQUIRED

- A. Submit applications typed on the Application for Payment form approved by MDMR, with itemized data typed on 8-1/2 inch by 11-inch white paper continuation sheets.
- B. Provide itemized data on continuation sheet:
  - 1. Format, schedules, line items and values: Those of the Schedule of Values accepted by MDMR's representative.

1.05 PREPARATION OF EACH PROGRESS APPLICATION FOR PAYMENT

- A. Application Form:
  - 1. Fill in required information, including information for Change Orders executed prior to date of submittal of application.
  - 2. Fill in summary of dollar values to agree with respective totals indicated on continuation sheets.
  - 3. Execute certification with signature of a responsible officer of Contractor.



B. Continuation Sheets:

1. Fill in total list of all scheduled component items of Work, with item number and scheduled dollar value for each item.
2. Fill in dollar value in each column for each scheduled line item when work has been performed or products stored.
3. List each Change Order executed prior to date of submission, at the end of the continuation sheets.
4. Calculate the retainage amount in accordance with Mississippi Code 31-5-33 (Attachment G). See Article 5, Paragraph 5.02 in Section 00 52 15 – Agreement for retainage requirements.
5. Calculate the total amount due by subtracting the retainage and any liquidated damages from the total earned and previously paid.

1.06 SUBSTANTIATING DATA FOR PROGRESS APPLICATION FOR PAYMENTS

A. Contractor shall submit suitable information, including the following, with a cover letter identifying:

1. Project
2. Application number and date
3. Updated Construction Schedule in accordance with Section 01 32 00 – Construction Progress Documentation
4. Construction Photographs in accordance with Section 01 32 33 – Photographic Documentation
5. All Environmental Compliance documentation in accordance with Section 01 35 43 – Environmental Protection and any newly issued permits/authorizations associated with this project.
6. Progress Payment Survey documentation in accordance with Section 01 32 23 – Survey and Layout Data

B. Submit one copy of data and cover letter for each copy of application.

1.07 PREPARATION OF APPLICATION FOR FINAL PAYMENT

- A. Fill in Application form as specified for progress payments.
- B. Use continuation sheet for presenting the final statement of accounting as specified in Section 01 77 00 – Closeout Procedures.
- C. Submit Release of Claims form to be provided by MDMR.

1.08 SUBMITTAL PROCEDURE

- A. Submit Application for Payment to Engineer by email to Rick Coupe at [rcoupe@anchorqea.com](mailto:rcoupe@anchorqea.com) and Wendell Mears at [wmears@anchorqea.com](mailto:wmears@anchorqea.com).
- B. Invoice Number and a searchable PDF copy of each Application.

- C. When the Engineer finds the Application properly completed and correct, they will transmit recommendation for payment processing to MDMR's Project Manager.

**PART 2 - PRODUCTS (NOT APPLICABLE)**

**PART 3 - EXECUTION (NOT APPLICABLE)**

**END OF SECTION 01 29 00**

**SECTION 01 29 73**

**SCHEDULE OF VALUES**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. Procedure for submission of a certified Schedule of Values for review and approval by the Engineer and MDMR.

1.02 RELATED SECTIONS

- A. Attachment D – Bid Form
- B. Section 01 32 00 – Construction Progress Documentation

1.03 SUBMITTAL

- A. The Contractor shall provide a Schedule of Values in format similar to the Engineers Joint Contract Documents Committee (EJCDC) Schedule of Value Forms.

**PART 2 - PRODUCTS (NOT APPLICABLE)**

**PART 3 - EXECUTION**

3.01 PREPARATION

- A. Upon receipt of the Notice of Award, Contractor shall commence preparation of a Schedule of Values for Lump Sum items in accordance with the Bid Form (Attachment D).
- B. Schedule of Values format and content shall be approved by the Engineer and MDMR prior to submittal of first payment request.
- C. Contractor shall coordinate the preparation of a Schedule of Values with preparation of the Construction Schedule as set forth in Section 01 32 00 – Construction Progress Documentation. The corresponding values from the Bid Form (Attachment D) shall match with the approved Schedule of Values.
- D. Include the following Project identification on a certified Schedule of Values:
  - 1. Project name and location
  - 2. Project Number
  - 3. Contract No.
  - 4. Contractor name
  - 5. Date of Submittal

- E. The Schedule of Values shall be in an Excel format, tabular form with separate columns and shall include the following items:
  - 1. Related Specification section and division
  - 2. Description of Work
  - 3. Name of Subcontractor, manufacturer, or supplier
  - 4. Dollar value, quantity, and unit of measure of each line item
  - 5. Percentage of Contract amount to nearest one-hundredth percent, adjusted to total 100%
- F. Provide a breakdown of the Contract Amount in enough detail acceptable to Engineer and MDMR to facilitate continued evaluation of Application for Payment and progress reports.
- G. Each item in the Schedule of Values and Applications for Payment shall be complete. Include total cost and proportionate share of general overhead and profit for each Lump Sum line item.
- H. Temporary facilities and other cost items that are not direct cost of actual work-in-place shall be shown as separate line items.
- I. An approved certified Schedule of Values shall serve as the basis for the monthly certified Application for Payment.
- J. If at any time, MDMR determines, in its reasonable discretion, that the Schedule of Values does not approximate the actual cost being incurred by Contractor to perform the Work, Contractor shall prepare a revised Schedule of Values, which then shall be used as the basis for future progress payments. Without changing the Contract Amount, MDMR reserves the right to require Contractor:
  - 1. To increase or decrease amounts within the line items in the Schedule of Values; and
  - 2. To conform the price breakdown to MDMR accounting practice.

3.02 SUBMITTAL

- A. Contractor shall submit one (1) searchable PDF digital file and one (1) digital Excel file of the Schedule of Values for review and approval at least 14 days before the first Application for Payment.
- B. MDMR will review and if necessary, return the submitted Schedule of Values with summary comments noting items not in compliance with the requirements of the Contract Documents.
- C. Contractor shall revise the submitted Schedule of Values and return one (1) searchable PDF digital file and one (1) digital Excel file within three (3) days of receipt of summary comments.

**END OF SECTION 01 29 73**

**SECTION 01 31 00**

**PROJECT MANAGEMENT AND COORDINATION**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. This section addresses:
  - 1. General requirements.
  - 2. Contractor Work Plan
  - 3. Preconstruction conference.
  - 4. Request for Information (RFIs)
  - 5. Schedule finalization meeting.
  - 6. Progress meetings.
  - 7. Pre-installation conferences; and
  - 8. Final Inspection.

1.02 RELATED SECTIONS

- A. Attachment F – Standard Contract Terms and Conditions
- B. Section 01 40 00 – Contractor Quality Control
- C. Section 01 77 00 – Closeout Procedures
- D. Section 31 05 19 – Geotextiles
- E. Section 35 24 00 – Dredging
- F. Section 35 41 00 – Chenier Construction

1.03 SUBMITTALS

- A. Construction Work Plan: Prior to the start of construction, the Contractor shall provide a Construction Work Plan containing, at a minimum, the following:
  - 1. Work sequencing and equipment:
    - a. Order and sequence in which work shall be performed.
    - b. Number, types, and capacity of equipment to be used.
    - c. Hours of operation
    - d. Estimated schedule
    - e. Procedures for placing materials and confirming the variable thicknesses and materials depicted in the Construction Drawings typical section are met.
- B. Subcontract List: Prepare a digital, written summary identifying individuals or firms proposed for each portion of the Work, including those who are to furnish products or equipment fabricated to a special design. Include the following information in tabular form:

1. Name, address, telephone number, and UEI number of entity performing subcontract or supplying products.
  2. Number and title of related specification section(s) covered by subcontract.
  3. Drawing number and detail references, as appropriate, covered by subcontract.
- C. Key Personnel Names: Within 10 days of Notice to Proceed, submit a list of key personnel assignments, including superintendent and other personnel for the Project. Identify individuals and their duties and responsibilities; list addresses and telephone numbers, including office and cellular telephone numbers and e-mail addresses. Provide names, addresses, and telephone numbers of individuals assigned as alternates in the absence of individuals assigned to Project.
1. Post copies of list in project meeting room, in temporary field office, and the Engineer/MDMR construction trailer, if any. Always keep list current.
  2. Changes in key personnel shall only occur with written permission of MDMR. Engineer/MDMR shall have the right of reasonable rejection and approval of staff as provided in Section 6 of the Standard Contract Terms and Conditions.
  3. Engineer/MDMR has the right to raise and discuss adverse issues about any staff or subcontractor employed by the Contractor.

#### 1.04 PROJECT COORDINATION

- A. Coordination: Coordinate construction operations included in different specification sections to ensure efficient and orderly installation of each part of the Work. Coordinate construction operations, included in different sections that depend on each other for proper installation, connection, and operation.
1. Schedule construction operations in sequence required to obtain the best results where installation of one part of the Work depends on installation of other components, before or after its own installation.
  2. Coordinate submittals, surveying, availability of equipment, delivery of materials to ensure efficient use of resources and time management.
  3. Make adequate provisions to accommodate items scheduled for later installation.
- B. Prepare memoranda for distribution to each party involved, outlining special procedures required for coordination. Include such items as required notices, reports, and list of attendees at meetings.
1. Prepare similar memoranda for MDMR and separate contractors if coordination of their Work is required.
- C. Administrative Procedures: Coordinate scheduling and timing of required administrative procedures with other construction activities to avoid conflicts and to ensure orderly progress of the Work. Such administrative activities include, but are not limited to, the following:
1. Preparation of the Contractor's construction schedule
  2. Preparation of the schedule of values
  3. Delivery and processing of submittals
  4. Progress meetings

5. Pre-installation conferences
6. Project closeout activities

1.05 REQUEST FOR INFORMATION (RFI)

- A. General: Immediately on discovery of the need for additional information or interpretation of the Contract Documents, Contractor shall prepare and submit an RFI using the supplied form (attached at end of this specification).
  1. All RFIs must be submitted by the Contractor. Engineer will return RFIs submitted to Engineer by other entities controlled by Contractor with no response.
  2. Coordinate and submit RFIs in a prompt manner so as to avoid delays in Contractor's work or work of subcontractors.
  3. Do not use RFIs for any purpose other than to request additional information or interpretation of the Contract Documents.
- B. Content of the RFI: Include a detailed, legible description of item needing information or interpretation and the following:
  1. Project name.
  2. Project number.
  3. Date.
  4. Name of Contractor.
  5. Name of Engineer.
  6. RFI number, numbered sequentially.
  7. RFI subject.
  8. Specification section number, title, and related paragraphs, as appropriate.
  9. Drawing number and detail references, as appropriate.
  10. Field dimensions and conditions, as appropriate.
  11. Contractor's suggested resolution. If Contractor's suggested resolution impacts the Contract Time or the Contract Sum, Contractor shall state impact in the RFI.
  12. Contractor's signature; and
  13. Attachments: Include sketches, descriptions, measurements, photographs, product data, shop drawings, coordination drawings, and other information necessary to fully describe items needing interpretation.
    - a. Include dimensions, thicknesses, location and/or station number, and details of the affected area or facilities impacted by the RFI.
- C. RFI Forms: Software-generated form with substantially the same content as indicated above, acceptable to Engineer.
  1. Attachments shall be electronic files in searchable Adobe Acrobat PDF format.

- D. Engineer's Action: Engineer will review each RFI, determine action required, and respond. Allow seven (7) working days for Engineer's response for each RFI. RFIs received by Engineer after 1:00 p.m. will be considered as received the following working day.
1. The following Contractor-generated RFIs will be returned without action:
    - a. Requests for approval of submittals
    - b. Requests for approval of substitutions
    - c. Requests for approval of Contractor's means and methods
    - d. Requests for coordination information already indicated in the Contract Documents
    - e. Requests solely for adjustments in the Contract Time or the Contract Sum
    - f. Requests for interpretation of Engineer's actions on submittals
    - g. Incomplete RFIs or inaccurately prepared RFIs
  2. Engineer's action may include a request for additional information, in which case Engineer's time for response will date from time of receipt of additional information.
  3. Engineer's action on RFI's that may result in a change to the Contract Time, or the Contract Sum may be eligible for Contractor to submit Change Order request according to the Change Order procedures in Section 22 of the Standard Contract Terms and Conditions.
    - a. If Contractor believes the RFI response warrants change in the Contract Time or the Contract Sum, notify the Engineer in writing within seven (7) days of receipt of the RFI response.
- E. RFI Log: Prepare, maintain, and submit a tabular log of RFIs organized by the RFI number. Submit log weekly. Include the following:
1. Project name
  2. Name and address of the Contractor
  3. Name and address of the Engineer
  4. RFI number including RFIs that were returned without action or withdrawn.
  5. RFI description
  6. Date the RFI was submitted.
  7. Date the Engineer's response was received.
- F. On receipt of Engineer's action, update the RFI log and immediately distribute the RFI response to affected parties. Review response and notify Engineer within seven (7) days if Contractor disagrees with response.
1. Identification of related minor change in the Work, Work Change Order Directive, and Change Order request, as appropriate.

#### 1.06 INSPECTIONS

- A. General: Contractor shall provide transportation via boat for MDMR, MDEQ, and Engineer to the Site for inspections of the Work to be completed.
1. MDMR and/or Engineer shall notify Contractor in advance of inspections and the number of personnel requiring transportation to the Site via boat.



## 1.07 MDMR/ENGINEER OFFICE SPACE

- A. If Contractor has office space on-site, then office space to accommodate 1 representative from MDMR or Engineer shall be provided. Office space provided for MDMR or Engineer, if any, shall be cleaned and furnished in the same manner as the Contractor office space.

## 1.08 PROJECT MEETINGS

- A. General: Schedule and conduct meetings and conferences to update relevant stakeholders on progress of the Work. Conference calls shall be added to all conferences or meetings, when necessary, in order to maintain social distancing protocols. All meetings may be held digitally instead of in-person in accordance with local public health authority guidelines. Contractor shall coordinate with MDMR and Engineer to setup conference calls to include all relevant project personnel.

1. Attendees: Inform participants and others involved, and individuals whose presence is required, of date and time of each meeting.
  - a. Notify MDMR and Engineer of scheduled meeting dates and times five (5) days in advance.
  - b. MDMR and/or Engineer shall be permitted to attend meetings held at the Project Site.
  - c. Representatives of contractors, subcontractors, and suppliers attending meetings shall be qualified and authorized to act on behalf of the entity each represents.
2. Agenda: Prepare the meeting agenda. Distribute the agenda to attendees.
3. Minutes: Entity responsible for conducting meeting will record significant discussions and agreements achieved. Distribute the meeting minutes within five (5) days of the meeting:
  - a. To all participants in meetings
  - b. To MDMR and the Engineer
  - c. To the Contractor
4. Engineer will schedule and administer pre-construction meeting, regularly scheduled progress meetings, and specially called meetings throughout the progress of the Work. The Engineer will do the following:
  - a. Prepare agendas for meetings, including items requested by MDMR and Contractor
  - b. Notify MDMR and Contractor five (5) days in advance of meeting date.
  - c. Preside at such meetings.
5. Contractor will schedule and administer pre-installation conferences. The Contractor shall do the following:
  - a. Attend all meetings.
  - b. Arrange for the attendance of Contractor's agents, employees, subcontractors, and suppliers as appropriate to the agenda.
  - c. Make physical arrangements for meetings.

## B. PRECONSTRUCTION CONFERENCE

1. The Engineer will schedule a conference after Notice of Award and before commencement of the Work.
2. Location: a central site, convenient for all parties
3. The representatives that should be in attendance include the following:

- a. MDMR's Representative
  - b. Engineer and Engineer's professional consultants
  - c. Resident Project Representative
  - d. Contractor's Superintendent
  - e. Major Subcontractors
  - f. Major Suppliers
  - g. Others, as appropriate
4. The agenda may include the following:
- a. Contractual matters
  - b. Submission of executed bonds and insurance certificates
  - c. Distribution of Contract Documents
  - d. Submission of list of subcontractors and suppliers, list of products, Schedule of Values, and progress schedule
  - e. Designation of key personnel representing the parties in Contract and the Engineer
  - f. Procedures and processing of field decisions, submittals, substitutions, applications for payments, cost proposal requests, Change Orders and Contract closeout Procedures
  - g. Establishment of official date of Notice to Proceed (NTP)
  - h. Establishment of mailing address and local office for the Contractor
  - i. Establishment of cut-off dates and payment request submittals
  - j. CQC plan as defined in Section 01 40 00 – Contractor Quality Control
  - k. Construction scheduling and updates
  - l. Construction photographs and video requirements
  - m. Inspections and site access by Engineer, MDMR and other regulatory agencies
  - n. Environmental permit compliance during construction
  - o. Critical work sequencing
  - p. Major material deliveries and priorities
  - q. Procedures for maintaining Record Documents
  - r. Use of Engineers/MDMR's office facilities, including the following:
    - 1) Office, work, and storage areas
    - 2) MDMR's requirements
    - 3) Cleaning requirements
  - s. Construction facilities, controls, and construction aids
  - t. Temporary utilities provided by Contractor.
  - u. All safety and first-aid procedures are responsibility of the Contractor.
  - v. Hurricane/Storm Preparedness Plan
  - w. Security and housekeeping procedures as required by MDMR.
  - x. Procedures for testing
  - y. Providing electronic design files to the Contractor
5. The Contractor shall bring to this conference the following items in either completed or draft form:
- a. Accident Prevention Plan
  - b. Activity Hazard Analysis
  - c. Job Hazard Analysis for each employee classification
  - d. Safety Data Sheets
  - e. Letter appointing representatives.
  - f. List of subcontractors
  - g. Listing of First Aid and CPR trained personnel
  - h. Work Plan

C. SCHEDULE FINALIZATION MEETING

1. The Contractor will schedule at least 10 days before submission of the first Application for Payment
2. Location: a central site convenient for all parties
3. The representatives that should be in attendance include the following:
  - a. MDMR's representative
  - b. The Engineer
  - c. The Contractor
  - d. Others, as appropriate
4. The suggested agenda for this meeting follows:
  - a. Schedule of Values
  - b. Construction Schedule
  - c. Submittal Schedule
  - d. Questions

D. PROGRESS MEETINGS

1. The Engineer will schedule and administer monthly meetings throughout progress of the Work.
2. Location of the Meetings: The project field office of the Contractor, or other locations arranged for by Contractor, convenient to all parties.
3. The representatives that should be in attendance include the following:
  - a. MDMR's Representative
  - b. Engineer, and his professional consultants, as needed.
  - c. Resident Project Representative
  - d. Contractor's Superintendent
  - e. Subcontractors as appropriate to the agenda
  - f. Suppliers as appropriate to the agenda
  - g. Others, as appropriate
4. The suggested agenda for this meeting follows:
  - a. Review minutes of previous meetings.
  - b. Review unresolved issues from last meeting.
  - c. Safety
  - d. The Contractor's Construction Schedule:
    - 1) Review progress since the last meeting.
    - 2) Determine whether each activity is on time, ahead of schedule, or behind schedule, in relation to Contractor's construction schedule.
    - 3) Determine how behind-schedule activities will be expedited; secure commitments from parties involved to do so.
    - 4) Discuss whether schedule revisions are required to ensure that current and subsequent activities will be completed within the Contract Time.
    - 5) Identify problems that impede planned progress.
    - 6) Planned progress during the succeeding work period.
    - 7) Make necessary revisions to the construction schedule.
  - e. Review of submittals schedule and status of submittals
  - f. Review of material delivery schedules
  - g. Access

- h. Site Utilization
- i. Temporary facilities
- j. Maintenance of quality and work standards
- k. Status of RFIs
- l. Status of proposal request
- m. Pending changes
- n. Status of Change Orders
- o. Unanticipated adverse weather days documentation
- p. Pending claims and disputes
- q. Documentation of information for payment request
- r. Environmental compliance
- s. Long-term weather conditions

E. PRE-INSTALLATION CONFERENCES

1. When required in individual specification section, the Contractor will convene a pre-installation conference at work site prior to commencing work of the section.
2. Contractor will require attendance of parties directly affecting, or affected by, work of the specific section.
3. Contractor will notify Engineer at least four (4) days in advance of meeting date.
4. Contractor will prepare agenda, preside at conference, record minutes, and distribute copies within two (2) days after conference to participants, with two (2) copies to Engineer and MDMR.
5. Review conditions of installation, preparation and installation procedures, and coordination with related work.

F. FINAL INSPECTION

1. Contractor shall notify the Engineer and MDMR and certify that the Project is substantially complete and request a date and time for a Final Inspection.
2. Final Inspection will be conducted in accordance with the procedures identified in Section 01 77 00 – Closeout Procedures.

1.09 Hazard Analysis Plan: The following additional items will be required under the Contract:

- A. A Job Hazard Analysis is required for each person employed on this job. Prior to beginning the job, a Job Hazard Analysis shall be prepared by the Contractor. The analysis will address the hazards in each job classification and will present the procedures and safeguards necessary to provide a safe working environment for that employee. The Contractor shall provide a means to assure that each employee has an opportunity to provide input to his/her Job Hazard Analysis and proof of employee understanding by having the employee sign a copy of his/her analysis.
- B. Contractor should assure an understanding on the part of employee and supervisor alike that no new task having potential as a hazard will be undertaken without thorough discussion between them to determine the safest means to accomplish the task. The Job Hazard Analysis will then be modified accordingly.
- C. It is emphasized that areas of the Work site are not readily accessible and that several hours may pass before an individual can be transported from the Work site to a medical treatment facility. At least two employees per shift shall be qualified to administer First Aid and CPR.



**SECTION 01 32 00**

**CONSTRUCTION PROGRESS DOCUMENTATION**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. This section includes administrative and procedural requirements for documenting the progress of construction during the performance of the Work, including the following:
  - 1. Startup construction schedule
  - 2. Contractor's construction schedule
  - 3. Updated construction schedule with updating report
  - 4. Daily construction reports
  - 5. Material location reports
  - 6. Site condition reports
  - 7. Special reports

1.02 RELATED SECTIONS

- A. Attachment F – Standard Contract Terms and Conditions
- B. Section 01 29 00 – Payment Procedures
- C. Section 01 31 00 – Project Management and Coordination
- D. Section 01 33 00 – Submittal Procedures

1.03 SUBMITTALS

- A. Format for Submittals: Submit required submittals in the following format:
  - 1. Working electronic copy of schedule file
  - 2. Fully searchable PDF electronic file of schedule
- B. Startup Construction Schedule
  - 1. Approval of cost-loaded, startup construction schedule will not constitute approval of schedule of values for cost-loaded activities.
- C. Startup Network Diagram: Of size required to display entire network for entire construction period. Show logic ties for activities.
- D. Contractor's Construction Schedule: Initial schedule, of size required to display entire schedule for entire construction period.
  - 1. Submit a working electronic copy of schedule, as described in Section 2.03, and labeled to comply with requirements for submittals. Include type of schedule (initial or updated) and date on label.

- E. Updated Construction Schedule with Updating Report: Submit with Applications for Payment.
- F. Daily Construction Reports: Submit the following day by noon.
- G. Material Location Reports: Submit at monthly intervals.
- H. Site Condition Reports: Submit at time of discovery of differing conditions.
- I. Special Reports: Submit at time of unusual event.

1.04 COORDINATION

- A. Coordinate preparation and processing of schedules and reports with performance of construction activities and with scheduling and reporting of separate contractors.
- B. Coordinate Contractor's construction schedule with the schedule of values, submittal schedule, progress reports, payment requests, and other required schedules and reports.
  - 1. Secure time commitments for performing critical elements of the Work from entities involved.
  - 2. Coordinate each construction activity in the network with other activities and schedule them in proper sequence.

**PART 2 - PRODUCTS**

2.01 CONTRACTOR'S CONSTRUCTION SCHEDULE, GENERAL

- A. Time Frame: Extend schedule from date established for the Notice to Proceed to date of final completion.
  - 1. Contract completion date shall not be changed by submission of a schedule that shows an early or later completion date, unless specifically authorized by Change Order.
- B. Activities: Treat each separate area as a separate numbered activity for each main element of the Work. Comply with the following:
  - 1. Activity Duration: Define activities so no activity is longer than 30 days, unless specifically approved by Engineer.
  - 2. Procurement Activities: Include procurement process activities for long lead items and major items, requiring a cycle of more than 60 days, as separate activities in schedule.
  - 3. Submittal Review Time: Include review and resubmittal times indicated in Section 01 33 00 – Submittal Procedures in schedule. Coordinate submittal review times in Contractor's construction schedule with submittal schedule.
  - 4. Substantial Completion: Indicate completion in advance of date established for substantial completion and allow time for Engineer's administrative procedures necessary for certification of substantial completion.
  - 5. Punch List and Final Completion: Include not more than 30 days for completion of punch list items and final completion. Final completion shall be within the Contract Time.
- C. Constraints: Include constraints and work restrictions indicated in the Contract Documents and as follows in schedule and show how the sequence of the Work is affected.
  - 1. Work Restrictions: Show the effect of the following items (if applicable) on the schedule:

- a. Coordination with existing construction
  - b. Uninterruptible services
  - c. Use of premises restrictions
  - d. Provisions for future construction
  - e. Anticipated adverse weather delay days as described in Section 23 of the Standard Contract Terms and Conditions (Attachment F)
  - f. Seasonal variations
  - g. Environmental control
2. Work Stages: Indicate important stages of construction for each major portion of the Work, including, but not limited to, the following:
- a. Subcontract awards
  - b. Submittals
  - c. Deliveries
  - d. Installation
  - e. Tests and inspections
  - f. Adjusting
  - g. Startup and placement into final use and operation (if applicable)
3. Construction Areas: Identify each major area of construction for each major portion of the Work. Indicate where each construction activity within a major area must be sequenced or integrated with other construction activities.
- D. Milestones: Include milestones indicated in the Contract Documents in schedule, including, but not limited to, the Notice to Proceed, and final completion.
- E. Cost Correlation: Superimpose a cost correlation timeline, indicating planned and actual costs. On the line, show planned and actual dollar volume of the Work performed as of planned and actual dates used for preparation of payment requests.
1. See Section 01 29 00 – Payment Procedures for cost reporting and payment procedures.
- F. Upcoming Work Summary: Prepare summary report indicating activities scheduled to occur or commence prior to submittal of next schedule update and submit in accordance with Section 01 31 00 – Project Management and Coordination. Summarize the following issues:
- 1. Unresolved issues
  - 2. Unanswered Requests for Information
  - 3. Rejected or unreturned submittals
  - 4. Notations on returned submittal.
  - 5. Pending modifications affecting the Work and Contract Time
- G. Recovery Schedule: When periodic update indicates the Work is 14 or more calendar days behind the current approved schedule, submit a separate recovery schedule indicating means by which Contractor intends to regain compliance with the schedule. Indicate changes to working hours, working days, crew sizes, and equipment required to achieve compliance, and date by which recovery will be accomplished.



- H. Critical Path Identification: The Critical Path Method (CPM) schedule should clearly identify all activities that are on the critical path.

2.02 STARTUP/MOBILIZATION CONSTRUCTION SCHEDULE

- A. Bar-Chart Schedule: Submit startup, horizontal, bar-chart-type construction schedule within 7 days of date established for the Notice to Proceed.

2.03 CONTRACTOR'S CONSTRUCTION SCHEDULE (GANTT CHART)

- A. Gantt-Chart Schedule: Submit a comprehensive, fully developed, horizontal, Gantt-chart-type, Contractor's construction schedule using Microsoft Project or similar software approved by MDEQ within 21 days of date established for the Notice to Proceed. Base schedule on the startup construction schedule and additional information received since the start of Project. Approval of this comprehensive schedule is a condition precedent for payment.
- B. Preparation: Indicate each significant construction activity separately. Identify first workday of each week with a continuous vertical line.
  - 1. For construction activities that require three months or longer to complete, indicate an estimated completion percentage in 10 percent increments within time bar.

2.04 REPORTS

- A. Daily Construction Reports: Prepare a daily construction report recording the following information concerning events at Project site:
  - 1. Date of Daily Report
  - 2. Shift detailed in the report.
  - 3. List of subcontractors at Project site
  - 4. List of separate contractors at Project site
  - 5. Actual count of personnel at Project site
  - 6. Regulatory agency personnel at Project site
  - 7. Equipment utilized including production time and downtime at Project site
  - 8. Quantities of materials removed, delivered, or placed including quantity of each stone material placed in the last 24 hours and quantity of each stone material placed to date for each site.
  - 9. Description of activity performed including areas of placement, final shaping, and grading for the last 24 hours for each stone type, as applicable.
  - 10. Environmental Compliance activities performed for the past 24 hours.
  - 11. High and low temperatures and general weather conditions, including presence of rain or snow, high winds, high waves, high tide, and low tide and whether weather conditions represent an adverse weather date.
  - 12. Description of any downtime, delay, quality control issue or schedule change
  - 13. Accidents – including, but not limited to incidents involving people or equipment (first-aid, near miss, OSHA recordable or lost time)

14. Meetings and significant decisions
  15. Unusual events (see special reports)
  16. Stoppages, delays, shortages, and losses
  17. Emergency procedures
  18. Orders and requests of authorities having jurisdiction
  19. Change Orders received and implemented
  20. Construction Change Directives received and implemented
  21. Substantial Completion authorized
- B. Material Location Reports: At monthly intervals, prepare and submit a comprehensive list of materials in transit, delivered to and stored at Project site. List shall be cumulative, showing materials previously reported plus items recently delivered. Include with list a statement of progress on and delivery dates for materials or items located away from Project site. Indicate the following categories for stored materials:
1. Material stored prior to previous report and remaining in storage
  2. Material stored prior to previous report and since removed from storage and installed
  3. Material stored following previous report and remaining in storage
- C. Site Condition Reports: Immediately on discovery of a difference between site conditions and the Contract Documents, prepare and submit a detailed report. Submit with a Request for Information. Include a detailed description of the differing conditions, together with recommendations for changing the Contract Documents.

## 2.05 SPECIAL REPORTS

- A. General: Submit special reports directly to Engineer within 1 day of an occurrence. Distribute copies of report to parties affected by the occurrence.
- B. Reporting Unusual Events: When an event of an unusual and significant nature occurs at Project site, whether or not related directly to the Work, prepare and submit a special report. List chain of events, persons participating, and response by Contractor's personnel, evaluation of results or effects, and similar pertinent information. Advise MDMR/Engineer in advance when these events are known or predictable.

## PART 3 - EXECUTION

### 3.01 CONTRACTOR'S CONSTRUCTION SCHEDULE

- A. Contractor's Construction Schedule Updating: At monthly intervals, with Application for Payment, update schedule to reflect actual construction progress and activities. Issue schedule minimum of 48 hours before each regularly scheduled progress meeting. No payment will be processed without an approved construction schedule.
1. Revise schedule immediately after each meeting or other activity where revisions have been recognized or made. Issue updated schedule concurrently with the report of each such meeting within 48 hours after such meeting.

2. Include a report with updated schedule that indicates every change, including, but not limited to, changes in logic, durations, actual starts and finishes, and activity durations.
  3. As the Work progresses, indicate final completion percentage for each activity.
- B. Distribution: Distribute copies of approved schedule to Engineer, MDMR, separate contractors, testing and inspecting agencies, and other parties identified by Contractor with a need-to-know schedule responsibility.
1. Post copies in Project meeting rooms and temporary field offices.
  2. When revisions are made, distribute updated schedules to the same parties and post in the same locations. Delete parties from distribution when they have completed their assigned portion of the Work and are no longer involved in performance of construction activities.

**END OF SECTION 01 32 00**

**SECTION 01 32 23****SURVEYS AND LAYOUT DATA****PART 1 - GENERAL**

## 1.01 SUMMARY

- A. The Contractor shall furnish all labor, equipment, materials, and incidentals necessary to perform surveys required to perform the Work as detailed in the Construction Drawings. The Work includes, but is not limited to, pre-construction surveys, daily quality control surveys, settlement monitoring surveys, and as-built surveys and drawings.

## 1.02 RELATED SECTIONS:

- A. Section 01 20 00 – Measurement and Payment Procedures
- B. Section 01 33 00 – Submittal Procedures
- C. Section 01 35 43 – Environmental Protection
- D. Section 01 40 00 – Contractor Quality Control
- E. Section 31 05 19 – Geotextiles
- F. Section 35 24 00 – Dredging
- G. Section 35 41 00 – Chenier Construction

## 1.03 SUBMITTALS

The following submittals shall be in accordance with Section 01 33 00 – Submittal Procedures:

- A. Survey Plan: The Contractor shall prepare and submit, for approval by the Engineer, a written survey plan, presenting the contract survey effort from start to completion. The plan shall cover, as a minimum, Contractor-conducted layout work (including baseline control) and the required surveys described in this section. The Contractor's plan shall show a percentage breakdown of each type of survey phase (baseline, control, pre-construction, etc.) of the total survey effort for the Work.
- B. Pre-construction Bathymetric Survey: The Contractor shall submit the xyz survey data within 2 working days of data collection. The electronic files in PDF and CADD files with templates, end areas and volumes shall be submitted within 5 working days of data collection. Calculated volumes should be broken down by segment.
- C. Daily Quality Control Surveys: The Contractor shall submit the xyz and PDF survey data within 2 working days of data collection.
- D. Monitoring Surveys: The Contractor shall submit the xyz survey data in tabular form with the survey date within 2 working days of data collection.
- E. As-Built Surveys: Upon project completion and before submitting the final Payment Application, the Contractor shall submit to the Engineer drawings showing as-built conditions of the site. The As-Built surveys will highlight any deviations to the Construction Drawings and shall include the following:

1. Field changes of dimension and detail.
- F. Changes made by Change Order or other Modifications.
- G. Details not on original Project Drawings.
- H. Pre- and Post-Construction 3D-generated surfaces (by the equivalent CADD method for each pre- and post-construction surface); and
- I. A plot of the actual pre- and post-construction cross sections of stone layers plotted at the same station as and on top of the design templates.

1.04 QUALITY ASSURANCE

- A. The Contractor shall hire a third-party independent surveyor licensed in the State of Mississippi to perform and certify all pre-construction and as-built surveys and monthly verify the Contractor's Quality Control surveys, survey setup, and local control network. The surveyor shall show more than 10 years of topographic and hydrographic survey experience.

**PART 2 - PRODUCTS (Not Applicable)**

**PART 3 - EXECUTION**

3.01 GENERAL

- A. The Contractor is responsible for all surveying required for layout and performance of the Work. All pre-construction and as-built surveys shall be performed by an independent third-party surveyor licensed in the State of Mississippi. Quality control surveys can be collected by the Contractor's crew using monumentation developed by the independent third-party surveyor. All construction-related drawings, submittals, and as-builts will be prepared by the Contractor in CADD and PDF formats.
- B. The Contractor shall complete the layout of the Work and shall be responsible for all measurements.
- C. The Contractor shall perform surveys of the stone installation. It is the intent of the surveys to have vertical and horizontal accuracies equivalent to land surveying. Cross-section surveys shall be performed prior to placement of stone, and again after placement of the stone.
- D. After installation of each settlement plate and before placement of stone template, the Contractor shall perform a survey detailing the location, date of installation, and the top elevation of the riser pipe to the nearest 0.1 feet NAVD88.
- E. For all daily quality control, settlement monitoring (as described in Section 3.04 C.), and as-built surveys, the Contractor shall perform cross-section surveys along the containment dike crest at maximum intervals of 50 feet on center (along the centerline of the containment dike) with a minimal data density of one (1) elevation shot every 5 linear feet on line. For all surveys, additional elevation shots shall be taken at the seaward and landward edge of the stone, along the crest, and at abrupt changes in grade. The cross sections shall extend 25 feet beyond the toe of the stone. In addition to the cross sections, a centerline profile survey, with elevations taken at least every 5 feet along the centerline.
- F. All survey submittals shall include the following:
  - G. Surveyor's name and date survey was performed.
  - H. Purpose of the survey (e.g., pre-construction, post-construction)

- I. Unit of measure in U.S. Survey Feet
- J. Horizontal datum in Mississippi State Plane East Zone, NAD 83, U.S. Feet
- K. Vertical datum in North American Vertical Datum of 1988 (NAVD88)
- L. CADD File submittals shall also include the following:
- M. Contours (and/or the actual surfaces if the surveyor(s) uses AutoCAD Civil 3D or can export to LandXML)
- N. Each survey shall be organized by surveyor and the date performed.
- O. If there is more than one survey in a CADD file, each survey shall be placed on its own layer and the layer shall be appropriately named and dated.
- P. If CSV files are submitted (formatted xyz), the first line of the text file shall identify the items listed in 3.01 E, along with the surveyor's name and date performed in the first line of the text file.

### 3.02 PRE-CONSTRUCTION SURVEY

- A. Prior to performing the pre-construction survey, the Contractor must field verify the location of all utilities throughout the entire project length. The Contractor is strictly responsible for repair of all damages related to utilities as a result the construction activities.
- B. Prior to construction, the Contractor shall perform a pre-construction bathymetric survey of the project area for Engineer's approval.
- C. The Pre-Construction bathymetric survey shall be collected using low frequency methods as prescribed by the U.S. Army Corps of Engineers Hydrographic Survey Manual EM 1110-2-1003 for soft sediments.
- D. The Contractor shall collect cross sections on 50-foot centers along the containment dike alignment. Each cross section shall extend 100 feet landward and seaward of the alignment producing minimum 200-foot cross sections. The survey can be a combination of bathymetric and real time kinematic data, providing shots at 5-foot intervals and a minimum of 100 feet into the marsh vegetation. Sufficient closure points between sections shall be obtained to develop a 5-foot by 5-foot grid.
- E. In addition to the bathymetry, the Contractor shall collect a centerline profile using RTK static methods, using a 1-square-foot shoe or base for the unit. These data will be used to adjust the bathymetric survey to correlate with each RTK survey of the completed feature.
- F. The Contractor shall submit proposed containment dike templates at each 50-foot cross section in PDF and CADD, as well as estimated stone volume and tonnage calculations for the entire containment dike to the Engineer for approval.

### 3.03 DAILY QUALITY CONTROL SURVEYS

- A. The Contractor shall perform daily quality control surveys after placement of the fill templates. The surveys shall encompass the previous day's construction to the extent practicable. For quality control purposes, the progress surveys shall be performed and completed no later than 3 calendar days following completion of the stone installation.

- B. Drawings shall be provided showing the surveyed surface elevations in cross section and centerline profile, along with the contract template. Submittal shall include hard copy plots in grid format and electronic files. Electronic files shall include Portable Document Format (PDF) submittal as well as original (native) format. The Contractor shall submit the xyz survey data in ASCII or another common format, if requested and as directed.

3.04 SETTLEMENT MONITORING SURVEYS

- A. After placement of the fill to the design elevations along the feature, the Contractor shall survey and record the elevation of the top of the fill to the nearest 0.1-foot NAVD88..
- B. Crest surveys shall be performed weekly until notification to discontinue by the Agency, or its designated representative is received or to final acceptance. For each crest survey, the Contractor shall survey as close to the initial stone point as possible to track consolidation of the fill during construction.
- C. When directed by the Engineer, the Contractor shall also collect cross-section surveys (as described in Section 3.01). The intent of this survey is to determine if additional slope materials are needed to meet the minimum lines and grades.

3.05 AS-BUILT SURVEYS

- A. When directed by the Engineer, the Contractor shall perform the As-Built surveys.
- B. The As-Built drawings and data sets shall include the pre-construction survey, design template, all quality control cross-section surveys, settlement plate monitoring elevations, settlement monitoring profile and cross sections, and the final as-built cross sections and centerline profile. The submittal shall be certified by an independent third-party surveyor licensed in the State of Mississippi and include an electronic PDF, xyz files, and the CADD files in an Agency approved format.

**END OF SECTION 01 32 23**

**SECTION 01 32 33**

**PHOTOGRAPHIC DOCUMENTATION**

**PART 1 - GENERAL**

This section addresses the requirement to take and produce construction record photographs during the course of the Work.

Digital Photography is required. Film photography is not acceptable.

Monthly aerials and video clips of construction are required.

The employment of competent photographer to take construction record photographs periodically during course of the Work is required.

**PART 2 - RELATED DOCUMENTS**

Section 01 29 00 – Payment Procedures

Section 01 77 00 – Closeout Procedures

**PART 3 - STILL PHOTOGRAPHY REQUIRED**

Provide digital aerial color photographs of the general construction area prior to starting construction and a second aerial photograph at the completion of construction. Aerial photographs shall be at a scale of 1" = 600' with a pixel resolution of at least 6 inches. Aerial photograph shall be within the boundaries defined by the following GPS coordinates and Figure 1 – Limits of Aerial Photograph located at the end of this specification:

- 1) 30° 22' 25.42" N, 88° 50' 11.37" W
- 2) 30° 22' 43.81" N, 88° 49' 58.75" W
- 3) 30° 22' 43.83" N, 88° 30' 51.12" W
- 4) 30° 22' 57.43" N, 88° 51' 4.45" W

Take aerial photographs on the monthly closing date on which each scheduled Payment Application is based.

Take a minimum of five (5) daily photographs of construction activities as necessary to document daily construction progress. The intent is for digital photos to be kept as a project record.

Digital photographs shall be submitted on suitable electronic media or uploaded to project site server. Organization and files of pictures must be approved by Engineer.

Digital photographs shall be a resolution of 10 megapixels or greater.

Submitted digital media and photos become the property of Agency.



#### **PART 4 - AERIAL STILL AND VIDEO PHOTOGRAPHY REQUIRED**

Aerial video of the construction site before construction begins is required. Video may be taken by plane, drone, helicopter, or any other aerial vehicle. If taken by drone or other unmanned aircraft, the view shall be taken at no higher than 400 feet above sea level (per Federal Aviation Authority [FAA] requirements) along the center line of the proposed containment dike.

Aerial video of the construction site during construction is required, in accordance with Section 1.01. Videos should show all completed work and proposed work area for the next month. This view shall be taken at no higher than 400 feet above sea level (per FAA requirements) along the center line of the constructed and proposed facilities if obtained by an unmanned aircraft.

Aerial video of the construction site on the day of the Final Inspection. This view shall be taken at no higher than 400 feet above sea level (per FAA requirements) along the center line of the constructed and proposed facilities if taken by an unmanned aircraft.

Video clips of key construction activities.

Still photography frames may be collected from video clips to comply with Section 1.03, provided they are taken using high-definition video.

High elevation still photographs of key construction activities. If still photographs of key construction activities are taken by an unmanned aircraft, the aircraft may not go higher than 400 feet above sea level in accordance with FAA requirements.

#### **PART 5 - COSTS OF PHOTOGRAPHY**

Contractor is responsible for the costs for specified photography and printing.

Payment to a subcontractor or individual for drone captured images or video clips will only be provided if an FAA Section 333 Exemption is provided. **Note: Under FAA regulations, commercial use of unmanned aircraft is only allowed if the user has an FAA Section 333 Exemption.**

Parties requiring additional photography or prints will pay for them directly.

#### **PART 6 - DELIVERY OF PHOTOS**

Contractor will submit digital photos to the Engineer with monthly pay requests or within 15 days of photo date.

#### **PART 7 - PRODUCTS (NOT USED)**

#### **PART 8 - EXECUTION**

##### **8.01 TECHNIQUE**

Presentation of Still Photography. The information/data provided with the digital still photography shall include:

1. Date of image.
2. Location of images by Station location as shown on the design drawings; and
3. Direction of image (N, S, NE, NW, SE, SW).

Exposure and Focus. The photography shall be taken with the appropriate exposure and focus.

#### Aerial Images and Aerial Videos

Still images may not be taken at elevations exceeding 400 feet above sea level in accordance with FAA regulations if taken by an unmanned aircraft such as a drone.

Aerial video survey shall use a focal length that captures no more than 30 feet outside the construction area in accordance with Figure 2 – Area of Coverage for Aerial, Drone or Unmanned Aircraft Captured Video located at the end of this specification. If an unmanned aircraft is utilized to capture video, the aircraft cannot fly higher than 400 feet above sea level in accordance with FAA regulations.

A digital imprint on the image that identifies the date and Station Location shall be edited onto the images.

Video imagery shall be at 1080p resolution with a shutter speed no slower than 30 frames/sec.

Video imagery shall use high quality lenses that produce clear and sharp images with a focal length that allows collected images to extend no more than 30 feet outside the construction zone. If a fixed lens is used, the height above sea level can be used to ensure that the cross section of the video does not exceed more than 30 feet outside the construction zone.

### **PART 9 - VIEWS REQUIRED AND SUBMITTALS**

Photograph shall be taken from locations to adequately illustrate the condition of construction and the state of the Project, and all fleeting areas utilized by the contractor.

Aerial and video survey of the site prior to construction under low tide conditions is required.

Monthly aerial and video survey of the site during construction is required. One flyover on or near the day of final payment request is required. Aerial survey should take place under low tide conditions when possible. Specific attention shall be given to facilities constructed since the previous pay period and the proposed construction area for the upcoming pay period.

Aerial video clips of key construction activities are required (at least three clips of each key construction activity during the life of the project).

Aerial still photography images of key construction activities are required (monthly images on or near the cut off day of payment request).

Still photography images of key construction activities from barge or inspection boat.

Contractor shall submit a binder of stored media containing digital photos, aerial video clips, aerial still photographs for project records collated in chronological order of project with date headings for groups of photos or videos.

Contractor shall submit an acceptable media that contains all photos, grouped by date and location.

Engineer will distribute, after review:

1. One copy of each view to Agency
2. One copy of each view to Engineer's file

3. One copy of each view returned to Contractor for inclusion in Project Record Document



Figure 1 – Limits of aerial photographs

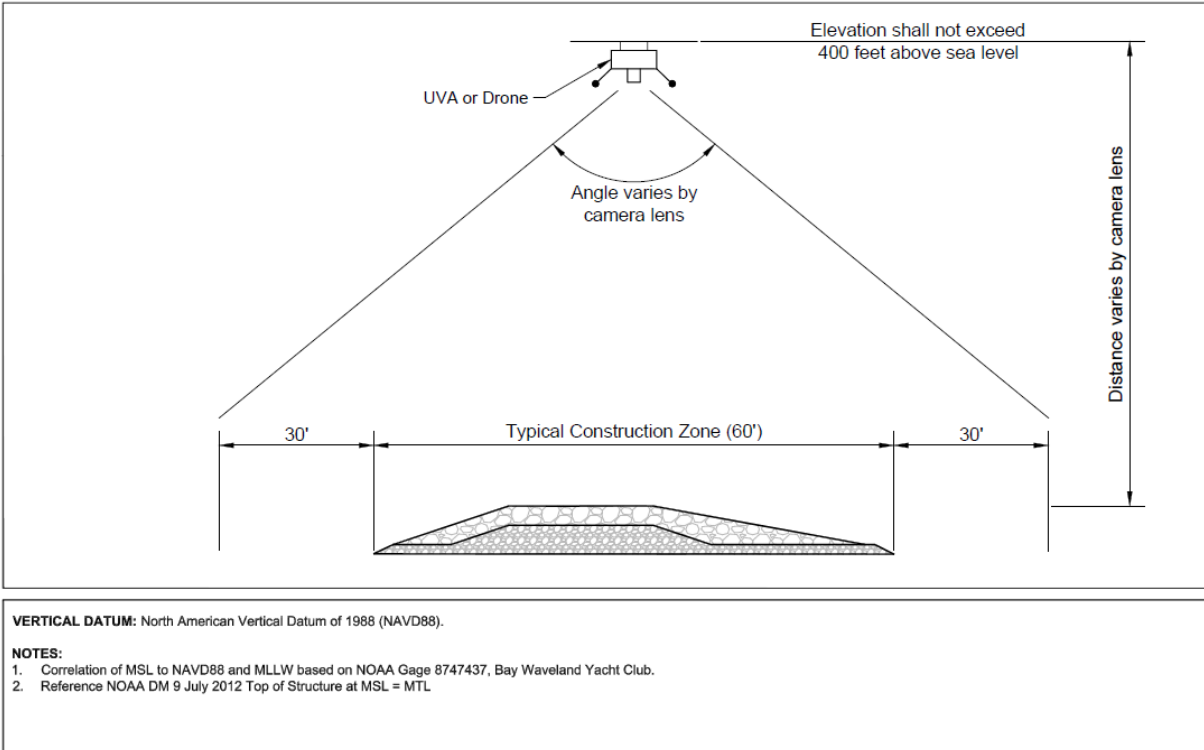


Figure 2 – Area of coverage for aerial-, drone-, or unmanned aircraft-captured video

**END OF SECTION 01 32 33**

**SECTION 01 33 00**

**SUBMITTAL PROCEDURES**

**PART 1 - GENERAL**

**SUMMARY**

- A. This section includes requirements for the submittal schedule and administrative and procedural requirements for submitting Shop Drawings, Product Data Samples, and other submittals.
- B. RELATED DOCUMENTS
- C. Attachment F of Standard Contract Terms and Conditions
- D. Section 01 29 00 – Payment Procedures
- E. Section 01 29 73 – Schedule of Values
- F. Section 01 31 00 – Project Management and Coordination
- G. Section 01 32 00 – Construction Progress Documentation
- H. Section 01 32 23 – Surveys and Layout Data
- I. Section 01 32 33 – Photographic Documentation
- J. Section 01 35 43 – Environmental Protection
- K. Section 01 40 00 – Contractor Quality Control
- L. Section 01 77 00 – Closeout Procedures
- M. SUBMITTALS
- N. Submittal Schedule: The Contractor shall submit a schedule of submittals with the Construction Work Plan, arranged in chronological order by dates required by the construction schedule. Include time required for review, ordering, manufacturing, fabrication, and delivery when establishing dates. Include additional time required for making corrections or revisions to submittals noted by Engineer and additional time for handling and reviewing submittals required by those corrections.
- O. QUALITY ASSURANCE
- P. Coordination: The Contractor will coordinate preparation and processing of submittals with performance of construction activities.
  - 1. Coordinate each submittal with fabrication, purchasing, testing, delivery, other submittals, and related activities that require sequential activity.
  - 2. Submit submittal items required for each specification section concurrently.
  - 3. Coordinate transmittal of different types of submittals for related parts of the Work so processing will not be delayed because of need to review submittals concurrently for coordination.

- a. Engineer reserves the right to withhold action on a submittal requiring coordination with other submittals until related submittals are received.
- b. Initial Review: Allow 7 working days for initial review of each submittal. Submittals which require coordination of subsequent submittals will not be reviewed until all pertinent submittals are provided.
- c. Intermediate Review: If intermediate submittal is necessary, process it in same manner as initial submittal.
- d. Resubmittal Review: Allow 7 working days upon Engineer's receipt of resubmittal for review of each resubmittal.
- e. Assemble complete submittal package into a single indexed file incorporating submittal requirements of a single specification section and transmittal form.
- f. Name file with submittal number or other unique identifier, including revision identifier – numbering system and identifiers will be mutually acceptable to the Contractor and MDMR.
- g. Transmittal Form for Electronic Submittals shall be in color format and be fully searchable: Use electronic form, containing the following information:
  - 1) Project name.
  - 2) Date.
  - 3) Name and address of Engineer.
  - 4) Name of Contractor.
  - 5) Name of firm or entity that prepared submittal.
  - 6) Names of subcontractor, manufacturer, and supplier.
  - 7) Category and type of submittal.
  - 8) Revision number of submittal along with submittal dates of previous submittals;
  - 9) Submittal purpose and description.
  - 10) Specification section number and title.
  - 11) Related physical samples submitted directly.
  - 12) Indication of full or partial submittal.
  - 13) Remarks.
  - 14) Identify options requiring selection by MDMR/Engineer.
  - 15) Identify on separate page any clarification required by the Engineer and any deviations from the Contract Drawings and Contract Documents.

- h. Furnish one (1) searchable PDF copy of each submittal to the Engineer. Provide additional submittals if additional copies are needed for suppliers or subcontractors. Copies of the submittal will be retained for the Engineer and MDMR with the remaining copies returned to the Contractor.

**PART 2 - PRODUCTS**

**A. MATERIAL SUBMITTAL PROCEDURES**

- B. Shop Drawings: The Contractor shall prepare Project-specific information, drawn accurately to scale. Do not base Shop Drawings on reproductions of the Contract Documents or standard printed data.

- 1. Preparation: Fully illustrate requirements in the Contract Documents. Include the following information, as applicable:
  - a. Identification of products
  - b. Schedules
  - c. Compliance with specified standards
  - d. Notation of coordination requirements
  - e. Notation of dimensions established by field measurement
  - f. Relationship and attachment to adjoining construction clearly indicated.
  - g. Seal and signature of professional engineer if specified.
- 2. Identify shop drawing details by reference to sheet and detail, or schedule shown on contract drawings.
- 3. Make drawings accurate to a scale with sufficient detail to show the kind, size, arrangement and function of component materials and devices.
- 4. Minimum sheet size is 8.5 inches by 11 inches.
- 5. Fabrication drawing size shall be 11 inches by 17 inches which shall be folded to 8.5 inches by 11 inches.
- 6. If information must be specially prepared for submittal because standard published data are not suitable for use, submit as Shop Drawings, not as Product Data.
- 7. Mark each copy of each submittal to show which products and options are applicable.
- 8. Include the following information, as applicable:
  - a. Manufacturer's catalog cuts
  - b. Standard color charts
  - c. Statement of compliance with specified referenced standards
- 9. Submit Product Data before or concurrent with Samples.

10. Submit Product Data in the following formats:
  - a. Electronically
  - b. Physical sample (such as geotextile fabric)
11. Transmit Samples that contain multiple, related components such as accessories together in one submittal package.
12. Identification: Attach label on unexposed side of Samples that includes the following:
  - a. Generic description of Sample
  - b. Product name and name of manufacturer
  - c. Sample source
  - d. Number and title of applicable specification section
  - e. The specification paragraph number and generic name of each item
13. Provide corresponding electronic submittal of Sample transmittal, digital image file illustrating Sample characteristics, and identification information for record.
14. Disposition: Maintain sets of approved Samples at Project site, available for quality control comparisons throughout the course of construction activity. Sample sets may be used to determine final acceptance of construction associated with each set.
  - a. Samples that may be incorporated into the Work are indicated in individual specification sections. Such Samples must be in an undamaged condition at time of use.
  - b. Samples not incorporated into the Work, or otherwise designated as MDMR's property, are the property of Contractor.

C. SCHEDULE OF VALUES SUBMITTAL

- D. Contractor shall submit a Schedule of Values for all Lump Sum items in accordance with Section 01 29 73 – Schedule of Values.
- E. Approval of Schedule of Values must be approved by the Engineer/MDMR prior to submittal of first payment request.

F. PAYMENT REQUEST

- G. One (1) searchable PDF copy of each payment request must be submitted on the Application for Payment forms provided by or approved by MDMR.
- H. Each payment request shall include the following:
  1. Payment form approved by MDMR.
  2. Updated Construction Schedule with updating report in accordance with Section 01 32 00 – Construction Progress Documentation



3. Photographic Documentation in accordance with Section 01 32 33 – Photographic Documentation
4. Documentation of Environmental Permit Compliance Reporting in accordance with Section 01 35 43 – Environmental Protection and any issued permits associated with this Project
5. Progress Payment Surveys
6. Request for contract extension due to unanticipated adverse weather delay days during the pay period along with supporting documentation in accordance with Section 23 of the Standard Contract Terms and Conditions

I. OTHER SUBMITTALS

J. The Contractor shall also provide the following submittals prior to construction:

1. Certificates of insurance
2. Surety bonds
3. List of proposed subcontractors
4. List of proposed products
5. Construction Progress Schedule
6. Submittal register
7. Schedule of Values
8. Health and safety plan
9. Work plan
10. Surveying Plan
11. Quality Control Plan
12. Environmental Protection Plan

K. Coordination Drawing Submittals: Comply with requirements specified in Section 01 31 00 – Project Management and Coordination.

L. Test and Inspection Reports and Schedule of Test and Inspection Submittals: Comply with requirements specified in Section 01 40 00 – Contractor Quality Control.

M. As-built surveys in accordance with Section 01 32 23 – Surveys and Layout Data

N. Closeout Submittals: Comply with requirements specified in Section 01 77 00 – Closeout Procedures.

O. Field Test Reports: Submit written reports indicating and interpreting results of field tests performed either during installation of product or after product is installed in its final location, for compliance with requirements in the Contract Documents.

## **PART 3 - EXECUTION**

### **CONTRACTOR'S REVIEW**

- A. Submittals: The Contractor shall review each submittal and check for coordination with other Work of the Contract and for compliance with the Contract Documents, note corrections and field dimensions, and mark with an approval stamp before submitting to Engineer.
- B. Project Closeout and Maintenance Material Submittals: See requirements specified in Section 01 77 00 – Closeout Procedures.
- C. Approval Stamp: Prior to submitting submittals to Engineer and MDMR, stamp each submittal with the submittal stamp. Each submittal must include the following:
  - 1. Project Name
  - 2. Submittal Number and Revision Number
  - 3. Specification Section
  - 4. Contractor's approval and statement certifying that submittal has been reviewed and checked and approved for compliance with the Contract Documents (Incomplete submittals will be returned to the Contractor.)
- D. Submittal Log to be Maintained by Contractor:
  - 1. Maintain an accurate submittal log for duration of the Work showing the current status of all submissions.
  - 2. Show submittal number, section number, section title, submittal description dates and disposition of submittal.
  - 3. Make submittal log available to Engineer for Engineer's review upon request.
- E. ENGINEER'S DUTIES
- F. The Engineer will review submittals in accord with approved submission schedule, provided that each submittal has been called for by the Contract Documents and is stamped by Contractor as indicated above.
  - 1. No extensions of time are allowed due to Engineer's delay in reviewing submittals unless all the following criteria are met:
    - a. The Contractor has notified Engineer in writing that timely review of a particular submittal in question is critical to the progress of the Work and Contractor has identified the requested submittal return date.
    - b. The Engineer has failed to return submittal within 14 working days of receipt of the submittal or receipt of said notice, whichever is later.
    - c. The Contractor demonstrates that delay in progress of the Work was directly attributable to Engineer's failure to return submittal within 14 working days; and

- d. The Contractor demonstrates that submittal was submitted on schedule and that submittal review is on an item that is on the critical path as defined by the construction schedule provided in Section 01 32 00 – Construction Progress Documentation.
  2. No extensions of time are allowed due to delays in progress of the Work caused by rejection and subsequent resubmission of data, including multiple resubmissions.
  3. The Engineer's review shall not extend to means, methods, techniques, sequences, operations of construction, and safety precautions and programs incidental thereto. No information regarding these items will be reviewed, whether or not included in submittals.
  4. In the event the Engineer will require more than 14 working days to perform review, the Engineer shall so notify Contractor.
- G. The Engineer will review drawings and data submitted only for general conformity with Contract Documents.
1. The Engineer's review of drawings and data returned marked "No Exceptions Taken" or "Exceptions Noted" does not indicate a thorough review of all dimensions, quantities, and details of material, equipment device or items shown.
  2. The Engineer's review does not relieve Contractor of responsibility for errors, omissions, or deviations nor responsibility for compliance with the Contract Documents.
  3. The Engineer will consider and review only those deviations from the Contract Documents clearly identified as such on the submittal and tabulated on the Contractor's transmittal sheet.
- H. The Engineer may return submittals unviewed to Contractor for distribution or for resubmission when one of the following conditions is met:
1. The submittal was previously returned to the Contractor and no apparent changes have been made to the original submittal.
  2. The submittal was provided by a subcontractor, supplier, or manufacturer.
  3. The submittal is not required by the specific technical specification or contract documents.
- I. The Engineer will affix a stamp and indicate the approval for submittal or resubmission requirements with the following stamp:

<input type="checkbox"/> NO EXCEPTIONS TAKEN	<input type="checkbox"/> EXCEPTIONS NOTED
<input type="checkbox"/> REVISE & RESUBMIT	<input type="checkbox"/> REJECTED
<input type="checkbox"/> INFORMATION ONLY This review was performed only for general conformance with the design concept of the project and general compliance with the information given in the Contract Documents. Modifications or comments made on the shop drawings and product data during this review do not relieve Contractor from responsibility for compliance with the requirements of the plans and specifications. Contractor is responsible for: dimensions and quantities; information that pertains solely to the fabrication processes or to the means, methods, of construction; coordination of the work of all trades. Anchor QEA  Date _____ By _____	

J. DISPOSITION OF SHOP DRAWINGS AND PRODUCT DATA

1. "No Exceptions Taken": Approved with no corrections noted
  - a. One copy sent to MDMR.
  - b. One copy sent to Resident Project Representative.
  - c. One copy retained in Engineer's file.
  - d. Remaining copies returned to the Contractor for their use, either via:
  - e. One copy to be kept on file at Contractor's office at the jobsite
  - f. Remaining copies for Contractor's office file, suppliers, or subcontractors
2. No corrections or comments noted on the submittal or on a Submittal Response Summary Sheet.
3. Issues or miscellaneous comments pertaining to other related items of the Work may be included in transmittal letter.
4. Resubmission is not required.

K. "Exceptions Noted": Approved with corrections noted

1. One copy sent to MDMR.
2. One copy sent to Resident Project Representative.
3. One copy retained in Engineer's file.
4. Remaining copies returned to the Contractor for their use.
5. Comply with corrections or comments as noted on the submittal or on a Submittal Response Summary Sheet.

6. Resubmission not required.
- L. "Revise And Resubmit": Incorrect information provided or Significant Information Still Required:
1. One copy sent to the Resident Project Representative.
  2. One copy retained in the Engineer's file.
  3. All remaining copies returned to Contractor for revision and resubmittal.
  4. A copy of transmittal letter and/or Submittal Response Summary Sheet sent to MDMR: A "No Exceptions Taken" or "Exceptions Noted" submittal will be forwarded to MDMR after review per above disposition requirements.
  5. Submittal is either: incorrectly annotated; specific comments need to be addressed and incorporated in resubmittal; and/or additional information may be required as noted on the submittal or on a Submittal Response Summary Sheet.
  6. Submitted information may not include or address specific item required per the specification as identified on the submittal or on a Submittal Response Summary Sheet.
  7. Specific information related to the identified item may be required for final approval of submittal.
  8. Resubmission of entire submittal may be required, or resubmission of a specific item may be required as identified on the submittal or on a Submittal Response Summary Sheet.
- M. "Rejected": Returned for correction
1. One copy sent to the Resident Project Representative.
  2. One copy retained in the Engineer's file.
  3. All remaining copies returned to the Contractor.
  4. Copy of transmittal letter and/or Submittal Response sent to MDMR.
  5. Contractor required to resubmit complete submittal package in accordance with Contract Documents.
  6. The Submittal does not comply with provisions of Contract Documents as noted on the submittal or on a Submittal Response Summary Sheet.
  7. Resubmission is required.
- N. "Information Only": Approval not required
1. One copy sent to MDMR.
  2. One copy sent to Resident Project Representative
  3. One copy retained in Engineer's file.
  4. Resubmission not required.

O. DISPOSITION OF SAMPLES

P. "No Exceptions Taken": Approved with no corrections noted

1. One sample sent to MDMR.
2. One sample sent to Resident Project Representative.
3. One sample retained in Engineer's file.
4. Acknowledgement: Copy of transmittal letter sent to Contractor.
5. Resubmission not required.

Q. "Exceptions Noted": Approved with corrections noted

1. One sample sent to MDMR.
2. One sample sent to Resident Project Representative.
3. One sample retained in Engineer's file.
4. Acknowledgement: Copy of transmittal letter sent to Contractor.
5. Work performed or products furnished to comply with exceptions noted in acknowledgement.
6. Resubmission not required.

R. "Rejected": Returned for correction

1. One sample retained in Engineer's file.
2. Remaining samples sent to Contractor for resubmittal and compliance with the Contract Documents as noted in transmittal letter.
3. Copy of transmittal letter sent to MDMR.
4. Resubmission required.

S. "Information Only": Approval not required.

1. One sample retained in Engineer's file.
2. Resubmission not required.

**END OF SECTION 01 33 00**

**SECTION 01 35 43****ENVIRONMENTAL PROTECTION****PART 1 - GENERAL**

## 1.01 SUMMARY

- A. This section covers prevention of environmental pollution and damage as the result of construction operations under this Contract and for those measures set forth in other technical requirements of these specifications. For the purpose of this specification, environmental pollution and damage are defined as the presence of chemical, physical, or biological elements or agents, which adversely affect human health or welfare; unfavorably alter ecological balances of importance to human life; affect other species of importance to man; or degrade the utility of the environment for aesthetic, cultural, and/or historical purposes. The control of environmental pollution and damage requires consideration of air, water, and land, and includes management of visual aesthetics, noise, solid waste, radiant energy, and radioactive materials, as well as other pollutants.
- B. The Contractor shall establish and maintain quality control for environmental protection of all items set forth herein. Contractor shall record on Daily Construction Report (per Section 01 32 00 – Construction Progress Documentation) or attachments thereto, any problems in complying with laws, regulations and ordinances, and corrective actions taken.
- C. The Contractor shall comply with all requirements under terms and conditions set forth in the following environmental permits and consultations authorized for this project:
1. Mississippi Department of Marine Resources File No. DMR-090302 approved August 21, 2018 (Appendix A)
  2. U.S. Army Corps of Engineers File No. SAM-2018-00434-KMN approved April 1, 2021 (Appendix B)
  3. Mississippi Department of Environmental Quality File No. WQC2018042 approved August 7, 2019 (Appendix C)
  4. Copies of the environmental permits and consultations are appended to these Contract Documents. The Contractor shall familiarize himself and his personnel and subcontractors with these and any other permits issued for this Project and comply with all requirements under the terms and conditions set forth therein. The Contractor shall be responsible for any fines resulting from violations of construction conditions set forth in the environmental permits. The Contractor shall include all costs for preparation and submittal of required reporting within each relative bid item. It is the Contractor's responsibility to obtain all other relevant federal, state, and local permits at no cost to MDMR. The Contractor shall be responsible for any delays and costs resulting from failure to comply with these and all federal, state, and local environmental protection laws and regulations.

## 1.02 RELATED SECTIONS:

- A. Section 01 32 00 – Construction Progress Documentation
- B. Section 01 32 23 – Surveys and Layout Data
- C. Section 01 33 00 – Submittal Procedures
- D. Section 01 40 00 – Contractor Quality Control

## 1.03 SUBMITTALS

- A. The following submittals shall be submitted by the Contractor in accordance with Section 01 33 00 – Submittal Procedures.
- B. Environmental Protection Plan: Within ten (10) calendar days after the Notice of Award, the Contractor shall submit in writing an Environmental Protection Plan (EPP). Acceptance of the Contractor's plan shall not relieve the Contractor of its responsibility for adequate and continuing control of pollutants and other environmental protection measures. Acceptance of the plan is conditional and predicated on satisfactory performance during construction. The Engineer reserves the right to require the Contractor to make changes to the EPP or operations if the Engineer determines that environmental protection requirements are not being met. No physical work at the site shall begin prior to acceptance of the Contractor's Plan by the Engineer. The EPP shall include but not be limited to the following:
1. A list of federal, state, and local laws, regulations, and permits concerning environmental protection, pollution control, and abatement that are applicable to the Contractor's proposed operations and the requirements imposed by those laws, regulations and permits in addition to any required by this Contract.
  2. Methods for protection of features and resources to be preserved within and adjacent to the work areas. The Contractor shall prepare a listing of methods to protect resources needing protection (i.e., upland and submerged vegetation, air and water quality, fish and wildlife, soil, historical, archeological, and cultural resources).
  3. Procedures to be implemented to provide the required environmental protection and to comply with the applicable laws and regulations. The Contractor shall provide written assurance that immediate corrective action will be taken to correct pollution of the environment due to accident, natural causes, or failure to follow the procedure set out in accordance with the environmental protection plan.
  4. The location of the solid waste disposal facility used for disposal of solid wastes resulting from this Project.
  5. Drawings showing locations of any material storage areas, structures, sanitary facilities, fleeting areas (existing and proposed), and stockpiles of excess materials for both on shore and offshore facilities.
  6. Environmental monitoring plans for the job site, including land, water, air, and noise monitoring.
  7. Methods for protecting surface and groundwater during construction activities, including how impacts to water quality will be minimized, including methods for monitoring water quality, best management practices (BMPs), and methods for monitoring and controlling turbidity.
  8. Spill Prevention Plan. The Contractor shall specify all potentially hazardous substances to be used on the job site and intended actions to prevent accidental or intentional introduction of such materials into the air, ground, water, wetlands, or drainage areas. The plan shall specify the Contractor's provisions to be taken to meet federal, state, and local laws and regulations regarding labeling, storage, removal, transport, and disposal of potentially hazardous substances.
  9. Spill Contingency Plan for cleaning up any spilled or released hazardous, toxic or petroleum material associated with any facilities used on this Project.



10. Work area plan showing the proposed activity in each portion of the area and identify the areas of limited use or non-use. The plan should include measures for marking the limits of use areas.
11. A statement identifying the Contractor's personnel who shall be responsible for implementation of the Environmental Protection Plan. The Contractor's personnel responsible shall report directly to the Contractor's top management and shall have the authority to act for the Contractor in all environmental protection matters.
12. Emergency contact information (office phone number, cell phone number, and e-mail address) for Contractor personnel, including the person responsible for environmental compliance for the Work, the on-site Construction Superintendent, the Project Manager, and other relevant parties.
13. Emergency contact information for MDMR and the Engineer (to be provided at the Preconstruction Meeting).
14. A Certification Letter must be signed acknowledging the Contractor has a copy of all environmental permits applicable to the project and understands the conditions in the permits. The Certification Letter (see Appendix E) shall be attached to the Environmental Protection Plan.
15. Turbidity Monitoring Qualifications: Within ten (10) calendar days after the Notice of Award, the Contractor shall submit qualifications for the person that is designated as the turbidity monitor for the Project. The person must be familiar with both turbidity monitoring and construction techniques and have the authority to alter and/or shut-down operations if turbidity levels exceed the compliance standards established.
16. Turbidity Monitoring Reports: During construction, the Contractor shall submit daily monitoring reports containing the turbidity data gathered. Monitoring shall occur at each construction site. Monitoring reports shall be submitted to the Engineer, Construction Quality Control (CQC) System Manager, and other parties as deemed necessary via e-mail on a daily basis. All reports shall contain the following information:
  - a. The time of day samples were taken
  - b. Dates of sampling and analysis
  - c. Depth of water body
  - d. Depth of each sample
  - e. Antecedent water conditions, including wind direction and velocity
  - f. Tidal stage and direction of flow
  - g. Water temperature
  - h. A map indicating sampling locations and direction of flow
  - i. Statement describing the methods used in collection, handling, storage, and analysis of the samples
  - j. Statement by the individual responsible for implementation of the sampling program concerning the authenticity, precision, limits of detection, calibration of the meter and accuracy of the data

- k. When samples cannot be collected, include an explanation in the report. If unable to collect sample due to severe weather conditions, include a copy of a current report from a reliable, independent source, such as an online weather service.

1.04 SUBCONTRACTORS

- A. Assurance of compliance with this section by subcontractors will be the responsibility of Contractor.

1.05 TRAINING OF CONTRACTOR PERSONNEL IN POLLUTION CONTROL

- A. Contractor shall train his personnel in all phases of environmental protection. The training shall include methods of detecting and avoiding pollution, familiarization with pollution standards, both statutory and contractual, and installation and care of facilities to ensure adequate and continuous environmental pollution control. Quality Control and supervisory personnel shall be thoroughly trained in the proper use of monitoring devices and abatement equipment, and shall be thoroughly knowledgeable of federal, state, and local laws, regulations, and permits as listed in the EPP submitted by Contractor. Quality Control personnel will be identified in the Quality Control Plan submitted in accordance with Section 01 40 00 – Contractor Quality Control.

1.06 NONCOMPLIANCE

- A. The Engineer or CQC System Manager, as defined in Section 01 40 00 – Contractor Quality Control, will notify the Contractor of any observed noncompliance with the federal, state, or local laws or regulations, permits and other elements of the Contractor's EPP. The Contractor shall, after receipt of such notice, inform the Engineer of proposed corrective action and take such action as may be approved. Corrective actions shall be in compliance with the federal, state, or local laws or regulations, permits and other elements of the Contractor's EPP. If the Contractor fails to comply promptly, the Engineer may issue an order stopping all or part of the Work until satisfactory corrective action has been taken. No time extensions shall be granted, or costs or damages allowed to the Contractor for any such suspension.
- B. Monitoring of permit and/or regulation compliance by the Engineer is for the sole benefit of MDMR and shall not relieve the Contractor of the responsibility of knowing and complying with all local, state, and federal laws and regulations concerning the protection of environmental resources, nor does it relieve the Contractor of the responsibility of ensuring that all environmental permit requirements governing the project work are met.
- C. The Contractor shall notify the Engineer, in writing, of the absence or occurrence of environmental incidents and also include in the Daily Construction Report in accordance with Section 01 32 00 – Construction Progress Documentation.

**PART 2 - PRODUCTS (NOT APPLICABLE)****PART 3 - EXECUTION**

## 3.01 PROTECTION OF ENVIRONMENTAL RESOURCES

A. General: For Contract work, the Contractor shall comply with all applicable federal, state, and local laws and regulations. The environmental resources within the project boundaries and those affected outside the limits of permanent work under this Contract shall be protected during the entire period of this Contract. Contractor shall confine his activities to areas defined by the Drawings and Specifications. Environmental protection shall be as stated in the following paragraphs. Failure to meet the requirements of these Specifications for environmental protection may result in Work stoppages or termination for default. No part of the time lost due to any such Work stoppages shall be made the subject of claims for extensions of time or for excess costs or damages by Contractor. If Contractor fails or refuses to promptly repair any damage caused by violation of provisions of these Specifications, MDMR may have the necessary Work performed and charge the cost thereof to Contractor.

## 3.02 PRESERVATION AND RECOVERY OF HISTORIC, ARCHEOLOGICAL, AND CULTURAL RESOURCES

A. Inadvertent Discoveries: If, during construction activities, Contractor observes items that may have historic or archeological value, such observations shall be reported immediately to Engineer so that the appropriate authorities may be notified and a determination made as to their significance and what, if any, special disposition of the finds should be made. Contractor shall cease all activities that may result in the destruction of these resources and shall prevent his employees from trespassing on, removing, or otherwise damaging such resources.

B. Claims for Downtime due to Inadvertent Discoveries: Upon discovery and subsequent reporting of a possible inadvertent discovery of cultural resources, the Contractor shall seek to continue work well away from, or otherwise protectively avoiding, the area of interest, or in some other manner that strives to continue productive activities in keeping with the Contract. Should an inadvertent discovery be of the nature that substantial impact(s) to the work schedule are evident; such delays shall be coordinated with the Engineer.

## 3.03 PROTECTION OF RESOURCES (ADDITIONAL ANCHORAGE/STAGING, IF REQUIRED BY CONTRACTOR)

A. If the Contractor requires any anchorage or staging area(s) Contractor, at his expense, shall be responsible for all approvals including environmental permitting, consultations, and coordination necessary to gain approval for use of the area(s) from appropriate authorities (e.g., the U.S. Army Corps of Engineers, U.S Coast Guard, and Mississippi Department of Archives and History). Since MDMR is the Permittee for USACE Permit, Contractor shall notify MDMR of its intention to pursue approvals for any additional anchorage or staging area(s), prior to initiating approvals or contacting any regulatory authorities. Contractor shall engage qualified third-party expertise for biological, cultural, engineering, or other for engineering, studies and surveys required for approvals. Contractor shall provide documentation to Engineer and MDMR that the proposed anchorage or staging area(s) has all approvals prior to using area(s). Contractor shall not be granted any delay in project schedule to gain approval.

## 3.04 PROTECTION OF WETLANDS

- A. The Contractor shall protect all wetlands adjacent to the work area from his operations. There shall be no storage of tools, materials within wetlands, along the shoreline in the littoral zone, or elsewhere within "waters of the state" except as specified in the project Specifications and/or Drawings.

## 3.05 PROTECTION OF LAND RESOURCES

- A. Before beginning any construction, Contractor shall identify all land resources to be preserved within Contractor's work area. Contractor shall not remove, cut, deface, injure, or destroy land resources including trees, shrubs, vines, grasses, topsoil, and landforms outside of the project area without special permission from Engineer. No ropes, cables, or guys shall be fastened to or attached to any trees for anchorage unless specifically authorized. Contractor shall provide effective protection for land and vegetation resources at all times as defined in the following subparagraphs.
- B. Monuments and markers shall be protected before construction operations commence. Where construction operations are to be conducted during darkness, the markers shall be visible. The Contractor shall convey to his personnel the purpose of marking and/or protection of all necessary objects.
- C. Solid wastes (excluding clearing debris) shall be placed in containers that are emptied on a regular schedule. All handling and disposal shall be conducted to prevent contamination. The Contractor shall transport all solid waste from the project area and dispose of it in compliance with federal, state, and local requirements for solid waste disposal. Discarded materials, other than those that can be handled in the solid waste category, will be handled as directed by the Engineer.
- D. Fuel dispensers shall have a 4-foot square, 16-gauge metal pan with borders banded up and welded at corners right below the bib. Edges of the pans shall be 8-inch minimum in depth to ascertain that no contamination of the ground or water takes place. Pans shall be cleaned by an approved method immediately after every dispensing of fuel and wastes disposed of offsite in an approved area. Contractor shall select and implement controls and procedures to minimize leaking or spilling of fuels during fueling of vehicles or equipment. Should any spilling of fuel occur, the Contractor shall immediately recover the contaminated ground and/or water and dispose of it offsite in an approved area.
- E. Chemical waste shall be stored in corrosion resistant containers, removed from the work area and disposed of in accordance with Federal, state, and local regulations.
- F. Discarded materials other than those that can be included in the solid waste category shall be handled as directed.

## 3.06 PROTECTION OF WATER RESOURCES

- A. The Contractor shall keep construction activities under surveillance, management, and control to avoid pollution of surface and groundwaters. The Contractor shall conduct his operations in a manner to minimize erosion and turbidity and shall conform to all water quality standards as required by the permits and all other relevant federal, state and local regulatory criteria. Special management techniques as set out below shall be implemented to control water pollution by the listed construction activities that are included in this contract. In the event of unforeseen conditions, the Engineer may require the use of control features or methods other than those indicated or proposed by the Contractor.
- B. No creosote material shall be used in construction.

C. No construction debris, refuse, or unauthorized fill material shall be allowed to enter coastal wetlands or waters.

D. Turbidity Control

1. Turbidity shall be monitored in accordance with permit requirements, techniques described below, and in the approved EPP:
  - a. Turbidity Threshold Value: Turbidity shall not exceed a value of 50 nephelometric turbidity units (NTUs) above background outside of the limits of a 750-foot mixing zone. If a turbidity reading is more than 50 NTUs above the threshold reading, this will be a trigger to evaluate construction activities. Background reading shall mean a turbidity measurement in an area unimpacted by these construction activities.
  - b. If a turbidity measurement exceeds the standard established in paragraph a, the turbidity will be measured at the same location after 4 hours. If the turbidity measurement is confirmed, the Contractor shall implement BMPs as described in the approved EPP.
  - c. The Contractor shall perform turbidity monitoring on a frequency established in the approved EPP, but not less than daily, unless weather conditions are not suitable for obtaining turbidity readings. If so, this will be noted on the daily report.
  - d. Turbidity monitoring will resume on the approved schedule after BMPs are implemented. If the turbidity standard is exceeded after BMPs are implemented, the Contractor shall cease operations associated with the excessive turbidity or implement additional BMPs to reduce resuspension of sediment.
2. Delays in work due to the fault or negligence of the Contractor or the Contractor's failure to comply with the required turbidity requirements shall not be compensable.

E. Washing Water

1. Wastewaters directly derived from construction activities shall not be allowed to enter surface water areas.
2. The Contractor shall provide siltation fences, hay bales, and other means and materials to prevent the pollution streams, canals, lakes, ditches, rivers, and other water improvements including on-site retention containers/areas from siltation from leakage, erosion, run off, and other construction activities. The Contractor is responsible for arranging for proper clean out facilities.
3. The Contractor shall take sufficient precautions to prevent discharge of fuels, oils, and other harmful materials to the surface and ground water.

F. Oil and Fuel Spill Prevention

1. Contractor will prevent oil or other hazardous substances from entering the ground, drainage, or local bodies of water. Contractor will provide containment, diversionary structures, or equipment to prevent discharged oil from reaching a watercourse. Contractor will take immediate action to contain and clean up any spill of oily substances, petroleum products, and hazardous substances. Contractor will immediately report such spills to the Engineer. Contractor will provide one or more of the following preventive systems at each oil storage site. The provision of such preventive systems shall be approved by the Engineer prior to tank installation and use.
2. Dikes, berms, retaining walls, culverts, curbs, gutters, or other similar structures shall be capable of containing the contents of the largest single tank.

3. Absorbent materials shall be capable of absorbing the contents of the largest single tank.
- G. Oil or Fuel Storage Tank Installation: All storage tank installation shall be constructed so that a secondary means of containment is provided for the entire contents of the tanks installed. Dikes and other structures shall be positioned or located so as to provide a secondary containment identical to that required for non-mobile storage tanks. Storage tanks shall be located where they will not be subject to flooding or washout. When it is determined that the installation of containment structures or equipment to prevent discharged oil from reaching a watercourse is not practicable, a clear demonstration of such impracticability shall be submitted to the Engineer for approval prior to installation or use of the storage tank. The following shall also be provided to the Engineer for approval prior to installation use of the storage tank:
1. An oil spill contingency plan, either contained within or separate from the EPP.
  2. A written certification of commitment of manpower, equipment, and materials required to expeditiously control and remove the discharge oil.
  3. Liabilities: Contractor shall be liable for the damage caused by oil or fuel spills when it can be shown that the oil or fuel was discharged as a result of negligence or willful misconduct. The penalty for failure to report the discharge of oil or fuel shall be in accordance with state and federal laws.

### 3.07 PROTECTION OF FISH AND WILDLIFE RESOURCES

- A. The Contractor shall keep construction activities under surveillance, management, and control to minimize interference with, disturbance to, and damage of fish, shellfish beds, and wildlife. The conditions and constraints of the Migratory Bird Treaty Act are also applicable. Species that require specific attention along with measures for their protection will be listed in Contractor's EPP prior to the beginning of construction operation.
- B. If a migratory bird, threatened or endangered species is harmed because of construction activities, the Contractor shall cease all work and notify the Engineer. The Engineer will provide emergency contact information at the Pre-Construction Meeting.

### 3.08 PROTECTION OF AIR RESOURCES

- A. The Contractor shall keep construction activities under surveillance, management, and control to minimize pollution of air resources. All activities, equipment, processes, and work operated or performed by the Contractor in accomplishing the specified construction shall be in strict accordance with the applicable air pollution standards of the State of Mississippi and all Federal emission and performance laws and standards.
- B. Dust Control: As determined and deemed necessary by the Engineer, the Contractor must control dust, and strictly adhere to environmental laws and regulations regarding dust prevention.
- C. Contractor will minimize air pollution from the construction activities.
- D. Burning of waste materials, rubbish, or other debris will not be permitted on or adjacent to the Site.
- E. Tanks and containers of fuels and related products shall be controlled to minimize the emission of volatile organic compounds.
- F. Equipment should not be allowed to idle longer than one (1) hour. Equipment not in use after this time frame shall be turned off.

3.09 PROTECTION FROM SOUND INTRUSIONS

- A. The Contractor shall keep construction activities under surveillance and control to minimize damage to the environment by noise and to comply with all federal, state, and local noise ordinances. The use of horns, bells or the use of whistle signals shall be held to a minimum necessary to ensure as safe and as quiet an operation as possible.

3.10 POST CONSTRUCTION CLEANUP

- A. The Contractor shall clean up any area(s) used for construction to the satisfaction of the Engineer and MDMR.

3.11 MAINTENANCE OF POLLUTION CONTROL FACILITIES

- A. The Contractor shall, at his expense, provide routine maintenance of permanent and temporary erosion control features until the Project is completed and accepted. If such erosion control features must be reconstructed due to the Contractor's negligence, carelessness, or in the case of temporary erosion control features, failure by the Contractor to install permanent erosion control features as scheduled, such replacement shall be on the Contractor's expense.
- B. If the Contractor through any construction activity degrades, destroys, or impacts the ground cover on any adjoining property including rights-of-way, effected area shall be fully repaired and re-vegetated at the Contractor's expense.

**END OF SECTION 01 35 43**

**SECTION 01 40 00****CONTRACTOR QUALITY CONTROL****PART 1 - GENERAL**

## 1.01 SUMMARY

- A. This section covers the establishment and operation of the Contractor's Quality Control (CQC) system. The Contractor shall coordinate activities and manage resources to construct the project conforming to the Contract, on time and within budget.
- B. Separate payment will not be made for providing and maintaining an effective CQC program, and all costs associated therewith shall be included in the applicable prices contained in the Bid Form.

## 1.01 RELATED SECTIONS

- A. Attachment F – Standard Contract Terms and Conditions
- B. Section 01 20 00 – Measurement and Payment Procedures
- C. Section 01 32 00 – Construction Progress Documentation
- D. Section 01 33 00 – Submittal Procedures
- E. Section 01 77 00 – Closeout Procedures

## 1.02 SUBMITTALS

- A. The following submittals shall be submitted by the Contractor in accordance with Section 01 33 00 – Submittal Procedures.
  - 1. Contractor Quality Control Plan: Within twenty (20) calendar days of Notice of Award, the Contractor shall submit the draft CQC Plan for review and acceptance by the Engineer and MDMR. The plan shall identify personnel, procedures, control, instructions, tests, records, and forms to be used. MDMR will consider an interim plan for the first 30 days of operation. Construction will be permitted to begin only after acceptance of the CQC Plan or acceptance of an interim plan applicable to the particular feature of work to be started. Work outside of the features of work included in an accepted interim plan will not be permitted to begin until acceptance of a CQC Plan or another interim plan containing the additional features of work to be started. The CQC shall be integrated with the Contractor's Work Plan and address each step of the Work Plan.
  - 2. Registered Surveyor Qualifications: The Contractor shall submit the name and credentials of the third-party Mississippi Registered Surveyor consultant and personnel who will be performing the surveying portions of the contract work for Engineer approval. The company and personnel shall show experience in this type of work. The submittal must provide the name and type of equipment used for the Project. All pre-construction surveys and as-built surveys shall be overseen by a Mississippi registered professional surveyor.



**PART 2 - PRODUCTS (NOT APPLICABLE)****PART 3 - EXECUTION**

## 1.03 GENERAL REQUIREMENTS

- A. The Contractor is responsible for quality control and shall establish and maintain an effective quality control system in accordance with these specifications. The quality control system shall consist of plans, procedures, and organization necessary to produce an end product which complies with the contract requirements. The system shall cover all construction operations, both onsite and offsite, and shall be keyed to the proposed construction sequence. The site project superintendent will be held responsible for the quality of work on the job and is subject to removal by the Engineer and/or MDMR for non-compliance with quality requirements specified in the Contract. The site project superintendent shall mean the individual with the responsibility for the overall management of the project, including quality and production. The site project superintendent shall maintain a physical presence at the site at all times, except as otherwise acceptable to MDMR, and shall be responsible for all construction and construction related activities at the site.

## 1.04 CONTRACTOR QUALITY CONTROL PLAN

- A. Content of the CQC Plan: The CQC Plan shall include, as a minimum, the following to cover all construction operations, both on site and off site, including work by subcontractors, fabricators, suppliers, and purchasing agents:
1. A description of the quality control organization, including a chart showing lines of authority and acknowledgment that the CQC staff shall implement the three-phase control system for all aspects of the work specified. The staff shall include a CQC System Manager who shall perform Contractor's duties in tandem with those who report to the Project superintendent and with direct reporting responsibility to an officer of the prime Contractor and/or an individual not directly responsible for production. Additionally, a qualified Mississippi Registered Surveyor is required for all pre-construction and as-built surveys.
  2. The name, qualifications (in resume format), duties, responsibilities, and authorities of each person assigned a CQC function.
  3. A copy of the letter to the CQC System Manager signed by an authorized official of the firm which describes the responsibilities and delegates sufficient authorities to adequately perform the functions of the CQC System Manager, including authority to stop work which is not in compliance with the Contract. The CQC System Manager shall issue letters of direction to all other various quality control representatives outlining duties, authorities, and responsibilities. Copies of these letters shall also be furnished to MDMR.
  4. Procedures for scheduling, reviewing, certifying, and managing submittals, including those of subcontractors, off-site fabricators, suppliers, and purchasing agents. These procedures shall be in accordance with Section 01 33 00 – Submittal Procedures.
  5. Control, verification, and acceptance testing procedures for each specific test to include the test name, specification paragraph requiring test, feature of work to be tested, test frequency, and person responsible for each test. Laboratory facilities approved by MDMR shall be used.
  6. Procedures for tracking preparatory, initial, and follow-up control phases and control, verification, and acceptance tests including documentation.

7. Procedures for tracking construction deficiencies from identification through acceptable corrective action. These procedures shall establish verification that identified deficiencies have been corrected.
8. Daily and weekly reporting procedures, including proposed reporting formats for the report and monitoring surveys.
9. A list of the definable features of work associated with this project. A definable feature of work is a task that is separate and distinct from other tasks, has separate control requirements, and may be identified by different trades or disciplines, or it may be work by the same trade in a different environment. Although each section of the specifications may generally be considered as a definable feature of work, there is frequently more than one definable feature under a particular section. The list will be agreed upon during the Coordination Meeting.

B. Acceptance of CQC Plan

1. Acceptance of the CQC plan is required prior to the start of construction. Acceptance is conditional and will be predicated on satisfactory performance during the construction. Engineer reserves the right to require the Contractor to make changes to Contractor's CQC Plan and operations including removal of personnel, as necessary, to obtain the quality specified.

C. Failure to Submit Acceptable CQC Plan

1. If the Contractor fails to submit an acceptable draft CQC plan within the time prescribed, construction SHALL NOT start. If an acceptable final plan is not submitted within a reasonable time, as determined by the Engineer, the Engineer may order the Contractor to stop work until such time as an acceptable plan has been submitted. Any such stop work order shall not be considered a suspension of work for an unreasonable period of time under Section 37 of the Standard Contract Terms and Conditions of MDMR (Attachment F) and the Contractor shall not be entitled to pay adjustments as a result of the stop work order. Failure to comply with the above requirements within the time prescribed will be considered a condition endangering the performance of the Contract and may be considered grounds for termination of the Contract in accordance with Section 38 "TERMINATION" in the Standard Contract Terms and Conditions of MDMR (Attachment F).

D. Notification of Changes

1. After acceptance of the CQC Plan, the Contractor shall notify MDMR in writing of any proposed change. Proposed changes are subject to acceptance by MDMR.

1.05 COORDINATION MEETING

- A. After award of the Contract, but before physical work starts and before the acceptance by MDMR of the CQC Plan, the Contractor shall meet with MDMR and discuss the Contractor's quality control system. During the meeting, a mutual understanding of the system details shall be developed, including the forms for recording the CQC operations, control activities, testing, administration of the system for both on-site and off-site work, and the interrelationship of Contractor's Management and control with MDMR's Quality Assurance. Minutes of the meeting shall be prepared by MDMR and signed by both the Contractor and MDMR. The minutes shall become a part of the Contract file. There may also be occasions when subsequent conferences will be called by either party to reconfirm mutual understandings and/or address deficiencies in the CQC system or procedures that may require corrective action by the Contractor.

## 1.06 QUALITY CONTROL ORGANIZATION

### A. General

1. The requirements for the CQC organization are a CQC System Manager and sufficient number of additional qualified personnel to ensure safety and Contract compliance. The Safety and Health Manager shall receive direction and authority from the CQC System Manager and shall serve as a member of the CQC staff. Personnel identified in the technical provisions as requiring specialized skills to assure the required work is being performed properly will also be included as part of the CQC organization. The CQC staff shall maintain a presence at the site at all times during progress of the Work and have complete authority and responsibility to take any action necessary to ensure Contract compliance. The CQC staff shall be subject to acceptance by MDMR. The Contractor shall provide adequate office space, filing systems, and other resources as necessary to maintain an effective and fully functional CQC organization.
2. Complete records of all letters, material submittals, shop drawing submittals, schedules and all other project documentation shall be promptly furnished to the CQC organization by the Contractor. The CQC organization shall be responsible to maintain these documents and records at the site at all times, except as otherwise acceptable to MDMR.

### B. CQC System Manager

1. The Contractor shall identify as CQC System Manager an individual within the on-site work organization who shall be responsible for overall management of CQC and have the authority to act in all CQC matters for the Contractor. The CQC System Manager shall have a minimum of eight (8) years of experience in related work and shall have completed the course entitled "Construction Quality Management for Contractors" or equivalent. The course is periodically offered at the Mobile District United States Army Corps of Engineers.
2. This CQC System Manager shall be on the site at all times during construction and shall be employed by the prime Contractor. The CQC System Manager shall be assigned as System Manager but may have duties as project superintendent in addition to quality control. An alternate for the CQC System Manager, having a minimum of three (3) years of experience, shall be identified in the plan to serve in the event of the primary CQC System Manager absence.

### C. CQC Personnel

1. A staff shall be maintained under the direction of the CQC System Manager to perform all CQC activities. The staff must be of sufficient size to ensure adequate CQC coverage of all work phases, work shifts, and work crews involved in the construction. These personnel may perform other duties but must be fully qualified by experience and technical training to perform their assigned CQC responsibilities and must be allowed sufficient time to carry out these responsibilities. The CQC plan will clearly state the duties and responsibilities of each staff member.

### D. Organizational Changes

1. The Contractor shall maintain the CQC staff at full strength at all times. When it is necessary to make changes to the CQC staff, the Contractor shall revise the CQC Plan to reflect the changes and submit the changes to MDMR for acceptance.

### E. Third Party Registered Surveyor Consultant

1. The Contractor shall obtain a qualified independent Mississippi Registered Surveyor to perform pre-construction surveys and as-built surveys required to carry out the Project Work. The Registered Surveyor should have at least 10 years of relevant bathymetric survey experience. Relevant experience shall include hydrographic and topographic surveying of soft sediments and rock structures in accordance with the U.S. Army Corps of Engineer standards.
2. The Registered Surveyor shall certify all field notes, computations, and all other records relating to surveys of the Work.
3. The Registered Surveyor must have appropriate equipment (i.e., heave, pitch, and roll compensator) to be able to work within inclement weather conditions.

#### 1.07 CONTROL

- A. Contractor Quality Control is the means by which the Contractor ensures that the construction, including that of subcontractors and suppliers, complies with the requirements of the Contract. At least three phases of control shall be conducted by the CQC System Manager for each definable feature of the construction work as follows:
  1. Preparatory Phase: This phase shall be performed prior to beginning work on each definable feature of Work, after all required plans/documents/materials are approved/accepted, and after copies are at the work site. This phase shall include:
    - a. A review of each paragraph of applicable specifications, reference codes, and standards. A copy of those sections of referenced codes and standards applicable to that portion of the Work to be accomplished in the field shall be made available by the Contractor at the preparatory inspection. These copies shall be maintained in the field and available for use by MDMR personnel until final acceptance of the Work.
    - b. A review of the Contract Drawings.
    - c. A check to assure that all materials and/or equipment have been tested, submitted, and approved.
    - d. Review of provisions that have been made to provide required control inspection and testing.
    - e. Examination of the Work area to assure that all required preliminary Work has been completed and is in compliance with the Contract.
    - f. A physical examination of required materials, equipment, and sample Work to assure that they are on hand, conform to approved shop drawings or submitted data, and are properly stored.
    - g. A review of the appropriate activity hazard analysis to assure safety requirements are met.
    - h. Discussion of procedures for controlling quality of the Work including repetitive deficiencies. Document construction tolerances and workmanship standards for that feature of work.
    - i. A check to ensure that the portion of the plan for the Work to be performed has been accepted by MDMR.
    - j. Discussion of the initial control phase.

- k. MDMR shall be notified at least 24 hours in advance of beginning the preparatory control phase. This phase shall include a meeting conducted by the CQC System Manager and attended by the superintendent, other CQC personnel (as applicable), and the foreman responsible for the definable feature. The results of the preparatory phase actions shall be documented by separate minutes prepared by the CQC System Manager and attached to the daily CQC report. The Contractor shall instruct applicable workers as to the acceptable level of workmanship required in order to meet Contract Specifications.
2. Initial Phase: This phase shall be accomplished at the beginning of a definable feature of Work. The following shall be accomplished:
    - a. A check of Work to ensure that it is in full compliance with Contract requirements. Review minutes of the preparatory meeting.
    - b. Verify that facilities adequacy of controls to ensure full Contract compliance. Verify required control inspection and testing equipment are available and comply with testing standards.
    - c. Check test instruments calibration data against certified standards.
    - d. Verify that recording forms and test identification control number system, including all of the test documentation requirements, are prepared in accordance with Contract requirements.
    - e. Record results of tests and monitoring instruments, both passing and failing, on the CQC report for the date taken. Specification paragraph reference, location where tests were taken, and the sequential control number identifying the test. If approved by Engineer, actual test reports may be submitted later with a reference to the test number and date taken. An information copy of test performed by an off-site or commercial test facility shall be provided directly to the Engineer. Failures to submit timely test reports as stated or maintain adequate monitoring testing may result in nonpayment for related Work performed and disapproval of the test facility for this Contract.
    - f. Establish level of workmanship and verify that it meets minimum acceptable workmanship standards.
    - g. Resolve all differences.
    - h. Check safety to include compliance with and upgrading of the safety plan and activity hazard analysis. Review the activity analysis with each worker.
    - i. MDMR shall be notified at least 24 hours in advance of beginning the initial phase. Separate minutes of this phase shall be prepared by the CQC System Manager and attached to the daily CQC report. Exact location of initial phase shall be indicated for future reference and comparison with follow-up phases.
    - j. Repeat the initial phase for each new crew to work on site, or any time acceptable specified quality standards are not being met.

3. Follow-up Phase: Daily checks shall be performed to assure control activities, including control testing, are providing continued compliance with Contract requirements, until completion of the particular feature of Work. The checks shall be made a matter of record in the CQC documentation. Final follow-up checks shall be conducted, and all deficiencies corrected prior to the start of additional features of Work that may be affected by the deficient Work. The Contractor shall not build upon nor conceal non-conforming work.
- B. Additional Preparatory and Initial Phases: Additional preparatory and initial phases shall be conducted on the same definable features of Work if: the quality of on-going Work is unacceptable; if there are changes in the applicable CQC staff, on-site production supervision or work crew; if Work on a definable feature is resumed after a substantial period of inactivity; or if other problems develop.

#### 1.08 COMPLETION INSPECTION

- A. Punch-Out Inspection: Near the end of the Work, or any increment of the Work, MDMR or CQC Manager shall conduct an inspection of the Work. A punch list of items that do not conform to the approved Drawings, Specifications, and work plan shall be prepared and included in the CQC documentation, as required by paragraph 3.07 DOCUMENTATION. The list of deficiencies shall include the estimated date by which the deficiencies will be corrected. The CQC System Manager or staff shall make a second inspection to ascertain that all deficiencies have been corrected. Once this is accomplished, the Contractor shall notify MDMR that the Work is ready for "Pre-Final" inspection.
- B. Pre-Final Inspection: The Engineer may perform a Pre-Final Inspection to verify that the Work is complete. The Contractor's CQC Manager shall ensure that all items identified as needing completion or corrections have been addressed before requesting a Final Inspection. Any items noted on the Pre-Final Inspection shall be corrected in a timely manner. These inspections and any deficiency corrections required shall be accomplished within the time slated for completion of the entire work or any particular increment thereof if the Project is divided into increments by separate completion dates.
- C. Final Acceptance Inspection: The Contractor's Quality Control Inspection personnel, plus the superintendent or other primary management person, and Engineer's representative shall be in attendance at this inspection. Additional MDMR personnel and other agencies may also be in attendance. The Final Acceptance Inspection will be formally scheduled by the Engineer based upon results of the Pre-Final inspection. Notice shall be given to the Engineer at least 14 days prior to the Final Acceptance Inspection and shall include the Contractor's assurance that all specific items previously identified to the Contractor as being unacceptable, along with all remaining work performed under the Contract, will be complete and acceptable by the date scheduled for the Final Acceptance Inspection. Failure of Contractor to have all Work acceptably complete for this inspection will be cause for MDMR to bill the Contractor for the MDMR's additional inspection cost in accordance with Section 01 77 00 – Closeout Procedures.

#### 1.09 DOCUMENTATION

- A. The Contractor shall maintain current records providing factual evidence that required quality control activities and/or tests have been performed. These records shall include the work of subcontractors and suppliers and shall be documented as described in Section 01 32 00 – Construction Progress Documentation.

1.10 NOTIFICATION OF NONCOMPLIANCE

- A. MDMR will notify the Contractor of any detected noncompliance with the foregoing requirements. The Contractor shall take immediate corrective action after receipt of such notice. Such notice, when delivered to the Contractor at the Work site, shall be deemed sufficient for the purpose of notification. If the Contractor fails or refuses to comply promptly, MDMR may issue an order stopping all or part of the work until satisfactory corrective action has been taken. No part of the time lost due to such stop orders shall be made the subject of claim for extension of time or for excess costs or damages by the Contractor.

**END OF SECTION 01 40 00**

**SECTION 01 77 00**

**CLOSEOUT PROCEDURES**

**PART 1 - GENERAL**

1.01 REQUIREMENTS

- A. Comply with requirements stated in the Agreement (Section 00 52 15), the Standard Contract Terms and Conditions (Attachment F of Invitation for Bids) and all specifications of these Contract Documents.

1.02 RELATED SECTIONS

- A. Attachment F of the Standard Contract Terms and Conditions
- B. Section 00 52 15 – Agreement
- C. Section 01 29 00 – Payment Procedures
- D. Section 01 32 23 – Surveys and Layout Data
- E. Section 01 32 33 – Photographic Documentation
- F. Section 01 33 00 – Submittal Procedures
- G. Section 01 40 00 – Contractor Quality Control

1.03 CLOSEOUT PROCEDURES

- A. Contractor will comply with requirements stated in these specifications for administrative procedures in closing out the Work.
- B. Contractor will submit written certification that Contract Documents have been reviewed, Work has been inspected, and that Work is complete in accordance with Contract Documents and ready for Engineer's inspection.
- C. Contractor will provide submittals to Engineer/MDMR that are required by governing or other authorities.
- D. Contractor will submit final Application for Payment identifying total adjusted Contract Sum, previous payments, and sum remaining due.

1.04 FINAL INSPECTION AND REMOVAL OF ALL CONSTRUCTION EQUIPMENT AND ANCILLARY FACILITIES.

- A. When Contractor considers the Work is complete, he or she shall submit written certification that:
  - 1. Contract Documents have been reviewed.
  - 2. Work is ready for a final inspection and completed punch list in accordance with Paragraph 3.06 of Section 01 40 00 – Contractor Quality Control.
- B. When the Engineer finds that the Work is acceptable under the Contract Documents, he shall request the Contractor to make closeout submittals in accordance with 1.05 below.



- C. In the event that the Final Inspection concludes that the construction progress does not meet completion status, the Contractor will be required to reimburse MDMR for all costs associated with the Final Inspection inclusive of payroll expenses of any engineer or regulatory agency staff involved, equipment rentals and any travel related expenses. Contractor may pay for these additional expenses directly to MDMR or have the expenses deducted from the final payment.

1.05 CONTRACTOR'S CLOSEOUT SUBMITTALS

Contractor will provide as closeout submittals the following:

- A. Evidence of Payment to subcontractors and suppliers and Release of Liens.
- B. Final inspection report by the Engineer recommending MDMR's final approval.
- C. At Contract close-out, deliver one (1) hard copy and one (1) electronic set of Record Documents to MDMR. Accompany submittal with transmittal letter containing:
  - 1. Date;
  - 2. Project title and number;
  - 3. Contractor's name and address;
  - 4. Title and number of each Record Document; and
  - 5. Signature of Contractor or his authorized representative.

1.06 PROJECT RECORD DOCUMENTS

- A. Final Payment will not be made to Contractor until Contract Record Documents in accordance with Section 1.05 are submitted and approved.

**PART 2 - PRODUCTS (NOT APPLICABLE)**

**PART 3 - EXECUTION (NOT APPLICABLE)**

**END OF SECTION 01 77 00**

**SECTION 31 05 19**

**GEOTEXTILES**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. The Contractor shall furnish all labor, equipment, materials, and incidentals necessary to install the geotextile for the pipeline access corridor and super silt fence as shown on the Construction Drawings.

1.02 RELATED SECTIONS

- A. Section 35 41 00 – Chenier Construction

1.03 REFERENCES

- A. American Society for Testing and Materials (ASTM):
  1. D4491 - Standard Test Methods for Water Permeability of Geotextiles by Permittivity
  2. D4533 - Standard Test Method for Trapezoid Tearing Strength of Geotextiles
  3. D4632 - Standard Test Method for Grab Breaking Load and Elongation of Geotextiles
  4. D4751 - Standard Test Method for Determining Apparent Opening Size of a Geotextile
  5. D5199 - Standard Test Method for Measuring the Nominal Thickness of Geosynthetics
  6. D5261 - Standard Test Method for Measuring Mass Per Unit Area of Geotextiles
  7. D6241 - Standard Test Method for Static Puncture Strength of Geotextiles and Geotextile-Related Products Using a 50-mm Probe

1.04 MEASUREMENT AND PAYMENT

- A. No separate payment will be made for procurement and installation of the geotextile. Payment for the geotextile will be combined with the installation of the pipeline access corridor rock in accordance with the Contract Documents.

1.05 SUBMITTALS

- A. The following shall be submitted a minimum of 14 calendar days prior to installation:
  1. Geotextile Sample: The Contractor shall submit a 6-inch by 6-inch or larger sample of the geotextile to the MDMR or its designated representative for approval.
  2. Manufacturer's Certificate: The Contractor shall submit the manufacturer's certificate of compliance with the name of the manufacturer, product name, style number, and other relevant information to fully describe the geotextile. The certificate should state that the geotextile meets the requirements of this section and shall be attested to by a person having legal authority to bind the manufacturer.
  3. Manufacturer's Instructions: The Contractor shall submit installation instructions to the MDMR for review.

4. Shop Drawings: The Contractor shall submit typical details of the typical sections and connections.

1.06 DELIVERY, STORAGE, AND HANDLING

A. Delivery

1. The manufacturer's plastic wrapping shall not be removed until deployment. If quality-assurance samples are collected, immediately rewrap rolls with the plastic wrapping or equivalent as approved by the MDMR. Geotextile or plastic wrapping damaged during storage or handling shall be repaired or replaced, as directed, at no additional cost to the MDMR.
2. The Contractor shall label each roll with the manufacturer's name, geotextile type, roll number, roll dimensions (length, width, gross weight), and date manufactured.

B. Storage

1. The Contractor shall protect rolls of geotextile from, but not limited to, construction equipment, chemicals, sparks, and flames, temperatures below minus 20 degrees F or in excess of 160 degrees F, or any environmental condition that may damage the physical properties of the geotextile.
2. Geotextile should not be exposed to direct sunlight for timeframes beyond those recommended by the manufacturer. Geotextile exposed beyond such timeframes shall be disposed of and replaced at no additional cost to the MDMR and shall not allow the construction schedule to be extended.
3. The Contractor shall protect geotextile from becoming saturated by elevating rolls off the ground or placing them on a sacrificial sheet of plastic in an area where water will not accumulate. If the geotextile becomes saturated, the Contractor shall remove the geotextile from the site and replace it at no additional cost to the MDMR.

C. Handling

1. Handle and unload geotextile rolls with load-carrying straps, a forklift with a stinger bar, or an axial bar assembly. Rolls shall not be dragged along the ground, lifted by one end, or dropped to the ground.

**PART 2 - PRODUCTS**

2.01 MATERIALS

- A. Geotextiles shall meet the requirements specified in Table 1. Where applicable, Table 1 property values represent MARV in the weakest principal direction. Values for Apparent Opening Size represent maximum average roll values.

**TABLE 1: GEOTEXTILE PROPERTIES**

Property	Test Method	Unit	Minimum Test Value
Apparent Opening Size	ASTM D4751	US Sieve	100 (Maximum)
Permittivity	ASTM D4491	Sec <sup>-1</sup>	0.8
CBR Puncture	ASTM D6241	lbs	825
Grab Tensile Strength	ASTM D4632	lbs	300
Trapezoidal Tear	ASTM D4533	lbs	115
Ultraviolet Degradation	ASTM D4355	% strength @ 500 hrs.	70
Weight	ASTM D5261	oz/sq. yd.	12
Thickness	ASTM D5199	mils	100

**PART 3 - EXECUTION****3.01 SUBGRADE PREPARATION**

- A. The Contractor shall ensure that the surface underlying the geotextile is smooth and free of debris, ruts, or protrusions that could damage the geotextile.

**3.02 INSTALLATION**

- A. The Contractor shall notify the MDMR and its designated representative a minimum of 5 days prior to installation of the geotextile.
- B. Geotextile rolls that are damaged or contain imperfections shall be repaired or replaced as directed by the MDMR or its designated representative at no additional cost to the MDMR.
- C. The Contractor shall install the geotextile as shown in the Construction Drawings.
- D. The Contractor shall minimize the amount of overlap sections needed for construction. It is the intent of the design for one geotextile roll width to be installed to avoid longitudinal overlaps across the chenier.
- E. The geotextile shall be laid flat and smooth so that it is in direct contact with the subgrade. Correct orientation (roll direction) of the geotextile shall be verified by the Contractor. The geotextile may be temporarily secured with sand bags or pipeline access corridor rock. The geotextile shall extend a minimum of 1 foot beyond the limits of the toe of the chenier as shown in the Construction Drawings.
- F. Pipeline access corridor rock shall be placed atop the geotextile as described in SECTION 35 41 00 – CHENIER CONSTRUCTION in a manner that minimizes the wrinkles and/or movement of the geotextile, uniformly loads the structure, and minimizes displacing the underlying foundation. The Contractor shall place rock in a manner that prevents material from entering the geotextile overlaps, prevents tensile stress from being mobilized in the geotextile, and prevents wrinkles from folding over onto themselves.

**3.03 SEAMS**

- A. The Contractor shall continuously overlap the geotextile panels a minimum of 2 feet at all longitudinal and transverse joints.

3.04 PROTECTION AND REPAIRS

- A. The Contractor shall protect the geotextile during installation from tears and other damage. Damaged geotextile shall be repaired or replaced as directed by the MDMR or its designated representative at no additional cost to the MDMR.
- B. The Contractor shall repair torn or damaged geotextile. The Contractor shall perform repairs by placing a patch of the same type of geotextile over the damaged area. The patch shall extend a minimum of 2 feet beyond the edge of the damaged area. Patches shall be continuously fastened using the manufacturer's approved methods. The machine direction of the patch shall be aligned with the machine direction of the geotextile being repaired. The Contractor shall remove and replace geotextile that cannot be repaired. Repairs shall be performed at no additional expense to the MDMR and shall not allow the construction schedule to be extended.

**END OF SECTION 31 05 19**

**SECTION 35 24 00**

**DREDGING**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. The Contractor shall furnish all labor, equipment, materials, and incidentals necessary for performing all required dredging of the project access channel. The intent of dredging is to provide access for the Contractor to construct the Deer Island Chenier and Cell 3 project. Dredged material from the access channel may be side-cast to the immediate west of the channel.

1.02 RELATED SECTIONS

- A. Section 01 32 23 – Surveys and Layout Data
- B. Section 35 41 00 – Chenier Construction

1.03 MEASUREMENT AND PAYMENT

- A. No separate payment will be made for dredging of the access channel. Payment for dredging of the access channel shall be included in Contractor's mobilization and demobilization costs.

1.04 SUBMITTALS

- A. Work Plan: Within 10 calendar days after Notice of Award, the Contractor shall submit to the MDMR for approval a detailed Work Plan to address equipment and methods of dredging of the access channel. The plan should also include details of the equipment to be used, methods for marking the dredging, methods for verifying proper dredging dimensions, environmental controls, and survey controls. The plan shall include discussion of staging areas and work sequencing.
  - 1. Access Channel Layout: Included in the Work Plan, the Contractor shall submit a proposed access channel layout to the MDMR for approval. The proposed access channel layout shall include proposed dimensions of the channel and stationing along the centerline of the channel. The layout shall include a proposed cross-section and plan view of the channel with dimensions and the bathymetry collected during the pre-construction survey.
- B. Surveys:
  - 1. Prior to dredging, the Contractor shall perform the pre-construction survey in accordance with SECTION 01 32 23 – SURVEYS AND LAYOUT DATA that encompasses the area where the access channel will be located.
  - 2. Dredging Quality Control Surveys: Contractor shall provide cross-sections of the access channel weekly during dredging. Cross-sections shall be collected every 100 feet linearly along the centerline of the access channel for all areas dredged.
- C. Notice of Intent to Dredge: Prior to commencement of dredging, the Contractor shall notify the Commander, Eighth Coast Guard District of the intended operations to dredge and request that it be published in the Local Notice to Mariners. This notification must be given in sufficient time so that it appears in the Notice to Mariners at least 2 weeks prior to the commencement of the dredging. A copy of the notification shall be provided to the MDMR.

- D. Daily Report of Operations: For each 24-hour period of dredging operations (midnight to midnight, local time), the Contractor shall prepare and submit a Daily Report. These reports shall be submitted to the MDMR or their authorized representative by noon on the day following the 24-hour period covered by the report. At a minimum, the report shall indicate the stop and start station for each day's dredging. The report should also include the weather conditions, downtime, and maintenance time. The Contractor shall provide an example of the Daily Report at the pre-construction meeting for review and discussion. Based on the review, the MDMR may request deletions or additions of daily operations information included on the Daily Report.
- E. Notice of Misplaced Material: The Contractor shall immediately notify the U.S. Coast Guard Marine Safety Office of any misplaced material (materials, cables, etc.) and forward a copy of this notice to the MDMR and its designated representative.

## **PART 2 - PRODUCTS (Not Applicable)**

## **PART 3 - EXECUTION**

### **3.01 GENERAL**

- A. Prior to dredging, the Contractor shall be responsible for investigating and verifying the locations and depths of all utility crossings. The Contractor will take precautions against damages that might result from their operations, especially the sinking of dredge spuds and/or anchors into the channel bottom, in the vicinity of underwater utility crossings. If any damage occurs because of Contractor operations, the Contractor will be required to suspend dredging operations until the damage is repaired and approved by the MDMR. Costs for such repairs and for the downtime of the dredge and attendant equipment shall be at the Contractor's expense.
- B. Material that escapes or is lost while loading, placing, or which is deposited in areas other than indicated herein, or in the approved permits for the project, or approved in writing by the MDMR or its designated representative, shall be removed and re-deposited at the Contractor's expense and at no additional cost to the MDMR.

### **3.02 DREDGING**

- A. The Contractor shall perform a pre-construction survey via a third-party independent surveyor licensed in the State of Mississippi. Prior to the start of construction, the Contractor shall verify all existing elevations and grades and provide templates per SECTION 01 32 23 – SURVEYS AND LAYOUT DATA. The Contractor shall establish the alignment depicted and provide a layout for review and approval by the MDMR before starting dredging operations.
- B. The Contractor shall dredge as necessary to meet the intent of the approved Work Plan and to result in the required bottom depth and side slopes to form the access channel.
- C. The Contractor may dredge to the limits designated in the Mississippi Department of Marine Resources Permit (DMR-090302). No tolerances beyond those provided in the permit documentation will be allowed.
- D. Dredging of the access channel is to provide access only, and no direct payment for dredging shall be provided.
- E. Contractor shall maintain adequate depth of the access channel for the duration of the project and may remove any material that enters the channel, as necessary.

3.03 DREDGED MATERIAL PLACEMENT

- A. The Contractor shall side-cast all dredged material to the west of the access channel, distributing the material uniformly so as not to leave abrupt changes in water depth.

3.04 SURVEYS

- A. All surveys shall be conducted in accordance with SECTION 01 32 23 – SURVEYS AND LAYOUT DATA.

3.05 SAFETY

- A. The Contractor shall display signal lights and conduct operations in accordance with the General Regulations of the Department of the Army and of the U.S. Coast Guard governing lights and day signals to be displayed by towing vessels with tows on which no signals can be displayed, vessels working on wrecks, dredges, and vessels engaged in laying cables or pipe or in submarine or bank protection operations, lights to be displayed on dredge pipe lines, and day signals to be displayed by vessels of more than 65 feet in length moored or anchored in a fairway or channel, and the passing by other vessels of floating plant working in navigable channels, as set forth in Commandment U.S. Coast Guard Instruction M16672.2, Navigation Rules: International-Inland (COMDTINST M16672.2), or 81 Appendix A (International) and 33 CFR 84 through 33 CFR 89 (Inland) as applicable.

**END OF SECTION 35 24 00**



**SECTION 35 41 00**

**CHENIER CONSTRUCTION**

**PART 1 - GENERAL**

1.01 SUMMARY

- A. The Contractor shall furnish all labor, equipment, materials, and incidentals necessary to install the chenier as described herein, and in the Contract Documents. The Work shall include, but is not necessarily limited to, excavation, imported sand placement, and chenier construction as shown in the Construction Drawings.

1.02 RELATED SECTIONS

- A. Section 01 32 23 – Surveys and Layout Data
- B. Section 31 05 19 – Geotextiles

1.03 REFERENCES

- A. American Society for Testing and Materials (ASTM):
  - 1. ASTM C127 - Standard Test Method for Density, Relative Density (Specific Gravity), and Absorption of Coarse Aggregate
  - 2. ASTM C131- Standard Test Method for Resistance to Degradation of Small-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine
  - 3. ASTM D535-12 - Standard Test Method for Resistance to Degradation of Large-Size Coarse Aggregate by Abrasion and Impact in the Los Angeles Machine

1.04 MEASUREMENT AND PAYMENT

- A. Measurement
  - 1. Measurement for the side cast chenier shall be made at the contract unit price per linear foot. Measurement for the pipeline access corridor, including super silt fence, will be lump sum as described herein. Measurement for the imported sand shall be by the ton based on barge measurements.
  - 2. The tonnage of imported sand delivered by barge for payment will be determined by barge displacement in accordance with the following:
    - a. Suitably mark each barge with a displacement gaging location at or near each corner of the barge. For hopper barges, two amidships on opposite sides should also be marked. Mark each gaging location with orange paint on the deck and side of the barge. For barges with rakes, place the displacement gaging marks at each corner of the box section between the rakes. If a barge has a box end or ends, place the gaging locations approximately 4 feet from the box end(s).

- b. Measure the freeboard at the six gaging locations on hopper barges or the four gaging locations on deck barges and determine the displacement using "Standard Barge Table" (SBT) from the average of these measurements. The SBT for each barge shall be certified by a licensed marine architect or other approved certifying official.
- c. Calculate the displacement before and after barge unloading; the difference between these values will be the measure of quantity delivered.
- d. Load barges so that the readings taken at the gaging locations do not vary more than 3.0 feet port to starboard fore and aft and do not vary more than 1.0-foot port to starboard. If such is not the case, trim the barge by shifting the material until this limit is reached before the measurement will be accepted. For deck barges, calculate the draft from the average of all four readings. For hopper barges, calculate the draft from the average of all six readings, weighting the readings of the middle gage at double those of the end gages:  $(G1 + G2 + 2xG3 + 2xG4 + G5 + G6)$  divided by 8 = average draft.
- e. All barges used in transporting material shall be free of leaks that would render accurate gauging difficult. Provide facilities for inspecting the hold of each barge to determine whether leakage is occurring. Provide each barge with adequate pumping facilities, and if water is found to be accumulating in the hold, pump the barge dry before each gaging, both before and after unloading. Leave rejected and unacceptable material aboard the barge until after the final readings have been taken.

#### B. Payment

- 1. Payment for the construction of the side-cast portion of the chenier shall be made based on MDMR acceptance of the final grades and extents of the chenier on a per linear foot basis. Payment shall be made in accordance with the amount contained in the Bid Form in accordance with the Contract Documents.
- 2. Payment for the construction of the imported sand portion of the chenier shall be made based on MDMR acceptance of the final grades and extents of the chenier on per ton basis. Payment shall be made in accordance with the amount contained in the Bid Form in accordance with the Contract Documents.
- 3. Payment for the pipeline access corridor shall be made based on MDMR acceptance of the final constructed surface of the pipeline access corridor on a lump sum basis. Payment shall be made in accordance with the amount contained in the Bid Form and in accordance with the Contract Documents.

#### 1.05 SUBMITTALS

- A. Construction Work Plan: Prior to the start of construction, the Contractor shall provide a Construction Work Plan containing, at a minimum, the following:
  - 1. Work Sequencing and equipment:
    - a. Order and sequence in which work shall be performed.
    - b. Number, types, and capacity of equipment to be used.
    - c. Hours of operation.

- d. Estimated schedule.
- 2. Methods, procedures, and equipment addressing the following:
  - a. Installation methods for side-cast borrow material and imported sand.
  - b. Procedures for placing chenier materials and confirming slopes and grades are met.
  - c. Procedures for procurement of the imported sand.
  - d. Methods of ensuring the imported sand is free of undesirable materials including, but not limited to, silts, debris, rocks, vegetative material, and any other material other than sand.
  - e. Placement and transportation of imported sand (including anticipated trip time and frequencies if barged).
  - f. Procurement and transportation of pipeline access corridor rock, geotextile, and super silt fence.
  - g. Installation of the geotextile, pipeline access corridor rock, and super silt fence.
  - h. Verification of minimum design template.
- B. Quality Control Checks and Adaptive Management Surveys: During construction, the Contractor shall provide interim surface elevation surveys per SECTION 01 32 23 – SURVEYS AND LAYOUT DATA.
- C. Daily Construction Report: The Contractor shall prepare and maintain a daily report of operations and furnish copies by noon the following day or as requested by the MDMR.
- D. Stop Work: The MDMR may elect to stop work activities at the Site if the required submittals have not been submitted or are not of acceptable quality (as determined by the MDMR). Any delays related to submittal approvals shall not allow the construction schedule to be extended and shall not be reason to increase the Contract price.

## **PART 2 - PRODUCTS**

### **2.01 CHENIER MATERIALS**

- A. Side-Cast Material: The Contractor shall use side-cast material to construct the interior portion of the outer chenier and the entire shoreline chenier. The side-cast material shall come from inside the cell, parallel to the cheniers, and be taken from a minimum distance of 25 feet from the interior toe of slope.
- B. Imported Sand: The Contractor shall be responsible for procurement and transportation of the imported sand. Contractor shall ensure that the imported sand to be used to construct the outer chenier is free of debris, vegetative material, stones, or other undesirable constituents. The imported sand shall meet gradation requirements shown below:

Sieve Number	Percent Passing (%)
0.75 inch	100%
#10	90 to 95%
#48	20 to 60%
#100	0 to 10%

1. The imported sand may be obtained by the Contractor from the Sunflower Bend USACE placement area located on the Tombigbee River near Jackson, Alabama. Contractor shall coordinate with USACE personnel for the facility to obtain the sand. Coordinates for the facility and USACE contact person are shown below:

**Sunflower Bend Placement Area**

Latitude: 31°23'6.39"N

Longitude: 87°53'46.58"W

**USACE Contact**

Herbert Bullock, P.E.

[Herbert.M.Bullock@usace.army.mil](mailto:Herbert.M.Bullock@usace.army.mil)

(251) 694-3703

2. Contractor may elect to obtain the required imported sand from another source that meets the requirements of the Contract Documents. Any source for the imported sand other than the Sunflower Bend placement area shall be subject to approval by the MDMR. To receive approval to use another source for the imported sand, the Contractor must demonstrate to the MDMR a satisfactory method of measurement and tracking of the sand.

## 2.02 ROCK

- A. The Contractor shall make arrangements, pay royalties, and secure the permits for procurement, furnishing, and transporting rock. The Contractor shall vary the quarrying, processing, loading, and placing operations to produce the sizes and quality of rock specified. If the rock being furnished by the Contractor does not meet the requirements as specified herein, the Contractor shall furnish, at no additional cost to the MDMR, other rock meeting these requirements.
- B. Before rock is produced from a source for completion of the Work under this Contract, the source of rock shall be approved by the MDMR. Approval of a rock source shall not be construed as a waiver of the right of the MDMR to require the Contractor to furnish rock that complies as specified herein. Materials produced from localized areas, zones, or strata will be rejected when these materials do not comply as specified herein.
- C. If requested, rock samples shall be provided to the MDMR for testing. Rock from a proposed source or sources shall be tested by the Contractor for quality compliance as described below. Copies of the compliance testing for each gradation shall be provided to the MDMR before installation.

- D. Testing and Analysis of Materials shall be performed in accordance with applicable ASTM standards. When tests indicate materials do not meet specified requirements, the Contractor shall remove and legally dispose of the unsuitable material off site and replace with suitable material, at no cost to the MDMR. Rock shall meet the following minimum test requirements:

TEST REQUIREMENTS		
TEST	TEST METHOD	REQUIREMENTS
Specific Gravity (Bulk SSD)	ASTM C127	(2.60) minimum (2.75) maximum
Absorption	ASTM C127	(3.0%) maximum
Abrasion loss	ASTM C131, ASTM D535-12	(40%) max. loss <sup>(1)</sup>
<sup>(1)</sup> Weakening and loss of individual surface particles is permissible unless bonding of the surface grains softens and causes general disintegration of the surface material.		

- E. The required gradations for rock to be used are as follows:

Size (inches)	Percent Passing (%)
4	100%
3.5	90 to 95%
2.5	20 to 60%
1	0 to 10%

2.03 SUPER SILT FENCE

- A. Contractor shall install Super Silt Fence, or approved equal, as shown in the Construction Drawings and as described in Mississippi Department of Transportation Standard Plan SSF-1. This drawing is attached to this section for reference.

2.04 GEOTEXTILE

- A. Contractor shall use geotextile to construct the pipeline access corridor and super silt fence that meets the requirements described in SECTION 31 05 19 – GEOTEXTILES.

**PART 3 - EXECUTION**

3.01 GENERAL

- A. The Contractor shall perform a pre-construction survey per SECTION 01 32 23 – SURVEYS AND LAYOUT DATA.
- B. The Contractor may dredge access channels to construct the cheniers in accordance with the Construction Drawings.

- C. Material that escapes or is lost while loading, transporting, or placing, or which is deposited in areas other than shown on the Construction Drawings or approved in writing by the MDMR, shall be removed and re-deposited at the Contractor's expense and at no additional cost to the MDMR or, if not removed and re-deposited, shall be deducted from the final quantities for payment.

3.02 CHENIER INSTALLATION

- A. The Contractor shall install cheniers as shown on the Construction Drawings.

3.03 PIPELINE ACCESS CORRIDOR

- A. The Contractor shall install geotextile, rock, and silt fence in the areas shown on the Construction Drawings to form the pipeline access corridor.
- B. Contractor shall inform the MDMR 7 days in advance of installation of the pipeline access corridor. Contractor shall only install pipeline access corridor rock after the chenier section where the pipeline access corridor is to be constructed is accepted as complete by the MDMR.
- C. The Contractor shall install the geotextile as described in SECTION 31 05 19 – GEOTEXTILES and shall take care to avoid damaging the geotextile layer during placement of overlying rock. Placement shall be done in such a manner so as not to rip, puncture, disturb, or damage the geotextile layer as specified herein.
- D. The height of the rock installation drop shall not be greater than that which may cause damage to the geotextile or the rock itself. When allowable drop heights are developed on site, between the MDMR and Contractor, these heights shall be based on actual performance. The Contractor shall maintain the rock layer until accepted, and if material is displaced or the surface damaged, replacement shall be made to the indicated lines and grades, at the Contractor's expense. Final surfaces of the finished rock shall be uniform and shall follow with the indicated lines and grades without continuous under or overbuilding.
- E. Material that escapes or is lost while loading, transporting, or placing rock, or which is deposited in areas other than shown on the Construction Drawings or approved in writing by the MDMR, shall be removed and re-deposited at the Contractor's expense and at no additional cost to the MDMR or, if not removed and re-deposited, shall be deducted from the final quantities for payment.
- F. Contractor shall install super silt fence as indicated in the Construction Drawings between 0.0 MLLW on both sides of the pipeline access corridor.

3.04 SURVEYS

- A. All surveys shall be conducted in accordance with SECTION 01 32 23 – SURVEYS AND LAYOUT DATA.

3.05 TOLERANCES

- A. Cheniers: Deviations in final chenier elevation shall not be greater than +/-0.5 foot. Multiple lifts may be required to achieve final grade.
- B. Pipeline Access Corridor: Deviations in pipeline access corridor rock thickness shall be +0.3 foot.

3.06 ACCEPTANCE

- A. Final acceptance will be based on the as-built surveys performed by the Contractor in accordance with SECTION 01 32 23 – SURVEYS AND LAYOUT DATA. The MDMR may perform field check tests and/or surveys to verify the Contractor's surveys. The MDMR survey checks will govern any discrepancies.

**END OF SECTION 35 41 00**

## **APPENDIX A**

Mississippi Department of Marine Resources File No. DMR-90302





**STATE OF MISSISSIPPI**

Phil Bryant  
Governor

**MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

Joe Spraggins, Executive Director

**PERMIT TO CONDUCT REGULATED ACTIVITIES**

Certification Number: DMR-090302

Date: August 31, 2018

Issued to: Mississippi Department of Marine Resources  
Beneficial Use of Dredged Material Program  
Attn: Jared Harris  
1141 Bayview Avenue  
Biloxi, MS 39530

Project Description: Coastal Wetland Fill and Dredging

Project Location: The Mississippi Sound  
North side of Deer Island  
Biloxi, Harrison County, Mississippi

DMR Project Manager: Greg Christodoulou  
228-523-4109  
greg.christodoulou@dmr.ms.gov

***NOTICE: Read this document carefully. Failure to follow the listed conditions can result in substantial fines and penalties.***

The Department of Marine Resources (DMR) has reviewed your request to construct a beneficial use (BU) site for the placement of suitable dredged material in accordance with MS Code § 49-27-61 on the Mississippi Sound along the north shore of Deer Island in Biloxi, Harrison County, MS. The application was presented to the MS Commission on Marine Resources (MCMR) on August 21, 2018.

In accordance with the provisions of the Mississippi Coastal Wetlands Protection Act and our findings made in compliance with Chapter Eight, Section 2 of the Mississippi Coastal Program (MCP), a Permit to conduct Regulated Activities is issued to you this day by the MCMR and by the Executive Director. The activities herein authorized shall be conducted in a manner resulting in the least damaging impacts to wetlands and the coastal environment.

The following activities and impacts are authorized by this certification as indicated on the attached approved diagram:

1. Permanent fill of approximately 70 acres of Coastal Wetlands consisting of unvegetated waterbottoms for the construction of a Beneficial Use site for the placement of suitable dredged material in accordance with MS Code § 49-27-61
2. Dredging of two (2) new access channels each 1,000 feet in length and 60 feet in width to a depth of 10 feet below mean low water. Approximately 17,780 cubic yards of material may be removed
3. A variance to Chapter VIII, Section 2, Part III.O.1. of the MCP

The applicant must abide by specific conditions as listed below.

**Any deviations beyond the above-authorized dimensions, the project footprint as shown on the attached approved diagram, or the specific conditions as set forth below will be considered a violation and may result in the revocation of the permit. Violations of these conditions may be subject to fines, project modifications, and/or site restoration. Both the permittee and the contractor may be held liable for such violations or for conducting unauthorized work. A modification to the project dimensions or footprint or to these conditions may be requested by submitting a written request along with a revised project diagram to DMR. Proposed modifications to project dimensions, footprint, or conditions must be approved in writing prior to commencement of work.**

The specific conditions of this certification are as follows:

1. All dredging and excavation (maintenance dredging, creation of a new channel, or creation of an indented boat slip or boat ramp) must:
  - a. Maintain a minimum distance of 10 feet between the dredge area and any wetlands or submerged aquatic vegetation
  - b. Result in areas that gradually increase in depth toward open water
  - c. Result in areas that have a minimum 3:1 (horizontal: vertical) side slope
  - d. Minimize turbidity at the dredge site by methods such as using staked filter cloth, staged construction, and/or the use of turbidity screens around the immediate project site
  - e. Not result in sinks or sumps
  - f. Not exceed the controlling navigational depth of the receiving or adjacent waters
  - g. Not impact wetlands, submerged aquatic vegetation, or shellfish beds (for maintenance dredging or new channel dredging in man-made waterbodies, exceptions may be made for noxious, invasive, or exotic vegetation, as determined or verified by staff)

2. All dredged or excavated material must:
  - a. Be utilized for a DMR-approved beneficial use, in accordance with MS Code § 49-27-61 unless a written exception to these requirements is issued by the DMR; If it has been determined that the material does not meet suitability standards, unsuitable material shall be placed in an approved off-site disposal area or confined in on-site uplands; If on-site disposal is utilized, spoil disposal area shall be immediately seeded and/or stabilized and appropriate Best Management Practices shall be utilized to prevent the movement of sediment off-site and into adjacent wetlands or drainage areas
  
3. All authorized activities must:
  - a. Use Best Management Practices (BMPs) at all times during construction, including, but not limited to, the use of staked hay bales; staked filter cloth; sodding, seeding, and mulching; staged construction; and the installation of turbidity screens around the immediate project site
  - b. Be conducted in a manner that minimizes the discharge of turbid waters into Waters of the State
  - c. Not result in construction debris, sewage, oil, refuse, other pollutants, or unauthorized fill material entering Coastal Wetlands or Waters of the State
  - d. Not impact wetlands, submerged aquatic vegetation, or shellfish beds unless specifically authorized above

**Work authorized by this certification must be completed on or before:  
August 21, 2028.**


***Enclosed is a Notice of Compliance (NOC) which must be conspicuously displayed at the site during construction of the authorized work.***

Issuance of this certification by DMR does not release the applicant from other legal requirements including but not limited to other applicable federal, state, or local laws, ordinances, zoning codes, or other regulations, including a possible Tidelands Lease from the MS Secretary of State's Office, required City or County construction setbacks, or building permits from the City or County where the project is located. A list of contacts has been provided for your assistance in determining whether any further certifications are required.

This certification conveys no title to land and water, does not constitute authority for reclamation of coastal wetlands and does not authorize invasion of private property or rights in property.

Please notify this Department upon completion of the permitted project so that compliance checks may be conducted by DMR staff.

THIS CERTIFICATION IS EFFECTIVE IMMEDIATELY.

  
\_\_\_\_\_  
Joe Spraggins  
Executive Director  
MS Department of Marine Resources

JS/gsc

Attachments: NOC/Approved Diagram

cc: Ms. Maryellen Farmer, USACE  
Ms. Florance Bass, OPC  
Mr. Raymond Carter, SOS



**Department of Marine Resources**

**NOTICE OF COMPLIANCE**

**DMR- 090302 PERMIT**

**DATE: August 21, 2018**

**THIS NOTICE ACKNOWLEDGES THAT:**

**Mississippi Department of Marine Resources  
Beneficial Use of Dredged Material Program  
Attn: Jared Harris  
1141 Bayview Avenue  
Biloxi, MS 39530**

**HAS, THROUGH APPLICATION TO THIS DEPARTMENT, DULY COMPLIED WITH THE MISSISSIPPI COASTAL WETLANDS PROTECTION ACT. THE FOLLOWING ACTIVITIES AND IMPACTS ARE AUTHORIZED AS INDICATED ON THE ATTACHED APPROVED DIAGRAM:**

1. Permanent fill of approximately 70 acres of Coastal Wetlands consisting of unvegetated waterbottoms for the construction of a Beneficial Use site for the placement of suitable dredged material in accordance with MS Code § 49-27-61
2. Dredging of two (2) new access channels each 1,000 feet in length and 60 feet in width to a depth of 10 feet below mean low water. Approximately 17,780 cubic yards of material may be removed
3. A variance to Chapter VIII, Section 2, Part III.O.1. of the MCP

On the Mississippi Sound along the north side of Deer Island in Biloxi, Harrison County, Mississippi.

Furthermore, this project as proposed has been found to be consistent with all guidelines for conduct of regulated activities in coastal wetlands as set forth in the Mississippi Coastal Program.

**No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters.**

**ALL CONDITIONS AS SPECIFIED IN THE WRITTEN CERTIFICATION DATED AUGUST 21, 2018, TO WHICH THIS NOTICE OF COMPLIANCE AND APPROVED DIAGRAM ARE ATTACHED MUST BE FOLLOWED AT ALL TIMES DURING CONSTRUCTION AND CONTINUING FOR THE LIFE OF THE PROJECT. ANY DEVIATIONS FROM THESE CONDITIONS, THE ABOVE-LISTED DIMENSIONS, OR THE PROJECT FOOTPRINT AS SHOWN ON THE ATTACHED APPROVED DIAGRAM SHALL BE CONSIDERED A VIOLATION AND MAY RESULT IN THE REVOCATION OF THE PERMIT.**

**VIOLATIONS MAY BE SUBJECT TO FINES, PROJECT MODIFICATIONS, AND/OR SITE RESTORATION. BOTH THE PERMITTEE AND THE CONTRACTOR MAY BE HELD LIABLE FOR SUCH VIOLATIONS OR FOR CONDUCTING UNAUTHORIZED WORK.**




  
Executive Director

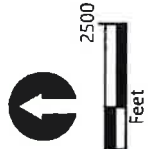
**POST THIS NOTICE CONSPICUOUSLY AT SITE OF WORK**



**SOURCE:** Aerial image courtesy © 2018 Microsoft Corporation © 2018 DigitalGlobe © CNES (1018) Distribution Airbus DS. Bathymetric survey provided by DIMCO dated September 27, 2017.  
**HORIZONTAL DATUM:** Mississippi State Plane East, NAD83, U.S. Feet.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**LEGEND:**

-  Existing Bathymetric Contours in Feet (1' Interval)
-  Proposed Breakwater/Chenier Contours in Feet (2' Interval)
-  Existing Reef Project



Publication Date: 2018/09/21 2:05 PM | User: c:\helmet  
 Filepath: K:\Projects\0702\_Mississippi Department of Marine Resources\0702\_RP\_003\_Deer\_Island.dwg Overview



**Figure 3**  
**Deer Island Chenier and Beneficial Use Cell 3 Overview**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources

## **APPENDIX B**

U.S. Army Corps of Engineers File No. SAM-2018-00434-KMN



REPLY TO  
ATTENTION OF

**DEPARTMENT OF THE ARMY**  
MOBILE DISTRICT, CORPS OF ENGINEERS  
P.O. BOX 2288  
MOBILE, AL 36628-0001

APRIL 09, 2021

South Mississippi Branch  
Regulatory Division

SUBJECT: Department of the Army Permit Application Number SAM-2018-00434-KMN, Mississippi Department of Marine Resources, Deer Island Habitat Restoration, Harrison County, Mississippi; Mississippi Sound

Mississippi Department of Marine Resources  
Attention: Mr. Joe Spraggins, Executive Director  
1141 Bayview Avenue  
Biloxi, Mississippi 39530

Transmitted electronically to [jared.harris@dmr.ms.gov](mailto:jared.harris@dmr.ms.gov)

Dear Mr. Spraggins:

**PLEASE READ THIS LETTER CAREFULLY AND COMPLY  
WITH ITS PROVISIONS**

There is enclosed a Department of the Army permit authorizing you to perform the work specified therein in accordance with the plans shown on the drawings attached thereto. This permit is issued under provision of the Federal laws for the protection and preservation of the navigable waters of the United States. These laws provide that after the proposed work has been approved by issuance of a Department of the Army permit,

**IT SHALL NOT BE LAWFUL TO DEVIATE FROM SUCH PLANS EITHER  
BEFORE OR AFTER COMPLETION OF THE WORK,**

unless modification of said plans has previously been submitted to and received the approval of the Department of the Army.

You should study and carefully adhere to all the terms and conditions of the permit. The District must be notified of the commencement and completion of the permitted work. The enclosed cards may be used for that purpose. Also enclosed is a "NOTICE OF AUTHORIZATION" which must be conspicuously displayed at the site during construction of the permitted work. If you have any questions or require further information concerning this matter, please contact Ms. Kaaren M. Neumann at [Kaaren.M.Neumann@usace.army.mil](mailto:Kaaren.M.Neumann@usace.army.mil).



If for any reason it becomes necessary to make a material change in location or plans for this work, revised plans should be submitted promptly to the District Engineer in order that the revised plans may receive the approval required by law before work is begun. Compliance with this and other conditions of the permit is essential. Failure to submit the notices requested may result in its revocation.

A copy of this permit is being provided to the Mississippi Department of Marine Resources, Attention: Mr. Greg Christodoulou, [greg.christodoulou@dmr.ms.gov](mailto:greg.christodoulou@dmr.ms.gov); and Mississippi Department of Environmental Quality, Attention: Ms. Florance Bass, P.E., [FBass@mdeq.ms.gov](mailto:FBass@mdeq.ms.gov).

If I can be of further assistance, please feel free to contact me at (251) 694-3782. For additional information about our Regulatory Program, please visit our web site at: [www.sam.usace.army.mil/Missions/Regulatory](http://www.sam.usace.army.mil/Missions/Regulatory) and please take a moment to complete our customer satisfaction survey while you're there. Your responses are appreciated and will allow us to improve our services.

Sincerely,

SAHAWNEH.MUNTHE  
HER.N.1230711808

Digitally signed by  
SAHAWNEH.MUNTHE.N.1230711  
808  
Date: 2021.04.09 10:01:20 -05'00'

Munther N. Sahawneh  
Supervisor, South Mississippi Branch  
Regulatory Division

Enclosures

DEPARTMENT OF THE ARMY PERMIT

Permittee: Mississippi Department of Marine Resources

Permit No.: SAM-2018-00434-KMN

Issuing Office: MOBILE DISTRICT

NOTE: The term "you" and its derivatives, as used in this permit, means the permittee or any future transferee. The term "this office" refers to the appropriate district or division office of the U.S. Army Corps of Engineers (Corps) having jurisdiction over the permitted activity or the appropriate official of that office acting under the authority of the commanding officer.

You are authorized to perform work in accordance with the terms and conditions specified below.

**Project Description:** The permittee is authorized to construct a dredged disposal site to be used beneficially in approximately 70 acres of the Mississippi Sound. The project will include creation of approximately 1,975 linear feet of an interior berm along the existing coastline of Deer Island and the southern boundary of the project site, and an exterior berm, 4,520 feet in length, will be constructed along the proposed northern boundary of the project site and will run parallel to the north shoreline of Deer Island then curve south on the western most end to connect back to the island. The berms will be constructed from material on-site, dredged and placed mechanically. Sand dredged from the Black Warrior-Tombigbee Rivers will then be placed hydraulically to reinforce the outside of the berms. The exterior berm will be constructed on the -4 feet MLLW contour and will be raised to an elevation of +6 feet MLLW. The interior berm will be raised to an elevation of +4 feet MLLW. The eastern end of the containment berm will remain open to provide for tidal flushing as well as continuation of the marsh adjacent to Grand Bayou.

Two access channels located on the north eastern and north western side of the proposed site, will be dredged to -9 feet MLLW if needed for access. These channels will be placed in such a manner as to avoid existing reefs in the area. The channels will extend to a depth sufficient to allow barge access and not exceed 2,500 linear feet in length. Both access channels will need to be maintained as needed for the 10-year life of the permit, or until capacity is reached. Material dredged from the north eastern access channel during initial construction, if required, will be side cast to the immediate west side of the channel. Material dredged from the north western access channel if needed for dredge disposal events will be pumped into the interior of the 70-acre site. Any material dredged from the access channels during maintenance dredging over the 10-year life of the project, will be pumped into the interior of the 70-acre site.

Dredged disposal material from various local dredging projects will be placed within the 70-acre site over a 10-year period. All dredged disposal material will be reviewed on a case-by-case basis for suitability of use within the site by the Mississippi Department of Marine Resources (MDMR). If MDMR deems the dredge material suitable for use under their "Sediment Testing Protocol: January 2021", all supporting information such as results of previous testing on site or nearby, information on surrounding land use, sediment testing data obtained, etc., would be provided to USACE. Using the information provided, USACE will determine if the material is suitable for placement into the site under the criteria of the 404(b)(1) guidelines and the Inland Testing Manual as appropriate.

The 70-acre site will accept dredge disposal material incrementally for the life of the permit or until capacity is reached. Depending on the composition of the material placed into the site, the anticipated capacity will be between 470,000 and 575,000 cubic yards.

- ATTACHED:**
1. Locations and Plan Drawings
  2. Mississippi Department of Marine Resources (DMR) Coastal Program Consistency dated August 31, 2018 (DMR-090302).
  3. Mississippi Department of Environmental Quality (DEQ) Section 401 Certification dated August 07, 2019 (WQC2018042).
  4. National Marine Fisheries Service (NMFS) Sea Turtle and Smalltooth Sawfish Construction Conditions

5. U.S. Fish and Wildlife Service (USFWS) Guidelines for Activities in Proximity to Manatees and their Habitat
6. Mississippi Department of Marine Resources (DMR) Dredged Sediment Evaluation dated January 2021.

**Project Location:** The project is located along north central Deer Island, Section 2, Township 8 South, Range 9 West, City of Biloxi, Harrison County, Mississippi. The area is depicted on the MS-OCEAN SPRINGS Quadrangle, United States Geological Survey Topographic Map, Hydrologic Unit Code 03170009. Latitude: 30.379° North, Longitude: -88.846° West

#### Permit Conditions

##### General Conditions:

1. The time limit for completing the work authorized ends on 01 APRIL 2031. If you find that you need more time to complete the authorized activity, submit your request for a time extension to this office for consideration at least 1 month before the above date is reached.
2. You must maintain the activity authorized by this permit in good condition and in conformance with the terms and conditions of this permit. You are not relieved of this requirement if you abandon the permitted activity, although you may make a good faith transfer to a third party in compliance with General Condition 4 below. Should you wish to cease to maintain the authorized activity or should you desire to abandon it without a good faith transfer, you must obtain a modification of this permit from this office, which may require restoration of the area.
3. If you discover any previously unknown historic or archeological remains while accomplishing the activity authorized by this permit, you must immediately notify this office of what you have found. We will initiate the Federal and State coordination required to determine if the remains warrant a recovery effort or if the site is eligible for listing in the National Register of Historic Places.
4. If you sell the property associated with this permit, you must obtain the signature of the new owner in the space provided and forward a copy of the permit to this office to validate the transfer of this authorization.
5. If a conditioned water quality certification has been issued for your project, you must comply with the conditions specified in the certification as special conditions to this permit. For your convenience, a copy of the certification is attached if it contains such conditions.
6. You must allow representatives from this office to inspect the authorized activity at any time deemed necessary to ensure that it is being or has been accomplished in accordance with the terms and conditions of your permit.

##### Special Conditions:

1. All conditions of the Coastal Zone Consistency Determination issued by the Department of Marine Resources (August 31, 2018; DMR-090302) are incorporated as conditions of this DOA permit.
2. The permittee shall comply with all requirements of the Mississippi Department of Environmental Quality 401 Water Quality Certification (WQC2018042) dated June 28, 2019.
3. The project must be constructed in accordance with the description and plans presented. Any changes to project plans must be submitted to this office for review and modification.
4. 70 Days prior to sea turtle nesting season (May 1st through November 30th), the permittee shall install temporary barrier(s) to inhibit sea turtle nesting within the area(s) where the dredge disposal pipe(s) would be located. The temporary barriers shall remain in place throughout sea turtle nesting season. The permittee shall periodically inspect the temporary barrier(s) during the required placement period, to include following any and all storm events around the project site.

5. 70 Days prior to and during sea turtle nesting season (May 1<sup>st</sup> through November 30<sup>th</sup>), the permittee shall perform daily surveys for sea turtle crawls, if suitable habitat is present within the interior portions of the site. If evidence of sea turtle presence or nesting is encountered, consultation under the Endangered Species Act must be reinitiated and concluded prior to conducting work. The permittee shall immediately notify the following offices in writing and by phone of the finding and need to reinitiate consultation with U.S. Fish and Wildlife Service under permit SAM-2018-00434-KMN. The permittee shall provide photographic and locational documentation of the finding as well as a narrative description of the finding and proposed measures to avoid effect to the species.

U.S. Army Corps of Engineers (USACE), Mobile District, Attention: Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001; 251-690-2658

USFWS, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213; 228-493-6631

6. If any evidence of the presence of Endangered/Threatened Species is found during construction, ground disturbing activities in the immediate vicinity must cease, and the permittee shall notify the USACE, Mobile District and the U.S. Fish and Wildlife Service (USFWS) immediately.

USACE, Mobile District, Attention: Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001; 251-690-2658

USFWS, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213; 228-493-6631

7. This Department of Army (DA) permit does not authorize you to take an endangered species, in particular the Gulf sturgeon and sea turtles (leatherback, Kemp's ridley, hawksbill, green, and loggerhead). If a take occurs or new information reveals effects of the action not previously considered, or the identified action is subsequently modified in a manner that causes an effect to listed species or critical habitat in a manner or to an extent not previously considered, or if a new species is listed or critical habitat designated that may be affected by the identified action reinitiation of consultation with NMFS-PRD and/or USFWS must take place. Therefore, within 24 hours of any of the above mentioned actions taking place you shall notify this office of the event and/or finding. Your authorization under this DA permit is conditional upon your compliance with all of the mandatory terms and conditions associated with the enclosed Sea Turtle and Smalltooth Sawfish Construction Conditions, dated March 23, 2006, and USFWS Guidelines for Activities in Proximity to Manatees and Their Habitat. Lack of compliance with these enclosed conditions would constitute non-compliance with your DA permit.

8. Should artifacts or archaeological features be encountered during project activities, all heavy equipment operations within a 35-foot buffer surrounding the potentially significant artifact(s) or the observation shall cease and the USACE and the State Historic Preservation Officer at the Mississippi Department of Archives and History (MDAH) shall be consulted immediately.

U.S. Army Corps of Engineers (USACE), Mobile District, Attention: Regulatory Division, Post Office Box 2288, Mobile, Alabama 36628-0001; 251-690-2658

MDAH, Post Office Box 571, Jackson, Mississippi 39205; 601-576-6850

9. Best management practices shall be implemented to minimize erosion, siltation damage to adjacent wetlands and waters of the United States, and submerged aquatic vegetation. Appropriate erosion and siltation control measures must be used and maintained in effective operating condition during construction. All temporary erosion control features shall remain in place until permanent stabilization measures have been completed and have become fully effective.

10. The permittee shall only accept dredged material for placement within the site if the material has adhered to Mississippi Department of Marine Resources (MDMR) January 2021, Sediment Testing Protocol and has been deemed suitable for disposal within the site by this office.

11. If corrective actions are deemed necessary, the permittee shall submit all proposals to this office, the

**MDMR, and the MDEQ for review as a potential permit modification**

**12. All excavation and fill activities shall be performed in a manner that minimizes disturbance and turbidity increases in "waters of the United States" and wetlands; and shall be retained in a manner to preclude its erosion into any adjacent wetlands or waterway.**

**13. In order for the United States Coast Guard to give proper notice to the maritime community; the permitted owners, contractors, or responsible party(s) shall contact Coast Guard Sector Mobile Waterways Management Branch (spw), 1500 15th Street, Mobile, Alabama 36615 at (251) 441-5166, 60 days prior to performing the proposed action. The permitted owners, contractors, or responsible party(s) must also install and maintain, at the permitted owners, contractors, or responsible party(s) expense any safety lights, signs, and signals required by the US Coast Guard, through regulations or otherwise, on the permitted owners, contractors, or responsible party(s) fixed structures. To receive a US Coast Guard Private Aids to Navigation marking determination, at no later than 30 days prior to the installation of any fixed structures in navigable waters, you are required to contact the Eight Coast Guard District (dpw), 500 Poydras Street, Suite 1230, New Orleans, Louisiana 70130, (504) 671-2328 or via email to: D8oanPATON@uscg.mil. For general information related to Private Aids to Navigation please visit the Eight CG District website at: <http://www.uscg.mil/d8/waterways/PATON.Home.asp>**

**14. It is the permittee's responsibility to ensure that the contractors working on this project are aware of all general and special permit conditions.**

Further Information:

1. Congressional Authorities: You have been authorized to undertake the activity described above pursuant to:

- Section 404 of the Clean Water Act (33 U.S.C. 1344).
- Section 10 of the Rivers and Harbors Act 1899 (33 U.S.C. 403).

2. Limits of this authorization.

- a. This permit does not obviate the need to obtain other Federal, State, or local authorizations required by law.
- b. This permit does not grant any property rights or exclusive privileges.
- c. This permit does not authorize any injury to the property or rights of others.
- d. This permit does not authorize interference with any existing or proposed Federal project.

3. Limits of Federal Liability. In issuing this permit, the Federal Government does not assume any liability for the following:

- a. Damages to the permitted project or uses thereof as a result of other permitted or unpermitted activities or from natural causes.
- b. Damages to the permitted project or uses thereof as a result of current or future activities undertaken by or on behalf of the United States in the public interest.
- c. Damages to persons, property, or to other permitted or unpermitted activities or structures caused by the activity authorized by this permit.
- d. Design or construction deficiencies associated with the permitted work.
- e. Damage claims associated with any future modification, suspension, or revocation of this permit.

4. Reliance on Applicant's Data: The determination of this office that issuance of this permit is not contrary to the public interest was made in reliance on the information you provided.

5. Reevaluation of Permit Decision. This office may reevaluate its decision on this permit at any time the circumstances warrant. Circumstances that could require a reevaluation include, but are not limited to, the following:

- a. You fail to comply with the terms and conditions of this permit.
- b. The information provided by you in support of your permit application proves to have been false, incomplete, or inaccurate (See 4 above).
- c. Significant new information surfaces which this office did not consider in reaching the original public interest decision.

Such a reevaluation may result in a determination that it is appropriate to use the suspension, modification, and revocation procedures contained in 33 CFR 325.7 or enforcement procedures such as those contained in 33 CFR 326.4 and 326.5. The referenced enforcement procedures provide for the issuance of an administrative order requiring you to comply with the terms and conditions of your permit and for the initiation of legal action where appropriate. You will be required to pay for any corrective measures ordered by this office, and if you fail to comply with such directive, this office may in certain situations (such as those specified in 33 CFR 209.170) accomplish the corrective measures by contract or otherwise and bill you for the cost.

6. Extensions. General condition 1 establishes a time limit for the completion of the activity authorized by this permit. Unless there are circumstances requiring either a prompt completion of the authorized activity or a reevaluation of the public interest decision, the Corps will normally give favorable consideration to a request for an extension of this time limit. Your signature below, as permittee, indicates that you accept and agree to comply with the terms and conditions of this permit.

  
 \_\_\_\_\_  
 (PERMITTEE) **MR. JOE SPRAGGINS**  
**EXECUTIVE DIRECTOR**  
**MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**  
**1141 BAYVIEW AVENUE**  
**BILOXI, MISSISSIPPI 39530**

\_\_\_\_\_  
 4. 8. 2021  
 (DATE)

This permit becomes effective when the Federal official, designated to act for the Secretary of the Army, has signed below.

**SEVASTIEN P. JOLY**  
**COLONEL, U.S. ARMY**  
**DISTRICT COMMANDER**

SAHAWNEH.MUNTER.N.1  
 230711808  
 BY: \_\_\_\_\_  
**MR. MUNTER N. SAHAWNEH** (DATE)  
**SUPERVISOR, SOUTH MISSISSIPPI BRANCH**  
**REGULATORY DIVISION**

Digitally signed by  
 SAHAWNEH.MUNTER.N.1230711808  
 Date: 2021.04.09 09:51:25 -05'00'

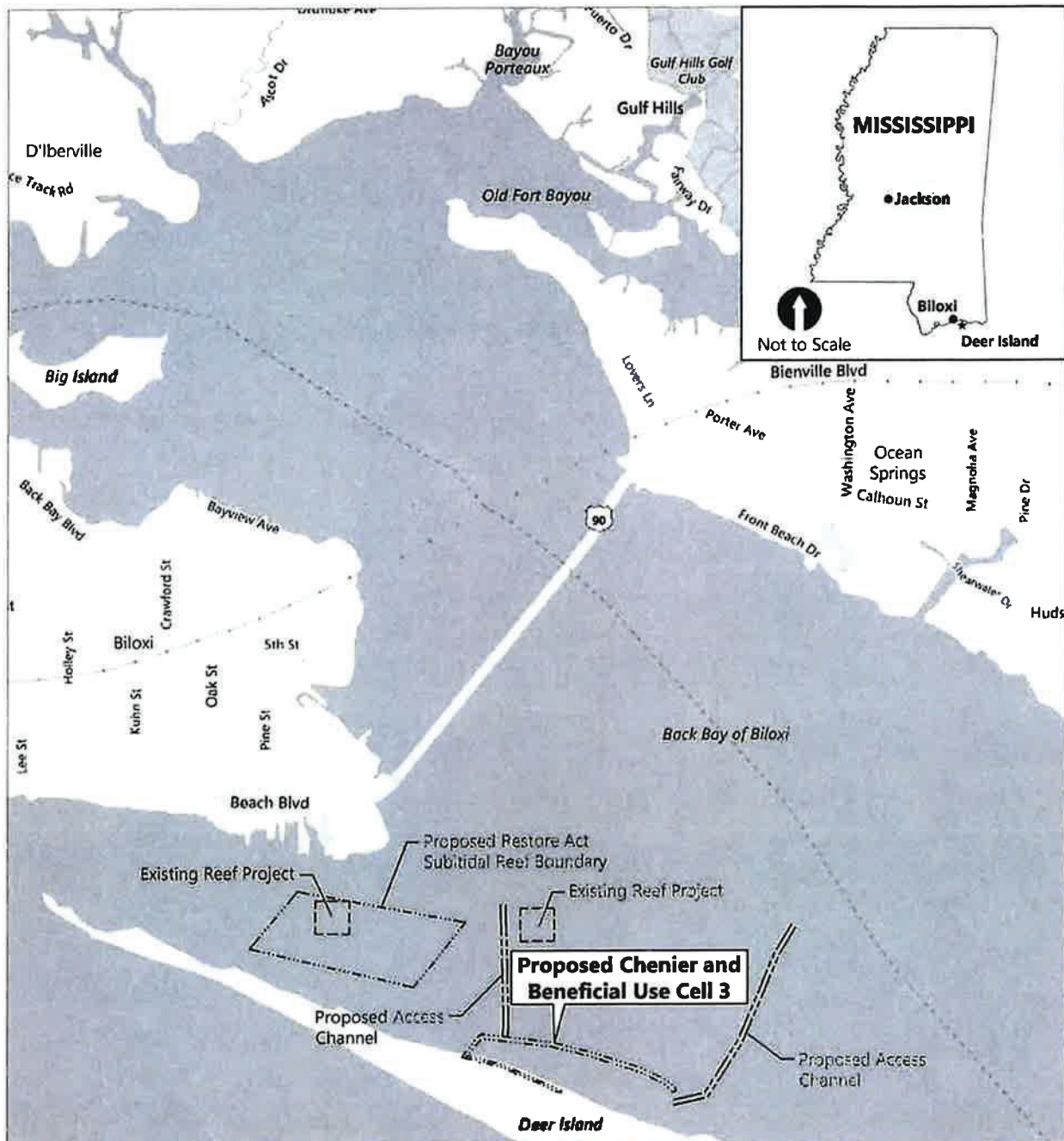
When the structures or work authorized by this permit are still in existence at the time the property is transferred, the terms and conditions of this permit will continue to be binding on the new owner(s) of the property. To validate the transfer of this permit and the associated liabilities associated with compliance with its terms and conditions, have the transferee sign and date below.

\_\_\_\_\_

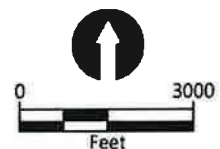
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(TRANSFEREE)

(DATE)



**SOURCE:** 2010 NAVTEC © and 2017 Microsoft Corporation.  
**HORIZONTAL DATUM:** Mississippi State Plane East, NAD83, U.S. Feet.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).



Publish Date: 2018/08/01 2:05 PM | User: dholmer  
 Filepath: K:\Projects\0762-Mississippi Department of Marine Resources\Mississippi Dept of Marine Resources\0762-RP-001 (Deer Island - Vicinity Map) dwg Vicinity Map (Cheniere)



**Figure 1**  
**Deer Island Chenier and Beneficial Use Cell 3 Vicinity Map**

Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources



**SOURCE:** Aerial image courtesy © 2018 Microsoft Corporation © 2018 DigitalGlobe © CNES (1018) Distribution Airbus DS. Bathymetric survey provided by DIMCO dated September 27, 2017.  
**HORIZONTAL DATUM:** Mississippi State Plane East NAD83, U.S. Feet.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**LEGEND:**

-  Existing Bathymetric Contours in Feet (1' Interval)
-  Proposed Breakwater/Chenier Contours in Feet (2' Interval)
-  Existing Reef Project



Publish Date: 2018/08/01 2:05 PM | User: dholmer  
 Filepath: K:\Projects\0762\_Mississippi Department of Marine Resources\0762-RP-003 (Deer Island) dwg Overview



**Figure 3**  
**Deer Island Chenier and Beneficial Use Cell 3 Overview**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources





**SOURCE:** Aerial image courtesy © 2018 Microsoft Corporation © 2018 DigitalGlobe © CNES (1018) Distribution Airbus DS. Bathymetric survey provided by DIMCO dated September 27, 2017.  
**HORIZONTAL DATUM:** Mississippi State Plane East, NAD83, U.S. Feet.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

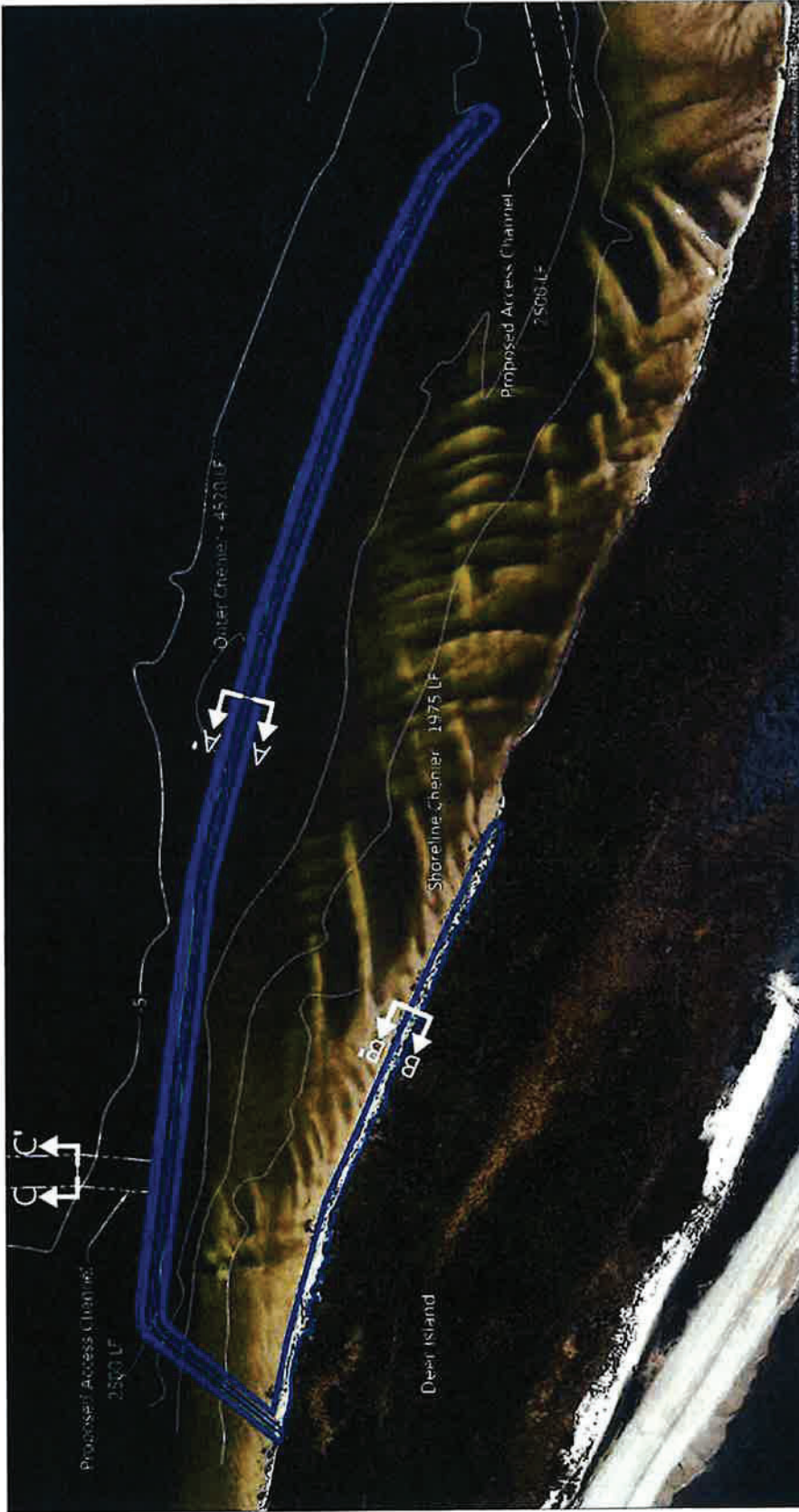
**LEGEND:**

- Existing Bathymetric Contours in Feet (1' Interval)
- Proposed Breakwater/Chenier Contours in Feet (2' Interval)
- Cross Section Location (See Figures 4, 5, 6, and 7)

Publish Date: 2018/08/01 2:05 PM | User: dholmer  
 Filepath: K:\Projects\0762-Mississippi Department of Marine Resources\Mississippi Dept. of Marine Resources\0762-RP-002 (Deer Island - Chenier).dwg Plan



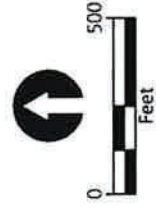
**Figure 2**  
**Deer Island Chenier and Beneficial Use Cell 3**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources



**SOURCE:** Aerial image courtesy © 2018 Microsoft Corporation © 2018 DigitalGlobe © CNES (1018) Distribution Airbus DS. Bathymetric survey provided by DIMCO dated September 27, 2017.  
**HORIZONTAL DATUM:** Mississippi State Plane East, NAD83, U.S. Feet.  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**LEGEND:**

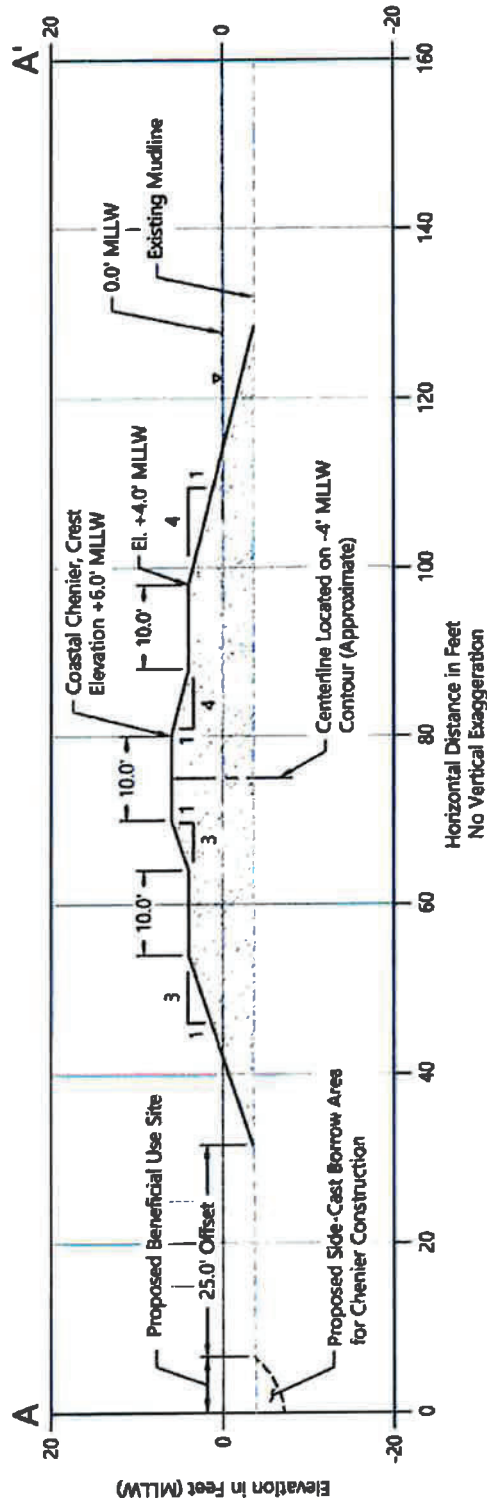
- Existing Bathymetric Contours in Feet (1' Interval)
- Proposed Breakwater/Chenier Contours in Feet (2' Interval)
- Cross Section Location (See Figures 3, 4, 5, and 6)



Publish Date: 2018/02/19 2:34 PM | User: dholmer  
 Filepath: K:\Projects\0762-Mississippi Department of Marine Resources\Mississippi Dept of Marine Resources\0762 RP 002 (Deer Island Chenier) dwg Plan



**Figure 2**  
**Deer Island Chenier and Beneficial Use Cell 3**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources

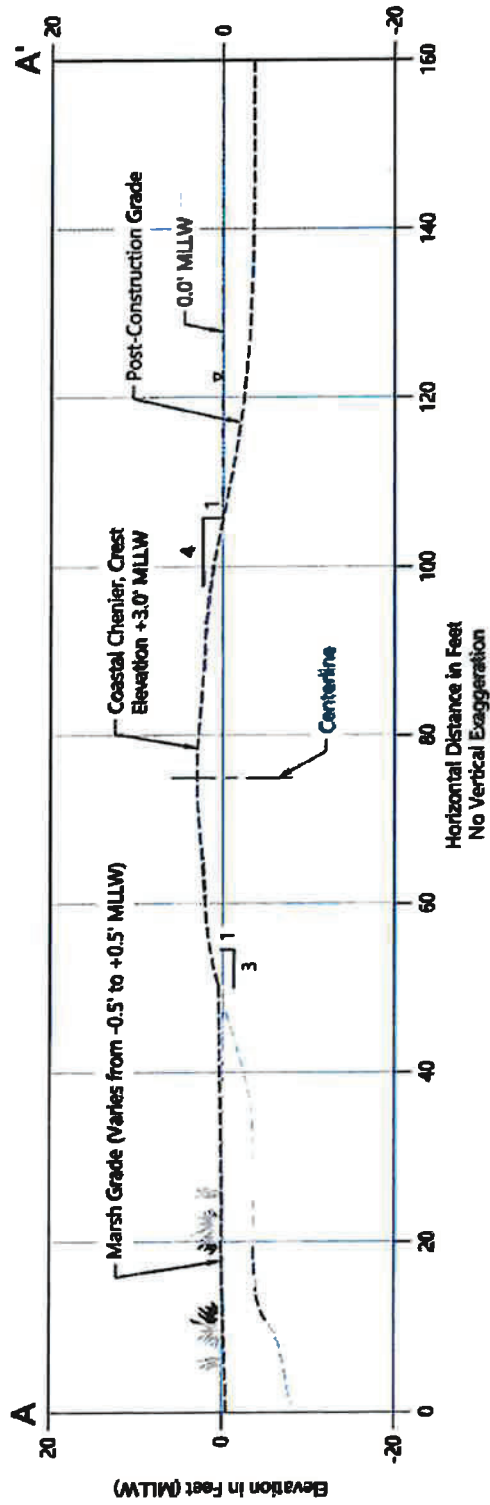


**Outer Coastal Chenier - Initial Construction**

Publication Date: 2018/02/19 2:34 PM | User: dholmer  
 Project: K:\Project\0762-Mississippi Department of Marine Resources\Mississippi Dept of Marine Resources\0762-RP-002 (Deer Island - Chenier)dwg Section (Outer)



**Figure 3**  
**Deer Island Chenier Restoration and Beneficial Use Cell 3**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources

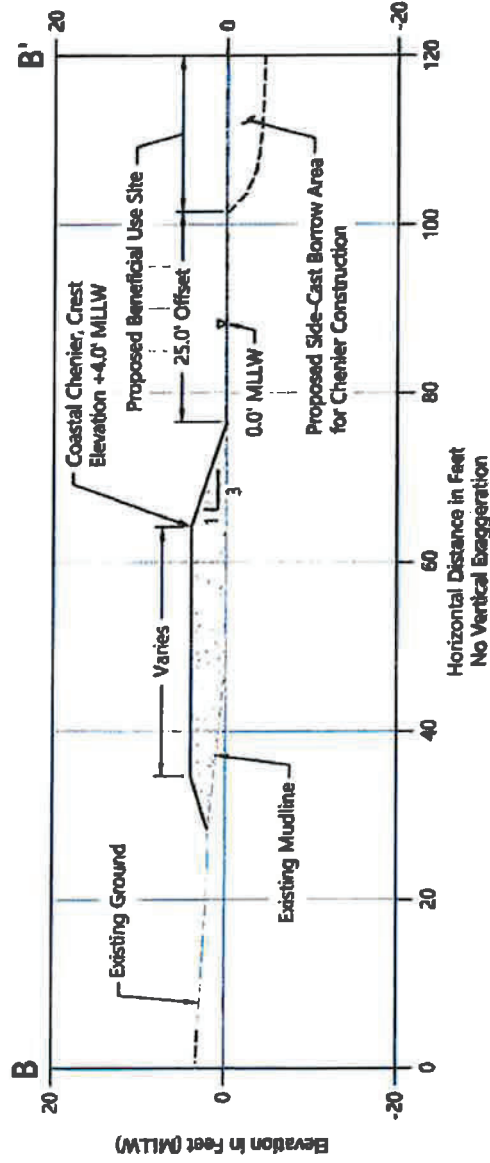


**Outer Coastal Chenier - Final Condition**

Public Date: 2018/02/19 2:34 PM | User: dholmer  
 Report: C:\Projects\0762-H\Mississippi Department of Marine Resources\Mississippi Dept of Marine Resources\0762-RP-002 (Deer Island - Chenier) Job Section (Final)



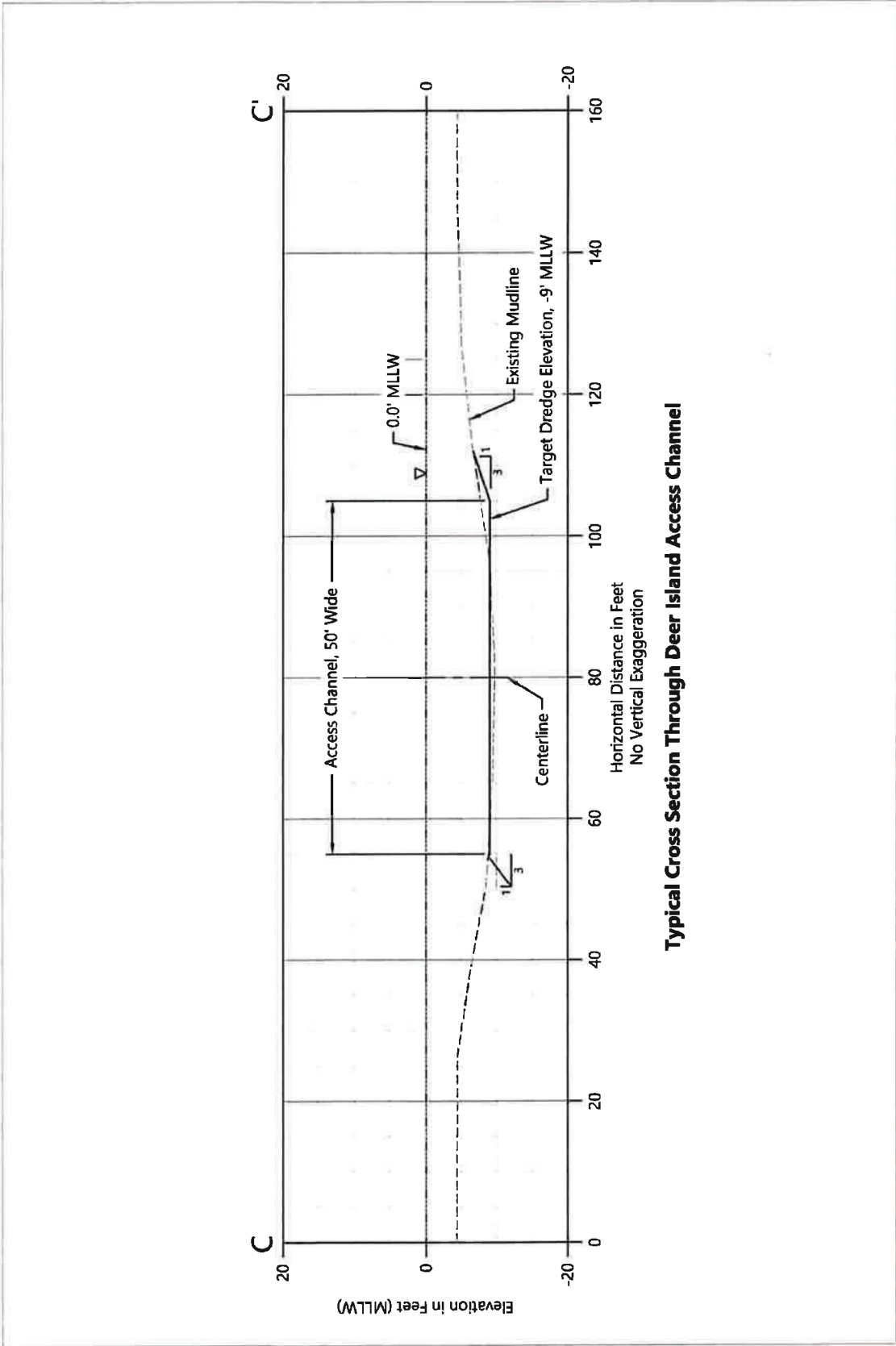
**Figure 4**  
**Deer Island Chenier Restoration and Beneficial Use Cell 3**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources



**Shoreline Chenier - Initial Construction**

Publication Date: 2018/02/19 2:34 PM | User: dholmer  
 Filepath: K:\Projects\0762-Initial\0762-Initial\0762-Initial.dwg Section (Stone)





Publish Date: 2018/08/20 2:56 PM | User: dholmer  
 Filepath: K:\Projects\0762-Mississippi Department of Marine Resources\Mississippi Dept of Marine Resources\0762-RP-002 (Deer Island - Chenier),dwg Section (Access)



**Figure 7**  
**Typical Cross Section Deer Island Access Channel**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources



**STATE OF MISSISSIPPI**

Phil Bryant  
Governor

**MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

Joe Spraggins, Executive Director

**PERMIT TO CONDUCT REGULATED ACTIVITIES**

Certification Number: DMR-090302

Date: August 31, 2018

Issued to: Mississippi Department of Marine Resources  
Beneficial Use of Dredged Material Program  
Attn: Jared Harris  
1141 Bayview Avenue  
Biloxi, MS 39530

Project Description: Coastal Wetland Fill and Dredging

Project Location: The Mississippi Sound  
North side of Deer Island  
Biloxi, Harrison County, Mississippi

DMR Project Manager: Greg Christodoulou  
228-523-4109  
greg.christodoulou@dmr.ms.gov

***NOTICE: Read this document carefully. Failure to follow the listed conditions can result in substantial fines and penalties.***

The Department of Marine Resources (DMR) has reviewed your request to construct a beneficial use (BU) site for the placement of suitable dredged material in accordance with MS Code § 49-27-61 on the Mississippi Sound along the north shore of Deer Island in Biloxi, Harrison County, MS. The application was presented to the MS Commission on Marine Resources (MCMR) on August 21, 2018.

In accordance with the provisions of the Mississippi Coastal Wetlands Protection Act and our findings made in compliance with Chapter Eight, Section 2 of the Mississippi Coastal Program (MCP), a Permit to conduct Regulated Activities is issued to you this day by the MCMR and by the Executive Director. The activities herein authorized shall be conducted in a manner resulting in the least damaging impacts to wetlands and the coastal environment.

The following activities and impacts are authorized by this certification as indicated on the attached approved diagram:

1. Permanent fill of approximately 70 acres of Coastal Wetlands consisting of unvegetated waterbottoms for the construction of a Beneficial Use site for the placement of suitable dredged material in accordance with MS Code § 49-27-61
2. Dredging of two (2) new access channels each 1,000 feet in length and 60 feet in width to a depth of 10 feet below mean low water. Approximately 17,780 cubic yards of material may be removed
3. A variance to Chapter VIII, Section 2, Part III.O.1. of the MCP

The applicant must abide by specific conditions as listed below.

**Any deviations beyond the above-authorized dimensions, the project footprint as shown on the attached approved diagram, or the specific conditions as set forth below will be considered a violation and may result in the revocation of the permit. Violations of these conditions may be subject to fines, project modifications, and/or site restoration. Both the permittee and the contractor may be held liable for such violations or for conducting unauthorized work. A modification to the project dimensions or footprint or to these conditions may be requested by submitting a written request along with a revised project diagram to DMR. Proposed modifications to project dimensions, footprint, or conditions must be approved in writing prior to commencement of work.**

The specific conditions of this certification are as follows:

1. All dredging and excavation (maintenance dredging, creation of a new channel, or creation of an indented boat slip or boat ramp) must:
  - a. Maintain a minimum distance of 10 feet between the dredge area and any wetlands or submerged aquatic vegetation
  - b. Result in areas that gradually increase in depth toward open water
  - c. Result in areas that have a minimum 3:1 (horizontal: vertical) side slope
  - d. Minimize turbidity at the dredge site by methods such as using staked filter cloth, staged construction, and/or the use of turbidity screens around the immediate project site
  - e. Not result in sinks or sumps
  - f. Not exceed the controlling navigational depth of the receiving or adjacent waters
  - g. Not impact wetlands, submerged aquatic vegetation, or shellfish beds (for maintenance dredging or new channel dredging in man-made waterbodies, exceptions may be made for noxious, invasive, or exotic vegetation, as determined or verified by staff)



2. All dredged or excavated material must:
  - a. Be utilized for a DMR-approved beneficial use, in accordance with MS Code § 49-27-61 unless a written exception to these requirements is issued by the DMR; If it has been determined that the material does not meet suitability standards, unsuitable material shall be placed in an approved off-site disposal area or confined in on-site uplands; If on-site disposal is utilized, spoil disposal area shall be immediately seeded and/or stabilized and appropriate Best Management Practices shall be utilized to prevent the movement of sediment off-site and into adjacent wetlands or drainage areas
  
3. All authorized activities must:
  - a. Use Best Management Practices (BMPs) at all times during construction, including, but not limited to, the use of staked hay bales; staked filter cloth; sodding, seeding, and mulching; staged construction; and the installation of turbidity screens around the immediate project site
  - b. Be conducted in a manner that minimizes the discharge of turbid waters into Waters of the State
  - c. Not result in construction debris, sewage, oil, refuse, other pollutants, or unauthorized fill material entering Coastal Wetlands or Waters of the State
  - d. Not impact wetlands, submerged aquatic vegetation, or shellfish beds unless specifically authorized above

**Work authorized by this certification must be completed on or before:  
August 21, 2028.**

***Enclosed is a Notice of Compliance (NOC) which must be conspicuously displayed at the site during construction of the authorized work.***

Issuance of this certification by DMR does not release the applicant from other legal requirements including but not limited to other applicable federal, state, or local laws, ordinances, zoning codes, or other regulations, including a possible Tidelands Lease from the MS Secretary of State's Office, required City or County construction setbacks, or building permits from the City or County where the project is located. A list of contacts has been provided for your assistance in determining whether any further certifications are required.

This certification conveys no title to land and water, does not constitute authority for reclamation of coastal wetlands and does not authorize invasion of private property or rights in property.

Please notify this Department upon completion of the permitted project so that compliance checks may be conducted by DMR staff.

THIS CERTIFICATION IS EFFECTIVE IMMEDIATELY.

A handwritten signature in blue ink, appearing to read "Joe Spraggins", is written over a horizontal line.

Joe Spraggins  
Executive Director  
MS Department of Marine Resources

JS/gsc

Attachments: NOC/Approved Diagram

cc: Ms. Maryellen Farmer, USACE  
Ms. Florance Bass, OPC  
Mr. Raymond Carter, SOS



**Department of Marine Resources**

**NOTICE OF COMPLIANCE**

**DMR- 090302 PERMIT**

**DATE: August 21, 2018**

**THIS NOTICE ACKNOWLEDGES THAT:**

**Mississippi Department of Marine Resources  
Beneficial Use of Dredged Material Program  
Attn: Jared Harris  
1141 Bayview Avenue  
Biloxi, MS 39530**

**HAS, THROUGH APPLICATION TO THIS DEPARTMENT, DULY COMPLIED WITH THE MISSISSIPPI COASTAL WETLANDS PROTECTION ACT. THE FOLLOWING ACTIVITIES AND IMPACTS ARE AUTHORIZED AS INDICATED ON THE ATTACHED APPROVED DIAGRAM:**

1. Permanent fill of approximately 70 acres of Coastal Wetlands consisting of unvegetated waterbottoms for the construction of a Beneficial Use site for the placement of suitable dredged material in accordance with MS Code § 49-27-61
2. Dredging of two (2) new access channels each 1,000 feet in length and 60 feet in width to a depth of 10 feet below mean low water. Approximately 17,780 cubic yards of material may be removed
3. A variance to Chapter VIII, Section 2, Part III.O.1. of the MCP

On the Mississippi Sound along the north side of Deer Island in Biloxi, Harrison County, Mississippi.

Furthermore, this project as proposed has been found to be consistent with all guidelines for conduct of regulated activities in coastal wetlands as set forth in the Mississippi Coastal Program.

**No construction debris or unauthorized fill material shall be allowed to enter coastal wetlands or waters.**

**ALL CONDITIONS AS SPECIFIED IN THE WRITTEN CERTIFICATION DATED AUGUST 21, 2018, TO WHICH THIS NOTICE OF COMPLIANCE AND APPROVED DIAGRAM ARE ATTACHED MUST BE FOLLOWED AT ALL TIMES DURING CONSTRUCTION AND CONTINUING FOR THE LIFE OF THE PROJECT. ANY DEVIATIONS FROM THESE CONDITIONS, THE ABOVE-LISTED DIMENSIONS, OR THE PROJECT FOOTPRINT AS SHOWN ON THE ATTACHED APPROVED DIAGRAM SHALL BE CONSIDERED A VIOLATION AND MAY RESULT IN THE REVOCATION OF THE PERMIT.**

**VIOLATIONS MAY BE SUBJECT TO FINES, PROJECT MODIFICATIONS, AND/OR SITE RESTORATION. BOTH THE PERMITTEE AND THE CONTRACTOR MAY BE HELD LIABLE FOR SUCH VIOLATIONS OR FOR CONDUCTING UNAUTHORIZED WORK.**

  
Executive Director

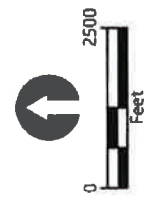
**POST THIS NOTICE CONSPICUOUSLY AT SITE OF WORK**



**SOURCE:** Aerial image courtesy © 2018 Microsoft Corporation © 2018 DigitalGlobe © CNES (1018) Distribution Airbus DS. Bathymetric survey provided by DIMCO dated September 27, 2017.  
**HORIZONTAL DATUM:** Mississippi State Plane East, NAD83, U.S. Feet  
**VERTICAL DATUM:** Mean Lower Low Water (MLLW).

**LEGEND:**

- Existing Bathymetric Contours in Feet (1' Interval)
- Proposed Breakwater/Chenier Contours in Feet (2' Interval)
- Existing Reef Project



Publication Date: 2/18/2021 2:05 PM | User: dlbolmer  
 Filepath: \\Projects\0763\_Mississipppi\_Department\_of\_Marine\_Resources\0762\_20193\_Deer\_Island\_308\_Overview



**Figure 3**  
**Deer Island Chenier and Beneficial Use Cell 3 Overview**  
 Beneficial Use of Dredged Material Program  
 Mississippi Department Marine Resources



STATE OF MISSISSIPPI  
PHIL BRYANT  
GOVERNOR  
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY  
GARY C. RIKARD, EXECUTIVE DIRECTOR

August 7, 2019

Certified Mail No. 7017 1450 4592 4825

Mr. Jared Harris  
Mississippi Department of Marine Resources  
1141 Bayview Avenue  
Biloxi, Mississippi 39530

Dear Mr. Harris:

Re: Mississippi Department of  
Marine Resources, Deer Island  
Habitat Restoration  
Harrison County  
COE No. SAM201800434KMN  
WQC No. WQC2018042

Pursuant to Section 401 of the Federal Water Pollution Control Act (33 U. S. C. 1251, 1341), the Office of Pollution Control (OPC) issues this Certification, after public notice and opportunity for public hearing, to Mississippi Department of Marine Resources, an applicant for a Federal License or permit to conduct the following activity:

Mississippi Department of Marine Resources, Deer Island Habitat Restoration: The project will fill 70 acres of open water on the north central shore of Deer Island as a Beneficial Use (BU) for Dredged Material Disposal. The project will include creation of approximately 1,975 linear feet of a coastal Chenier (upland ridge) along the existing coastline and the southern boundary of the project site, and an outer berm, 4,520 feet in length, will be constructed along the proposed northern boundary of the project site and will run parallel to the north shoreline of Deer Island then curve south on the western most end to connect back to the Island. Sand dredged from the Black Warrior-Tombigbee Rivers will then be placed hydraulically to reinforce the outside of the berm. The outer berm will be constructed on the -4 feet MLLW contour and will be raised to an elevation of +6 feet MLLW. The interior coastal Chenier will be raised to an elevation of +4 feet MLLW. Dredged material from various local dredging projects in Harrison and Jackson Counties will be placed within the 70-acre bermed site over the 10-year period. Within the disposal area, the dredged material will be pumped to a height of +3 to +5 MLLW initially, with final grade after dewatering and consolidation ranging from -0.5 to +1.5 MLLW. Two access channels located

OFFICE OF POLLUTION CONTROL

POST OFFICE BOX 2261 JACKSON, MISSISSIPPI 39225-2261 • TEL: (601) 961-5171 • FAX: (601) 354-6612 • www.deq.state.ms.us  
74346 WQC20180001

AN EQUAL OPPORTUNITY EMPLOYER

on the eastern and western side of the proposed site, will be dredged to -9 feet MLLW if needed for access. The channels will extend to a depth sufficient to allow barge access and not exceed 2,500 linear feet in length. Both access channels will need to be maintained for the 10-year life of the permit, or until capacity is reached. The material removed during the initial channel dredging will be side cast to the immediate west side of the channel in order to renourish the island. Any material removed during maintenance dredging over the 10-year life of the project, will be pumped into the BU site. Depending on the composition of the material placed into the site, the anticipated capacity will be between 470,000 and 575,000 cubic yards. The outside berm and interior marsh will be planted with appropriate marsh and dune species when construction and dewatering are complete. Mitigation will not be required for this project. The site is located in Biloxi, Harrison County, Mississippi. [SAM201800434KMN, WQC2018042].

The Office of Pollution Control certifies that the above-described activity will be in compliance with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Section 49-17-29 of the Mississippi Code of 1972, if the applicant complies with the following conditions:

1. The material placement and access channel dredging shall be conducted in such a manner that no sumps are created within the areas.
2. All fill material and excavated areas shall have side slopes of 3:1 (horizontal:vertical) or flatter and shall be immediately seeded, stabilized, and maintained.
3. The permittee shall contact the Department for further consultation regarding testing protocols for dredged material obtained from waterways with a completed Total Daily Maximum Load for toxics, phenols, mercury, and PCBs-Dioxin; and from waterways listed on the 303(d) list for biological impairment. Further information may be obtained from the branch manager of the Modeling and TMDL Branch within the Surface Water Division of the Office of Pollution Control.
4. The permittee shall contact the Department for further consultation regarding testing protocols for dredged material obtained from waterways affected by a CERCLA/Uncontrolled Site as identified by the Groundwater Assessment and Remediation Division. Further information may be obtained from the branch manager of the Assessment/Remediation (I or II still to be determined) within the Groundwater Assessment and Remediation Division of the Office of Pollution Control.

5. Best management practices should be used at all times during construction to minimize turbidity at the restoration sites. The restoration sites shall be constructed and maintained in a manner that minimizes the discharge of turbid waters into waters of the Mississippi Sound and surrounding waters. Best management practices should include, but not limited to, staked filter cloth; sodding, seeding and mulching; staged construction; and the installation of turbidity screens around the immediate project site.
6. Sediment testing for approval of material placement shall be done in accordance with protocols established by the Beneficial Use Group as part of the Beneficial Use Program within the Department of Marine Resources.
7. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
8. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Office of Pollution Control also certifies that there are no limitations under Section 302 nor standards under Sections 306 and 307 of the Federal Water Pollution Control Act which are applicable to the applicant's above-described activity. This certification is valid for the project as proposed. Any deviations without proper modifications and/or approvals may result in a violation of the 401 Water Quality Certification. If we can be of further assistance, please contact us.

Sincerely,



Krystal Rudolph, P.E., BCEE  
Chief, Environmental Permits Division

HMW: JP

cc: Mary Ellen Farmer, U.S. Army Corps of Engineers, Mobile District  
Greg Christdoulou, Department of Marine Resources  
Paul Necaie, U.S. Fish and Wildlife Service  
Molly Martin, Environmental Protection Agency



**UNITED STATES DEPARTMENT OF COMMERCE**  
**National Oceanic and Atmospheric Administration**  
**NATIONAL MARINE FISHERIES SERVICE**  
Southeast Regional Office  
263 13th Avenue South  
St. Petersburg, FL 33701

## **SEA TURTLE AND SMALLTOOTH SAWFISH CONSTRUCTION CONDITIONS**

The permittee shall comply with the following protected species construction conditions:

- a. The permittee shall instruct all personnel associated with the project of the potential presence of these species and the need to avoid collisions with sea turtles and smalltooth sawfish. All construction personnel are responsible for observing water-related activities for the presence of these species.
- b. The permittee shall advise all construction personnel that there are civil and criminal penalties for harming, harassing, or killing sea turtles or smalltooth sawfish, which are protected under the Endangered Species Act of 1973.
- c. Siltation barriers shall be made of material in which a sea turtle or smalltooth sawfish cannot become entangled, be properly secured, and be regularly monitored to avoid protected species entrapment. Barriers may not block sea turtle or smalltooth sawfish entry to or exit from designated critical habitat without prior agreement from the National Marine Fisheries Service's Protected Resources Division, St. Petersburg, Florida.
- d. All vessels associated with the construction project shall operate at "no wake/idle" speeds at all times while in the construction area and while in water depths where the draft of the vessel provides less than a four-foot clearance from the bottom. All vessels will preferentially follow deep-water routes (e.g., marked channels) whenever possible.
- e. If a sea turtle or smalltooth sawfish is seen within 100 yards of the active daily construction/dredging operation or vessel movement, all appropriate precautions shall be implemented to ensure its protection. These precautions shall include cessation of operation of any moving equipment closer than 50 feet of a sea turtle or smalltooth sawfish. Operation of any mechanical construction equipment shall cease immediately if a sea turtle or smalltooth sawfish is seen within a 50-ft radius of the equipment. Activities may not resume until the protected species has departed the project area of its own volition.
- f. Any collision with and/or injury to a sea turtle or smalltooth sawfish shall be reported immediately to the National Marine Fisheries Service's Protected Resources Division (727-824-5312) and the local authorized sea turtle stranding/rescue organization.
- g. Any special construction conditions, required of your specific project, outside these general conditions, if applicable, will be addressed in the primary consultation.

Revised: March 23, 2006

O:\forms\Sea Turtle and Smalltooth Sawfish Construction Conditions.doc





### **Guidelines for Activities in Proximity to Manatees and Their Habitat**

- A. All personnel associated with the activity or project should be informed of the potential presence of manatees, manatee speed zones, and the need to avoid collisions with and injury to manatees. Such personnel instruction should also include a discussion of the civil and criminal penalties for harming, harassing, or killing manatees, which are protected under the Marine Mammal Protection Act of 1972 and the Endangered Species Act of 1973.
- B. All contract and/or construction personnel are responsible for observing water-related activities for the presence of manatee(s).
- C. Temporary signs should be posted prior to and during all construction/dredging activities to remind personnel to be observant for manatees during active construction/dredging operations or within vessel movement zones (i.e., work area), and at least one sign should be placed where it is visible to the vessel operator.
- D. Siltation barriers, if used, should be made of material in which manatees could not become entangled, and should be properly secured and regularly monitored. Barriers should not impede manatee movement.
- E. If a manatee is sighted within 100 yards of the active work zone, special operating conditions should be implemented, including: no operation of moving equipment within 50 ft of a manatee; all vessels should operate at no wake/idle speeds within 100 yards of the work area; and siltation barriers, if used, should be re-secured and monitored. Once the manatee has left the 100-yard buffer zone around the work area on its own accord, special operating conditions are no longer necessary, but careful observations would be resumed.
- F. Any manatee sighting should be immediately reported to the Dolphin Island Sea Lab's Manatee Sighting Network Hotline at (866-493-5803) or at [manatee.disl.org](http://manatee.disl.org) and the U.S. Fish and Wildlife Service's Jackson MS Field Office (228-493-6631).

**Mississippi Department of Marine Resources**  
**Dredged Sediment Evaluation**  
**January 2021**

Sediment testing and evaluation for suitability will be determined by the location of the dredging project and its associated Coastal Wetlands Use Plan, which is designated in Mississippi's Coastal Program.

**General Use Districts (“G” Districts): Wetland areas where only minor alterations are allowed when such alterations do not adversely affect recreation, swimming, fishing, and the natural scenic qualities of the wetlands.**

- For dredging projects less than 10,000 cubic yards with no reason to believe the sediment is a carrier of contaminants, no testing is required for placement within the BU site.
- For dredging projects greater than 10,000 cubic yards, a 10-day whole sediment toxicity test will be required.
- Suitability for placement in the BU site will be determined by:
  1. Survivability of *Leptocheirus plumulosus* – mortality that is more than 10% greater in test treatments versus the control will not be allowed to place material within the BU site.

**Industrial Districts (“I” Districts): Areas designated may be used for activities associated with water dependent industrial development.**

- All dredging projects in these districts will include the 10-day whole sediment toxicity test and all analytes on the attached sheet (metals, PAHs, PCBs, pesticides, dioxins).
- Suitability for placement within the BU site will be determined by:
  1. Survivability of *Leptocheirus plumulosus* – mortality that is more than 10% greater in test treatments versus the control will not be allowed to place the material within the BU site.

**Commercial Fishing and Recreational Marinas (“C” Districts): Areas designated to accommodate developments necessary to support commercial fishing or recreational marinas and associated activities**

- All dredging projects in these districts will include the 10-day whole sediment toxicity test and all analytes on the attached sheet (metals, PAHs, PCBs, pesticides, dioxins).
- Suitability for placement within the BU site will be determined by:
  1. Survivability of *Leptocheirus plumulosus* – mortality that is more than 10% greater in test treatments versus the control will not be allowed to place the material within the BU site.

***All information supporting a determination of ‘no reason to believe’ will be provided to USACE, such as results of previous testing on site or nearby, information on surrounding land use, etc. for their final determination of suitability. Additionally, when testing is required, all sediment testing data will be provided to USACE for their final determination of suitability.***

Chemical		Units
<b>Metals</b>		
Aluminum		mg/kg
Antimony		mg/kg
Arsenic		mg/kg
Barium		mg/kg
Cadmium		mg/kg
Chromium		mg/kg
Cobalt		mg/kg
Copper		mg/kg
Iron		mg/kg
Lead		mg/kg
Manganese		mg/kg
Mercury		mg/kg
Nickel		mg/kg
Selenium		mg/kg
Silver		mg/kg
Strontium		mg/kg
Tin		mg/kg
Vanadium		mg/kg
Zinc		mg/kg
<b>Volatiles * C district only</b>		
Total Petroleum Hydrocarbon (TPH)		
<b>Polycyclic Aromatic Hydrocarbons (PAHs)</b>		
Acenaphthene		mg/kg
Acenaphthylene		mg/kg
Anthracene		mg/kg
Benzo(a)anthracene		mg/kg
Benzo(a)pyrene		mg/kg
Benzo(g,h,i)perylene		mg/kg
Benzo(k)fluoranthene		mg/kg
Benzo(b)fluoranthene		mg/kg
Chrysene		mg/kg
Dibenzo(a,h)anthracene		mg/kg
Fluoranthene		mg/kg
Fluorene		mg/kg
Indeno(1,2,3-cd)pyrene		mg/kg
Naphthalene		mg/kg
Phenanthrene		mg/kg
Pyrene		mg/kg

1-Methylnaphthalene	mg/kg
2-Methylnaphthalene	mg/kg
Low molecular weight PAH	mg/kg
High molecular weight PAH	mg/kg
Total PAH	mg/kg
<b>Polychlorinated Biphenyl (PCB) Congeners</b>	
Total PCBs	µg/kg
<b>Chlorinated Pesticides</b>	
Aldrin	µg/kg
Chlordane	µg/kg
Dieldrin	µg/kg
4,4'-DDD	µg/kg
4,4'-DDE	µg/kg
4,4'-DDT	µg/kg
Total DDX	µg/kg
Endosulfan	µg/kg
Endrin	µg/kg
Heptachlor and Heptachlor Epoxide	µg/kg
Alpha-HCH	µg/kg
Beta-HCH	µg/kg
Gamma-BHC	µg/kg
Toxaphene	µg/kg
<b>Dioxins</b>	
Dioxin TEQ	ng/kg

## COMMENCEMENT CERTIFICATION



**U.S. Army Corps of Engineers  
Mobile District**

Permit Number: **SAM-2018-00434-KMN**

Name of Permittee: **MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

Date of Issuance: **APRIL 01, 2021**

Upon commencement of the activity authorized by this permit and any mitigation required by the permit, please sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Mobile District  
Regulatory Division  
Post Office Box 2288  
Mobile, Alabama 36628-0001

Please note that your permitted activity is subject to a commencement inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit, the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

I hereby certify that the work authorized by the above-referenced permit has commenced in accordance with the terms and conditions of the said permit, and the required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date

## COMPLETION CERTIFICATION



**U.S. Army Corps of Engineers  
Mobile District**

Permit Number: **SAM-2018-00434-KMN**

Name of Permittee: **MISSISSIPPI DEPARTMENT OF MARINE RESOURCES**

Date of Issuance: **APRIL 01, 2021**

Upon completion of the activity authorized by this permit and any mitigation required by the permit, please sign this certification and return it to the following address:

U.S. Army Corps of Engineers  
Mobile District  
Regulatory Division  
Post Office Box 2288  
Mobile, Alabama 36628-0001

Please note that your permitted activity is subject to a completion inspection by a U.S. Army Corps of Engineers representative. If you fail to comply with all terms and conditions of this permit, the permit is subject to permit suspension, modification, or revocation and you are subject to an enforcement action by this office.

I hereby certify that the work authorized by the above-referenced permit has been completed in accordance with the terms and conditions of the said permit, and the required mitigation was completed in accordance with the permit conditions.

\_\_\_\_\_  
Signature of Permittee

\_\_\_\_\_  
Date



**US Army Corps  
of Engineers®**

A permit to perform work authorized by statutes and regulations of the Department of the Army at  
Latitude: 30.379° North, Longitude: -88.846° West

Has been issued to Mississippi Department of Marine Resources on April 1, 2021

Address of Permittee 1141 Bayview Avenue, Biloxi MS 39530

PERMIT NUMBER

**SAM-2018-00434-KMN**

SAHAWNEH.MUNTHE  
ER.NAJI.1230711808  
Digitally signed by  
SAHAWNEH.MUNTHE.NAJI.12307  
11808  
Date: 2023.12.04 12:16:26 -06'00'

**Munther N. Sahawneh**

Supervisor, South Mississippi Branch, Regulatory Division

*For the District Commander*

## NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Mississippi Department of Marine Resources		File Number: SAM-2018-00434-KMN	Date: 09APR2021
Attached is:			See Section below
	INITIAL PROFFERED PERMIT (Standard Permit or Letter of permission)		A
X	PROFFERED PERMIT (Standard Permit or Letter of permission)		B
	PERMIT DENIAL		C
	APPROVED JURISDICTIONAL DETERMINATION		D
	PRELIMINARY JURISDICTIONAL DETERMINATION		E

**SECTION I -** The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

**A: INITIAL PROFFERED PERMIT:** You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

**B: PROFFERED PERMIT:** You may accept or appeal the permit

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**C: PERMIT DENIAL:** You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**D: APPROVED JURISDICTIONAL DETERMINATION:** You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

**E: PRELIMINARY JURISDICTIONAL DETERMINATION:** You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.



**SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMIT**

**REASONS FOR APPEAL OR OBJECTIONS:** (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

**ADDITIONAL INFORMATION:** The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

**POINT OF CONTACT FOR QUESTIONS OR INFORMATION:**

If you have questions regarding this decision and/or the appeal process you may contact:  
CESAM-RD-M  
U.S. ARMY CORPS OF ENGINEERS  
POST OFFICE BOX 2288  
MOBILE, ALABAMA 36628-0001  
(228)523-4116

If you only have questions regarding the appeal process you may also contact:  
MR. PHILIP SHANNIN  
ADMINISTRATIVE APPEALS REVIEW OFFICER  
60 FORSYTH STREET, SW (ROOM 9M10)  
ATLANTA, GA 30303-8801  
TELEPHONE: 404-562-5137, FACSIMILE: 404-562-5138

**RIGHT OF ENTRY:** Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

\_\_\_\_\_  
Signature of appellant or agent.

Date:

Telephone number:

## **APPENDIX C**

Mississippi Department of Environmental Quality WQC-2018042.



STATE OF MISSISSIPPI

PHIL BRYANT  
GOVERNOR

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

GARY C. RIKARD, EXECUTIVE DIRECTOR

June 28, 2019

Certified Mail No. 7018 0360 0000 7113 6216

Mr. Jared Harris

Mississippi Department of Marine Resources

1141 Bayview Avenue

Biloxi, Mississippi 39530

Dear Mr. Harris:

Re: Mississippi Department of  
Marine Resources, Deer Island  
Habitat Restoration  
Harrison County  
COE No. SAM201800434KMN  
WQC No. WQC2018042

Pursuant to Section 401 of the Federal Water Pollution Control Act (33 U. S. C. 1251, 1341), the Office of Pollution Control (OPC) issues this Certification, after public notice and opportunity for public hearing, to Mississippi Department of Marine Resources, an applicant for a Federal License or permit to conduct the following activity:

Mississippi Department of Marine Resources, Deer Island Habitat Restoration: The project will fill 70 acres of open water on the north central shore of Deer Island as a Beneficial Use (BU) for Dredged Material Disposal. The project will include creation of approximately 1,975 linear feet of a coastal Chenier (upland ridge) along the existing coastline and the southern boundary of the project site, and an outer berm, 4,520 feet in length, will be constructed along the proposed northern boundary of the project site and will run parallel to the north shoreline of Deer Island then curve south on the western most end to connect back to the Island. Sand dredged from the Black Warrior-Tombigbee Rivers will then be placed hydraulically to reinforce the outside of the berm. The outer berm will be constructed on the -4 feet MLLW contour and will be raised to an elevation of +6 feet MLLW. The interior coastal Chenier will be raised to an elevation of +4 feet MLLW. Dredged material from various local dredging projects in Harrison and Jackson Counties will be placed within the 70-acre bermed site over the 10-year period. Within the disposal area, the dredged material will be pumped to a height of +3 to +5 MLLW initially, with final grade after dewatering and consolidation ranging from -0.5 to +1.5 MLLW. Two access channels located

OFFICE OF POLLUTION CONTROL

Post Office Box 2261 Jackson, MISSISSIPPI 39225-2261 • TEL: (601) 961-5171 • FAX: (601) 354-6612 • www.deq.state.ms.us

74346 WQC20180001

AN EQUAL OPPORTUNITY EMPLOYER

on the eastern and western side of the proposed site, will be dredged to -9 feet MLLW if needed for access. The channels will extend to a depth sufficient to allow barge access and not exceed 2,500 linear feet in length. Both access channels will need to be maintained for the 10-year life of the permit, or until capacity is reached. The material removed during the initial channel dredging will be side cast to the immediate west side of the channel in order to renourish the island. Any material removed during maintenance dredging over the 10-year life of the project, will be pumped into the BU site. Depending on the composition of the material placed into the site, the anticipated capacity will be between 470,000 and 575,000 cubic yards. The outside berm and interior marsh will be planted with appropriate marsh and dune species when construction and dewatering are complete. Mitigation will not be required for this project. The site is located in Biloxi, Harrison County, Mississippi. [SAM201800434KMN, WQC2018042].

The Office of Pollution Control certifies that the above-described activity will be in compliance with the applicable provisions of Sections 301, 302, 303, 306, and 307 of the Federal Water Pollution Control Act and Section 49-17-29 of the Mississippi Code of 1972, if the applicant complies with the following conditions:

1. The material placement and access channel dredging shall be conducted in such a manner that no sumps are created within the areas.
2. All fill material and excavated areas shall have side slopes of 3:1 (horizontal:vertical) or flatter and shall be immediately seeded, stabilized, and maintained.
3. The permittee shall contact the Department for further consultation regarding testing protocols for dredged material obtained from waterways with a completed Total Daily Maximum Load for toxics, phenols, mercury, and PCBs-Dioxin; and from waterways listed on the 303(d) list for biological impairment. Further information may be obtained from the branch manager of the Modeling and TMDL Branch within the Surface Water Division of the Office of Pollution Control.
4. The permittee shall contact the Department for further consultation regarding testing protocols for dredged material obtained from waterways affected by a CERCLA/Uncontrolled Site as identified by the Groundwater Assessment and Remediation Division. Further information may be obtained from the branch manager of the Assessment/Remediation (I or II still to be determined) within the Groundwater Assessment and Remediation Division of the Office of Pollution Control.

5. Best management practices should be used at all times during construction to minimize turbidity at the restoration sites. The restoration sites shall be constructed and maintained in a manner that minimizes the discharge of turbid waters into waters of the Mississippi Sound and surrounding waters. Best management practices should include, but not limited to, staked filter cloth; sodding, seeding and mulching; staged construction; and the installation of turbidity screens around the immediate project site.
6. Sediment testing for approval of material placement shall be done in accordance with protocols established by the Beneficial Use Group as part of the Beneficial Use Program within the Department of Marine Resources.
7. Turbidity outside the limits of a 750-foot mixing zone shall not exceed the ambient turbidity by more than 50 Nephelometric Turbidity Units.
8. No sewage, oil, refuse, or other pollutants shall be discharged into the watercourse.

The Office of Pollution Control also certifies that there are no limitations under Section 302 nor standards under Sections 306 and 307 of the Federal Water Pollution Control Act which are applicable to the applicant's above-described activity. This certification is valid for the project as proposed. Any deviations without proper modifications and/or approvals may result in a violation of the 401 Water Quality Certification. If we can be of further assistance, please contact us.

Sincerely,



Krystal Rudolph, P.E., BCEE  
Chief, Environmental Permits Division

HMW: JP

cc: Mary Ellen Farmer, U.S. Army Corps of Engineers, Mobile District  
Greg Christdoulou, Department of Marine Resources  
Paul Ncaise, U.S. Fish and Wildlife Service  
Molly Martin, Environmental Protection Agency

## **APPENDIX D**

Mississippi Department of Archives and History Coordination Letter

GC



HISTORIC PRESERVATION DIVISION  
P. O. BOX 571  
Jackson, MS 39205-0571  
Phone 601-576-6940 Fax 601-576-6955  
Website: mdah.ms.gov

May 8, 2018

Mississippi Dept of Marine Resources  
WETLANDS PERMITTING

MAY 15 2018

RECEIVED

Mr. Greg Christodoulou  
Mississippi Department of Marine Resources  
1141 Bayview Avenue, Suite 101  
Biloxi, Mississippi 39530

RE: DMR-090302; Proposed ten-year permit for the proposed Deer Island Habit Restoration Beneficial Use site, MDAH Project Log #04-102-18, Harrison County

Dear Mr. Christodoulou:

We have reviewed your requested information for a cultural resources assessment, received on April 16 , 2018, for the above referenced projects in accordance with our responsibilities under Section 106 of the National Historic Preservation Act and 36 CFR Part 800. After review, it is our determination that a cultural resources survey should be performed by a qualified archaeologist, but only if there are to be onshore impacts. The placement of fill to the shoreline is not a disturbance. The resulting report should reference the project log number above on the title page. A list of individuals who have represented themselves as being willing and qualified to do archaeological survey work in Mississippi will be furnished upon request. A copy of this letter should be made available to the contracting archaeologist(s). No survey is needed for dredge channels. If anything is encountered (i.e. shipwrecks) in dredge channels, please contact us.

If you have any questions, please do not hesitate to call us at (601) 576-6940.

Sincerely,

A handwritten signature in black ink that reads "Hal Bell". The signature is written in a cursive, flowing style.

Hal Bell  
Review and Compliance Officer

FOR: Katie Blount  
State Historic Preservation Officer

**APPENDIX E**

**CERTIFICATION LETTER ACKNOWLEDGING ALL PERMITS ARE ON FILE**

I, \_\_\_\_\_, have a copy of all permits and consultations (Specification Section 01 35 43 – Environmental Protection and Appendices A – D) for the MDMR – DEER ISLAND CHENIER AND CELL 3 and have read and understand the conditions in the permits and consultations.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date



# ISSUED FOR BID

# DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3

MISSISSIPPI DEPARTMENT OF MARINE RESOURCES



DRAWING INDEX		
SHEET #	DRAWING #	SHEET TITLE
1	G1	COVER SHEET
2	G2	GENERAL NOTES AND ABBREVIATIONS
3	C1	EXISTING AND PROPOSED FEATURES
4	C2	BENEFICIAL USE PLAN VIEW
5	C3	CHENIER CROSS SECTIONS
6	C4	DETAILS

K:\Projects\0762-Mississippi Department of Marine Resources\Deer Island 60% Construction Plans\00\_PCT\0762-PL-001\_COVER\_100.dwg G1

Dec 07, 2023 11:45am mpratschner

PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE"  
ONE INCH AT FULL SIZE IF NOT ONE INCH SCALE ACCORDINGLY

**ISSUED FOR BID**



REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: R. COUPE  
 DRAWN BY: M. PRATSCHNER  
 CHECKED BY: W. MEARS  
 APPROVED BY: R. MOHAN  
 SCALE: AS NOTED  
 DATE: DECEMBER 7, 2023

**DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3**

**COVER SHEET**

**G1**

SHEET # 1 OF 6

**GENERAL NOTES**

1. THE CONTRACTOR SHALL COMPLY WITH ALL REQUIREMENTS OF THE DRAWINGS, SPECIFICATIONS, PERMITS, AND ALL APPLICABLE REGULATIONS AND ORDINANCES.
2. IN THE EVENT OF A CONFLICT BETWEEN THE SPECIFICATIONS AND THE DRAWINGS, THE SPECIFICATIONS SHALL GOVERN.
3. BATHYMETRIC SURVEY PERFORMED BY DIMCO, INC. ON SEPTEMBER 17, 2017.
4. AERIAL IMAGE ©2018 MICROSOFT CORP. ©2018 DIGITALGLOBE ©CNES (2018) DISTRIBUTION AIRBUS DS.
5. GEOTECHNICAL AND ENGINEERING DATA PROVIDED ARE FOR REPRESENTATIVE PURPOSES. THE CONTRACTOR SHALL FIELD VERIFY CONDITIONS AND/OR COLLECT ANY ADDITIONAL DATA, AS THEY DEEM NECESSARY.
6. THE CONTRACTOR SHALL FIELD VERIFY ALL FIELD BASELINE CONDITIONS, AS WELL AS ALL LOCATIONS AND DIMENSIONS.
7. THE CONTRACTOR SHALL LOCATE AND FIELD VERIFY ALL ABOVE-GROUND AND BELOW-GROUND UTILITIES BEFORE BEGINNING WORK.
8. THE CONTRACTOR SHALL BE RESPONSIBLE FOR DAMAGE TO BOTH ON- AND OFF-SITE FACILITIES CAUSED BY THEIR ACTIVITIES DURING PERFORMANCE OF THE WORK. THE CONTRACTOR SHALL RESTORE ALL SUCH DAMAGES TO THEIR PRE-CONSTRUCTION CONDITION AT NO COST TO THE OWNER.
9. THE CONTRACTOR SHALL AT ALL TIMES KEEP ITS CONSTRUCTION AREAS FREE FROM ACCUMULATIONS OF WASTE MATERIALS OR RUBBISH; AND PRIOR TO COMPLETION OF THE WORK, REMOVE ANY RUBBISH FROM THE PREMISES, AS WELL AS ALL TOOLS, EQUIPMENT, AND MATERIALS THAT ARE NOT THE PROPERTY OF THE OWNER.

**PERMITS AND PERMIT CONDITIONS**

1. THE CONTRACTOR SHALL COMPLY WITH ALL PERMIT CONDITIONS. MISSISSIPPI DEPARTMENT OF MARINE RESOURCES (MDMR) CERTIFICATION DMR-090302, UNITED STATES ARMY CORPS OF ENGINEERS (USACE) PERMIT SAM-2018-00434-KMN, AND MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY (MDEQ) WATER QUALITY CERTIFICATION WQC2018042 ARE INCLUDED IN THE SPECIFICATIONS.
2. THE CONTRACTOR SHALL BE RESPONSIBLE FOR OBTAINING ANY ADDITIONAL PERMITS THAT MAY BE REQUIRED FOR THE CONDUCT OF THIS WORK. COSTS OF OBTAINING PERMITS NOT SUPPLIED BY THE OWNER SHALL BE BORNE BY THE CONTRACTOR.

**HORIZONTAL DATUM**

MISSISSIPPI STATE PLANE EAST ZONE, NORTH AMERICAN DATUM OF 1983 (NAD83), US SURVEY FEET.

**VERTICAL DATUM**

MEAN LOWER LOW WATER (MLLW), FEET

**ABBREVIATIONS**

- E EASTING
- EL. ELEVATION
- MHHW MEAN HIGHER HIGH WATER
- MHW MEAN HIGH WATER
- MIN. MINIMUM
- MLW MEAN LOW WATER
- MLLW MEAN LOWER LOW WATER
- MTL MEAN TIDE LEVEL
- N NORTHING
- NOAA NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION
- PI POINT OF INTERSECTION
- STA STATION

CONTAINMENT BERM STATIONING-OUTER CHEINIER					
START STATION	END STATION	LENGTH	DIRECTION	START POINT	END POINT
0+00.0'	2+37.0'	236.99'	N47° 57' 15"W	982472.55',318842.55'	982296.56',319001.27'
2+37.0'	7+59.2'	522.22'	N64° 42' 46"W	982296.56',319001.27'	981824.38',319224.34'
7+59.2'	17+27.0'	967.77'	N71° 39' 23"W	981824.38',319224.34'	980905.78',319528.91'
17+27.0'	25+60.9'	833.92'	N75° 24' 02"W	980905.78',319528.91'	980098.79',319739.11'
25+60.9'	32+93.7'	732.77'	N82° 48' 05"W	980098.79',319739.11'	979371.80',319830.93'
32+93.7'	39+28.9'	635.19'	N83° 08' 03"W	979371.80',319830.93'	978741.16',319906.87'
39+28.9'	39+37.9'	9.06'	N85° 45' 48"W	978741.16',319906.87'	978732.12',319907.54'
39+37.9'	39+47.1'	9.17'	S88° 58' 42"W	978732.12',319907.54'	978722.95',319907.37'
39+47.1'	39+56.3'	9.17'	S83° 43' 12"W	978722.95',319907.37'	978713.83',319906.37'
39+56.3'	39+65.4'	9.17'	S78° 27' 42"W	978713.83',319906.37'	978704.84',319904.53'
39+65.4'	39+74.6'	9.17'	S73° 12' 13"W	978704.84',319904.53'	978696.06',319901.88'
39+74.6'	39+83.8'	9.17'	S67° 56' 43"W	978696.06',319901.88'	978687.55',319898.44'
39+83.8'	39+93.0'	9.17'	S62° 41' 13"W	978687.55',319898.44'	978679.40',319894.23'
39+93.0'	40+02.1'	9.17'	S57° 25' 43"W	978679.40',319894.23'	978671.67',319889.29'
40+02.1'	40+11.3'	9.17'	S52° 10' 13"W	978671.67',319889.29'	978664.42',319883.66'
40+11.3'	40+20.5'	9.16'	S46° 54' 43"W	978664.42',319883.66'	978657.73',319877.40'
40+20.5'	40+28.6'	8.13'	S41° 55' 39"W	978657.73',319877.40'	978652.30',319871.35'
40+28.6'	44+99.9'	471.28'	S39° 34' 19"W	978652.30',319871.35'	978352.07',319508.08'

CONTAINMENT BERM STATIONING-SHORELINE CHEINIER					
START STATION	END STATION	LENGTH	DIRECTION	START POINT	END POINT
0+00.0'	12+66.0'	1266.00'	N66° 04' 09"W	980220.16',318830.60'	979062.99',319344.14'
12+66.0'	17+10.6'	444.61'	N74° 19' 04"W	979062.99',319344.14'	978634.93',319464.32'
17+10.6'	19+89.8'	279.16'	N78° 40' 39"W	978634.93',319464.32'	978361.20',319519.12'

PIPELINE ACCESS CORRIDOR			
NO.	NORTHING	EASTING	LOCATION
1	319752.27	980268.48	OUTSIDE TOE OF SLOPE
2	319698.55	980254.50	CENTER OF CHENIER
3	319656.07	980243.42	INSIDE TOE OF SLOPE



REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: R. COUPE  
 DRAWN BY: M. PRATSCHEINER  
 CHECKED BY: W. MEARS  
 APPROVED BY: R. MOHAN  
 SCALE: AS NOTED  
 DATE: DECEMBER 7, 2023

**DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3**

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**COVER SHEET**

**G1**

SHEET # **1** OF **6**

**ISSUED FOR BID**




K:\Projects\0762-Mississippi Department of Marine Resources\Deer Island (60%) Construction Plans\100 PCT\0762-PL 001 COVER\_100.dwg G2

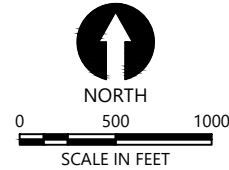
ONE INCH AT FULL SIZE IF NOT ONE INCH SCALE ACCORDINGLY  
 PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE"





**LEGEND:**

-  EXISTING BATHYMETRIC CONTOURS IN FEET (1' INTERVAL)
-  PROPOSED CHENIER CONTOURS IN FEET (2' INTERVAL)
-  EXISTING REEF PROJECT



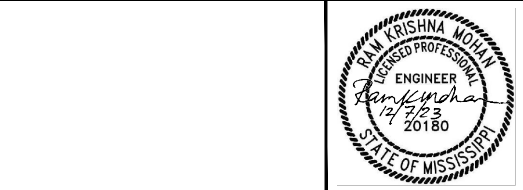
**NOTES:**

1. HORIZONTAL DATUM: MISSISSIPPI STATE PLANE EAST, NAD83, U.S. SURVEY FEET
2. VERTICAL DATUM: MEAN LOWER LOW WATER (MLLW)

**ISSUED FOR BID**

PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE".

ONE INCH AT FULL SIZE IF NOT ONE INCH SCALE ACCORDINGLY



REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: R. COUPE

DRAWN BY: M. PRATSCHNER

CHECKED BY: W. MEARS

APPROVED BY: R. MOHAN

SCALE: AS NOTED

DATE: DECEMBER 7, 2023

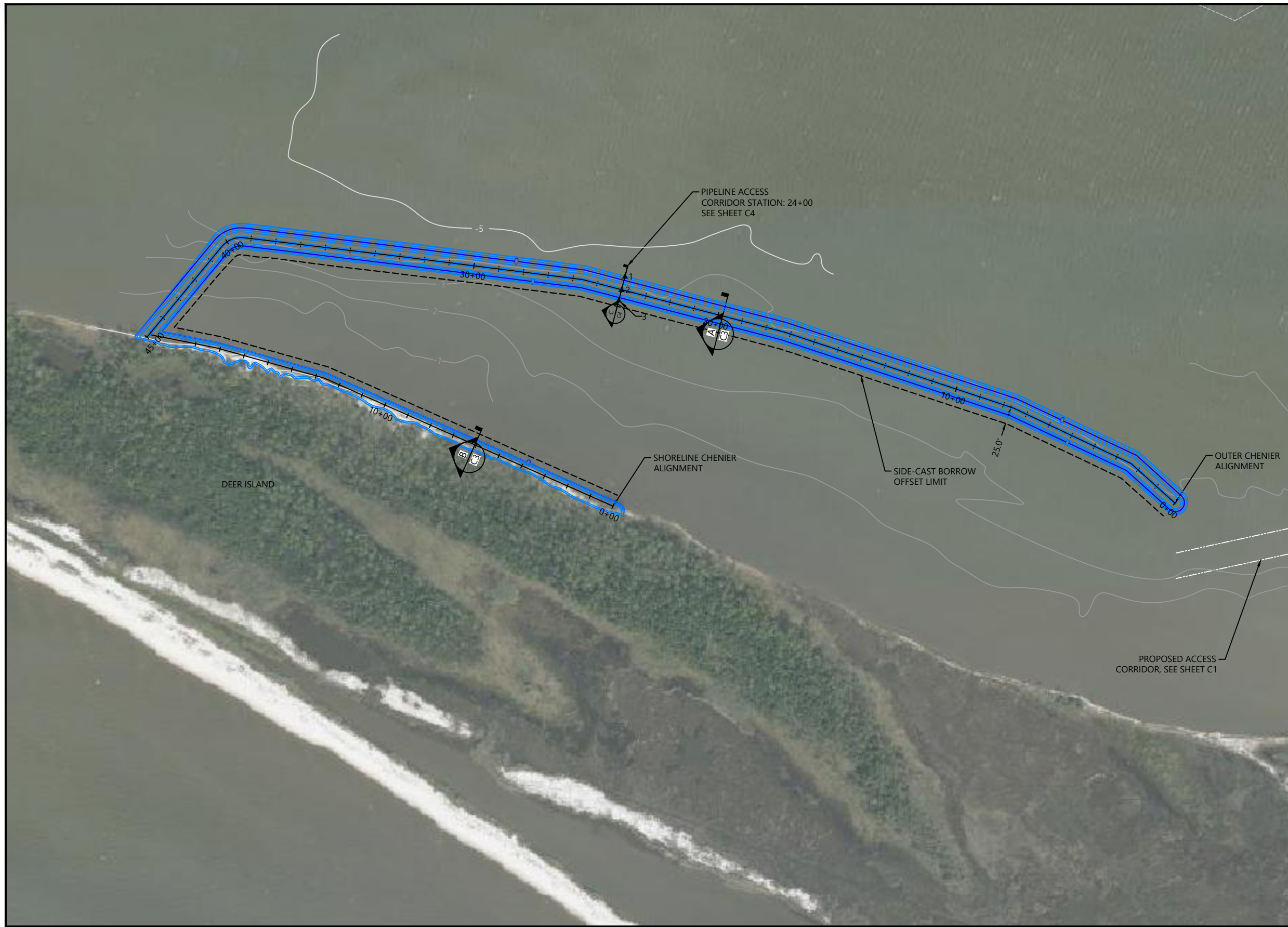
**DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3**

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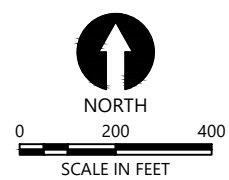
**EXISTING AND PROPOSED CONDITIONS**

**C1**

SHEET # **3** OF **6**



- LEGEND:**
- EXISTING BATHYMETRIC CONTOURS IN FEET (1' INTERVAL)
  - PROPOSED CHENIER CONTOURS IN FEET (2' INTERVAL)
  - CROSS SECTIONS - SEE SHEET C3



- NOTES:**
1. HORIZONTAL DATUM: MISSISSIPPI STATE PLANE EAST, NAD83, U.S. SURVEY FEET
  2. VERTICAL DATUM: MEAN LOWER LOW WATER (MLLW)
  3. SIDE-CAST BORROW MATERIAL MINIMUM OFFSET OF 25' FROM TOE OF SLOPE.
  4. AERIAL IMAGERY FROM BING MAPS, 2021.

**ISSUED FOR BID**

PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE" ONE INCH AT FULL SIZE IF NOT ONE INCH SCALE ACCORDINGLY



REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

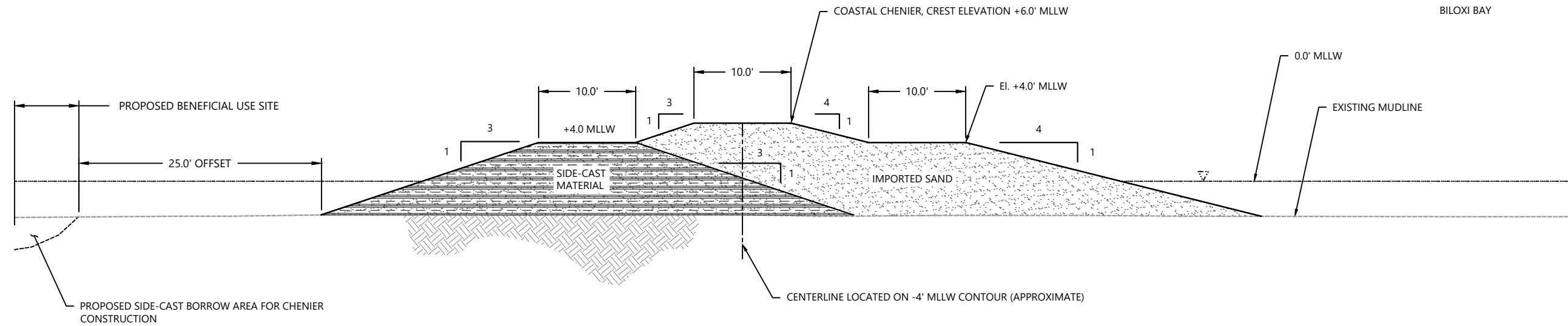
DESIGNED BY: R. COUPE  
 DRAWN BY: M. PRATSCHNER  
 CHECKED BY: W. MEARS  
 APPROVED BY: R. MOHAN  
 SCALE: AS NOTED  
 DATE: DECEMBER 7, 2023

**DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3**

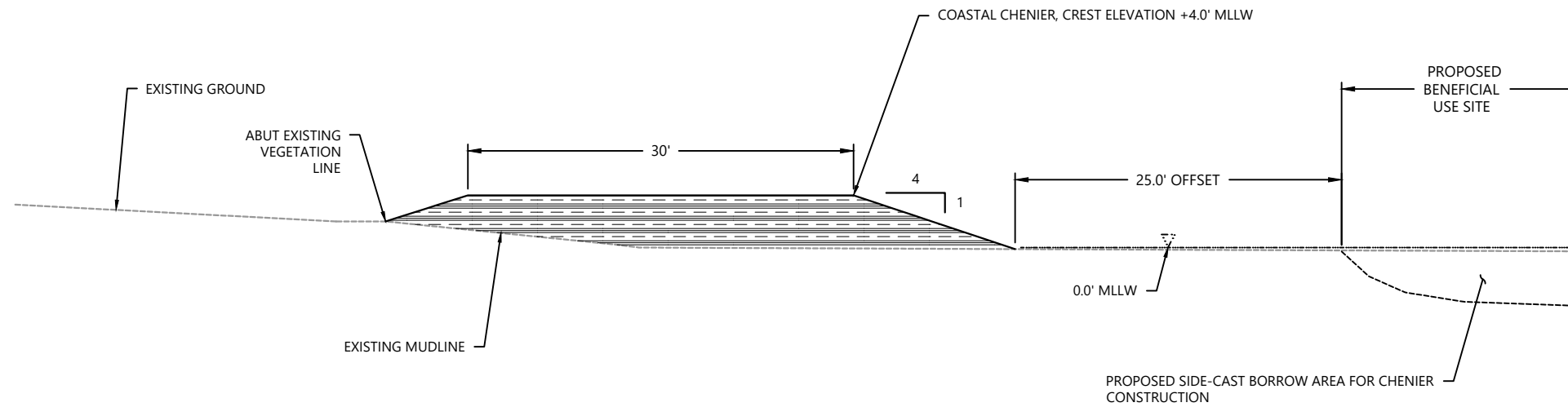
**BENEFICIAL USE PLAN VIEW**

**C2**

SHEET # **4** OF **6**



**A** OUTER COASTAL CHENIER  
SCALE: NTS



**B** SHORELINE CHENIER  
SCALE: NTS

- NOTES:
- SECTION A NOTE: INTERIOR SEGMENT OF THE CHENIER TO BE CONSTRUCTED WITH SIDE-CAST MATERIAL FROM THE SITE AND THE EXTERIOR TO BE CONSTRUCTED WITH IMPORTED SAND.
  - SECTION B NOTE: SHORELINE CHENIER TO BE CONSTRUCTED WITH SIDE-CAST MATERIAL FROM THE SITE.

PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE"  
ONE INCH AT FULL SIZE IF NOT ONE INCH SCALE ACCORDINGLY

**ISSUED FOR BID**



REVISIONS				
REV	DATE	BY	APP'D	DESCRIPTION

DESIGNED BY: R. COUPE  
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 CHECKED BY: W. MEARS  
 APPROVED BY: R. MOHAN  
 SCALE: AS NOTED  
 DATE: DECEMBER 7, 2023

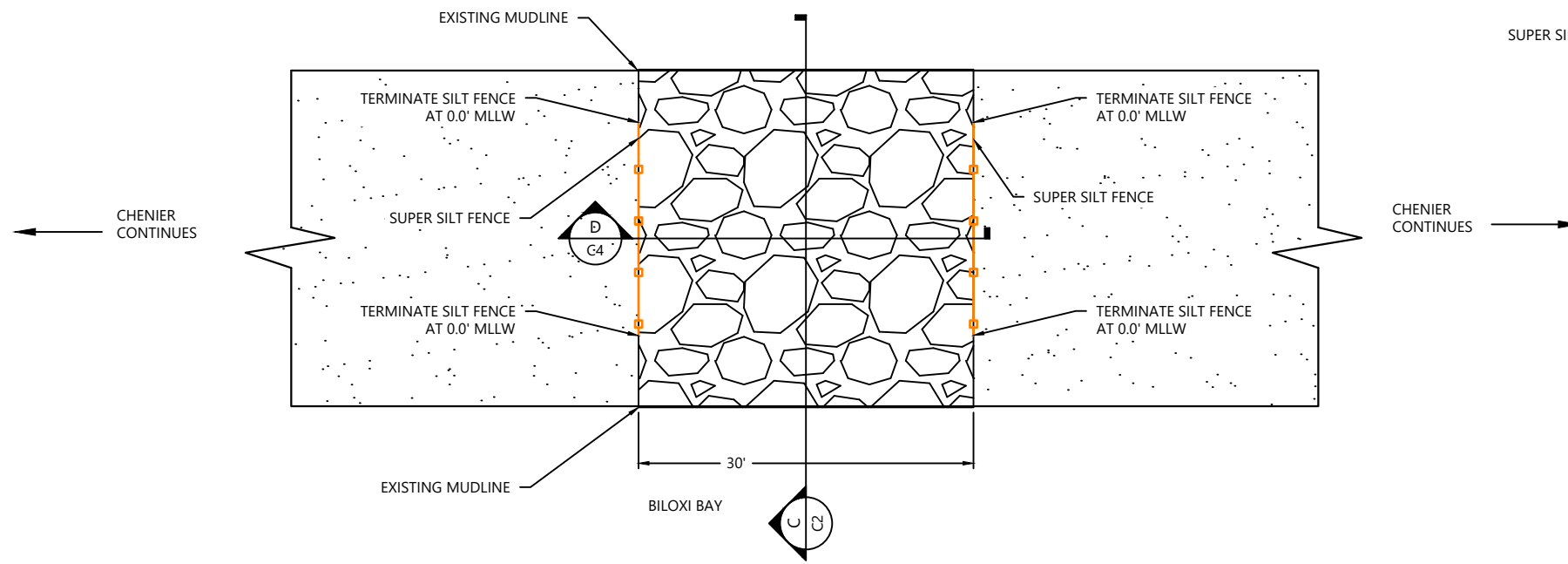
**DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3**

**CHENIER CROSS SECTIONS**

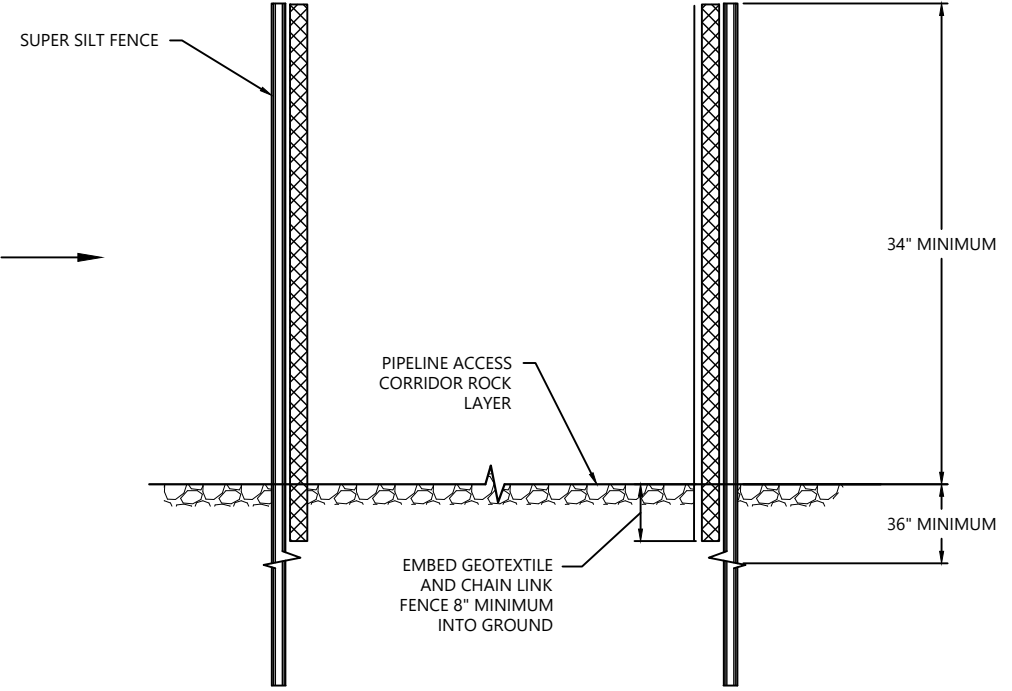
**C3**

SHEET # 5 OF 6

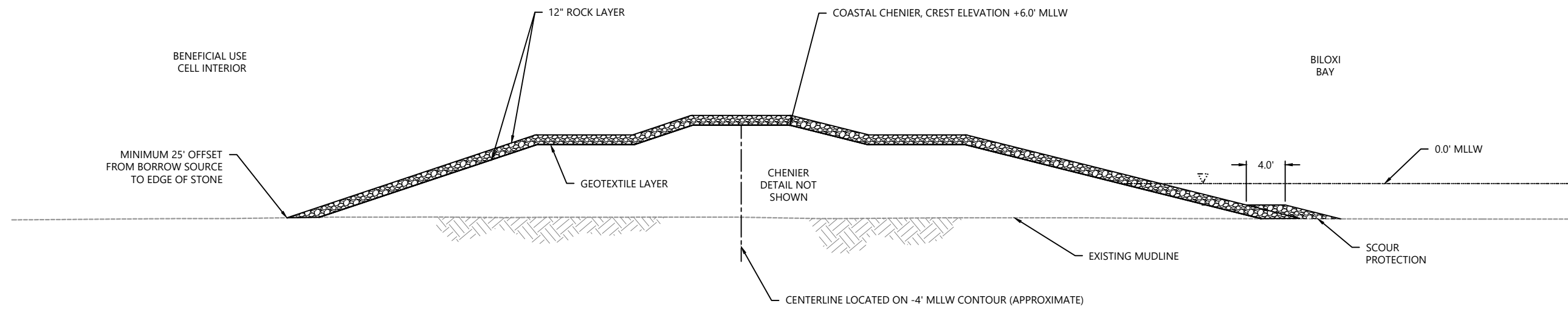
BENEFICIAL USE CELL INTERIOR



PIPELINE ACCESS CORRIDOR -PLAN VIEW



D PIPELINE ACCESS CORRIDOR TYPICAL SECTION  
C4 SCALE: NTS



C PIPELINE ACCESS CORRIDOR  
C2 SCALE: NTS

PLAN INTENDED TO BE VIEWED IN COLOR. ADJACENT BLOCK IS "BLUE"  
ONE INCH AT FULL SIZE IF NOT ONE INCH SCALE ACCORDINGLY

ISSUED FOR BID



REVISIONS				
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 SCALE: AS NOTED  
 DATE: DECEMBER 7, 2023

DEER ISLAND CHENIER AND BENEFICIAL USE CELL 3

CHENIER CROSS SECTIONS

C4

SHEET # 6 OF 6

K:\Projects\0762-Mississippi Department of Marine Resources\Deer Island 608\Construction Plans\100 PCT\0762-PL 004-CHENIER SECTIONS\_100.dwg C4