

ATTACHMENT 2: IAA STC'S

GULF COAST ECOSYSTEM RESTORATION COUNCIL

INTERAGENCY AGREEMENT STANDARD TERMS AND CONDITIONS

12/7/2015

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1. Statutory and National Policy Requirements

The Servicing Agency, and all non-Federal entity recipients and subrecipients, must 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, agreements and approved applications. Any inconsistency or conflict in terms and conditions specified in the agreement will be resolved according to the following order of precedence: public laws, regulations, applicable notices published in the *Federal Register*, EOs, OMB circulars, and these terms and conditions. Some of the terms and conditions herein 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 assurances. To the extent that it is a summary, such provision is not in derogation of, or an amendment to, any such statute, regulation, EO, OMB circular, or assurance.

The Servicing Agency shall administer the project in compliance with the Servicing Agency’s existing statutes, regulations, and grant policies. The terms and conditions contained in this Appendix are in addition to the Servicing Agency’s existing statutory and regulatory requirements, and grant policies.

2. Program Requirements

Pursuant to 31 C.F.R. § 34.803(d), the Servicing Agency must use funds only for the purposes identified in the Agreement. All activities under the agreement must meet the eligibility requirements for the Comprehensive Plan Component as defined in 31 C.F.R. § 34.202.

.01 Performance (Technical) Reports

The Servicing Agency is responsible for providing financial and performance information. The Servicing Agency 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, electronically to the Council Grants Officer. Performance reports must be submitted every six months and are due no later than 30 days following the end of each reporting period. Reporting periods will be specified in the agreement for either the periods ending March 31 and September 30, or any portion thereof, or June 30 and December 31, or any portion thereof. The Servicing Agency must require a non-Federal entity receiving a financial assistance award under this agreement to submit performance reports that align with

the requirements of 2 C.F.R. §§ 200.301 and 200.328, and Servicing Agency performance reports to the Council will incorporate information from such non-Federal entity reports. The Servicing Agency must retain all subrecipient reports, and make them available to the Council upon the request of the Grants or Program Officer in accordance with 2 C.F.R. § 200.333.

.02 Reporting on Real Property

The Servicing Agency must require a non-Federal entity receiving a financial assistance award under this agreement 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. In those instances where the Federal interest attached is for a period of 15 years or more, the Servicing agency or pass-through entity, at its option, may require a non-Federal entity to report at various multi-year frequencies (*e.g.*, every two years or every three years, not to exceed a five-year reporting period; or the Servicing agency 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 Programmatic Changes

The Servicing Agency must report programmatic changes to the Council Program Officer when those changes are equivalent to changes listed in 2 C.F.R. § 200.308 “Revision of budget and program plans.”

.04 Other Federal Funding of Similar Programmatic Activities

The Servicing Agency must immediately provide written notification to the Federal Program Officer and the Grants Officer in the event that, subsequent to signature of the agreement, other funds are received to support or fund any portion of the scope of work incorporated into the agreement. Council will not pay for costs that are funded by other sources.

.05 Non-Compliance with Agreement Provisions

Failure to comply with any or all of the provisions of this agreement may be considered grounds for any or all of the following actions: temporarily withhold cash payments pending correction of the deficiency by the Servicing Agency; wholly or partly suspend or terminate this agreement; or take other remedies that may be legally available, consistent with the dispute resolution clause of the agreement.

For awards made under this agreement to a non-Federal entity, the Servicing Agency must monitor those recipients and subrecipients for compliance with the terms of the award. Should non-compliance be found, the Servicing Agency may take one or all of the following actions: temporarily withhold cash payments pending correction of the deficiency by the Servicing Agency or more severe enforcement action in accordance with 2 C.F.R. § 200.338 by the Servicing Agency or pass-through entity; disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance; wholly or partly suspend or terminate the award; initiate 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, recommend such a proceeding be initiated by the Servicing Agency); withhold further awards for the project or program; or take other remedies that may be legally available. *See also* 2 C.F.R. §§ 200.339 through 200.342.

.06 Prohibition against Assignment by the Servicing Agency

The Servicing Agency shall not transfer, pledge, mortgage, or otherwise assign this agreement, or any interest therein, or any claim arising thereunder, to any party or parties, banks, trust companies, or other financing or financial institutions without the express written approval of the Grants Officer.

.07 Disclaimer Provisions

The Council expressly disclaims any and all responsibility or liability to the Servicing Agency or third persons for the actions of the Servicing Agency or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this agreement or any award or contract under this agreement.

3. FINANCIAL REQUIREMENTS

.01 Financial Reports

- a. The Servicing Agency shall submit financial reports providing information equivalent to that required in a “Federal Financial Report” (Form SF-425 or any successor form, or another format as required by the RESTORE Council) on a semi-annual basis. Reporting periods will be specified in the agreement for either the periods ending March 31 and September 30, or any portion thereof, or June 30 and December 31, or any portion thereof. 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.
- c. Pursuant to 31 C.F.R. § 34.803(e), the Servicing Agency must report at the conclusion of the agreement period, or other period specified by the Council, on the use of funds pursuant to the agreement. The report must be sent to the Council and include the following information:
 1. A description of the use of all funds received.
 2. A statement that funds were used only for purposes identified in the agreement.
 3. A certification that the Servicing Agency maintains written documentation sufficient to demonstrate the accuracy of these statements.
 4. For Servicing Agencies, a certification that the foregoing elements are reported accurately and that the certification is made from personal knowledge and belief after reasonable and diligent inquiry.

The report certifications must be signed by a senior authorized official(s) of the Servicing Agency receiving agreement funds who can legally bind the organization, and who has oversight and authority over the administration and use of the funds in question. These certifications are in addition to those required by 31 C.F.R. § 34.802 which are discussed in section 15 of these Terms and Conditions.

.02 Financial Management

- a. In accordance with 2 C.F.R. § 200.302(a), the Servicing Agency must require each state receiving a financial assistance award under this agreement, including a state's administrative agents and the Gulf Consortium of Florida counties, to expend and account for the award in accordance with state laws and procedures for expending and accounting for the state's own funds. In addition, the state's and any other non-Federal entity's financial management systems, including records documenting compliance with Federal statutes, regulations, and the terms and conditions of the award, must be sufficient to permit the preparation of reports required by general and program-specific terms and conditions; and the tracing of funds to a level of expenditures adequate to establish that such funds have been used according to the Federal statutes, 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 receiving a financial assistance award under this agreement from the Servicing Agency 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."

.03 Agreement Payments

- a. Funding disbursements under this agreement will be handled according to Federal procedures for interagency transfers of funds and will be done through the Federal IPAC system.
- b. The RESTORE Council Agreement Number must be included on all payment-related correspondence, information, and forms.

.04 Program Income

- a. If the Servicing Agency is authorized to receive income related to agreement activities, the Council and Servicing Agency will mutually agree whether any such income will be deducted from total amount transferred.
- b. When the Servicing Agency makes a financial assistance award to a non-Federal entity under this agreement, the recipient is encouraged to earn income to defray program costs where appropriate. Any program income must be earned and applied consistent with the requirements of 2 C.F.R. § 200.307. Recipients must track program income in accordance with the requirements in 31 C.F.R. § 34.803(b). All program income must be documented in financial reports submitted to the Council for the period in which the income was earned.

.05 Budget Changes and Transfer of Funds among Categories

- a. Requests for budget changes to the approved estimated budget in accordance with the provision noted below must be negotiated between the RESTORE Council and Servicing Agency. The revisions must be in writing.
 1. Construction Awards. For construction Federal awards, the Servicing Agency must request prior written approval promptly from the Council for budget revisions whenever 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.
 - 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, the Servicing Agency must request prior approval from the Council Grants Officer for one or more of the following program or budget-related reasons:
 - i. Change in the scope or the objective of the project or program;
 - ii. Change in a key person specified in the agreement;
 - 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 74 Appendix E, “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”; and
 - vi. Unless described in the agreement, the subawarding, transferring or contracting out of any work under the agreement. This provision does not apply to the acquisition of supplies, material, equipment or general support services.
- 3. Both Construction and Non-Construction Activities in Award. If a single award provides support for construction and non-construction work, the agency must request prior written approval from the Council before making any fund or budget transfers between the two types of work supported.
- b. Transfers of funds by the Servicing Agency among direct cost categories are permitted when the amount of the agreement is \$150,000 or less. When the amount of the agreement exceeds \$150,000, transfers of funds among direct cost categories must be approved in writing by the Grants Officer when the cumulative amount of such direct costs transfers exceed 10 percent of the total budget as last approved by the Grants Officer. The 10 percent threshold applies to the total Council 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 Servicing Agency to create new budget categories within an approved budget unless the Grants Officer has provided prior approval. Any transfer that causes any Federal appropriation, or part thereof, to be used for an unauthorized purpose will not be permitted. In addition, this provision does not prohibit the Servicing Agency from requesting Grants Officer approval for revisions to the budget. *See* 2 C.F.R. § 200.308.
- c. The Servicing Agency is not authorized at any time to transfer amounts budgeted for direct costs to the indirect costs line item or vice versa, without written prior approval of the Grants Officer.

.06 Indirect Costs and Facilities and Administrative Costs

- a. Indirect costs will not be allowable charges under this agreement unless expressly permitted and specifically included as a line item in the agreement’s approved budget.

- b. Indirect costs are subject to the three (3) percent cap on administrative expenses stated in 33 U.S.C. § 1321(t)(1)(B)(iii) and 31 C.F.R. § 34.204. The three (3) percent cap on administrative expenses applies only to the Servicing Agency and does not flow down to financial assistance awards made under this agreement to a non-Federal entity.
- c. Excess indirect costs may not be used to offset unallowable direct costs.

.07 Incurring Costs or Obligating Federal Funds beyond the Expiration Date

- a. The Servicing Agency shall not incur costs or obligate funds for any purpose pertaining to the operation of the project, program, or activities beyond the agreement period specified in box 5 of the 7600A, which is the time during which the Servicing Agency may incur new obligations to carry out the work authorized under this agreement. The Servicing Agency must include start and end dates of the period of performance in all financial assistance awards and subawards made under this agreement to non-Federal entities and must comply with the requirements of 2 C.F.R. §§ 200.77 and 200.309.
- b. Any extension of this agreement can only be authorized by both parties in writing consistent with the amendment provisions of the agreement. Verbal or written assurances of funding does not constitute authority to obligate funds for programmatic activities beyond the end of this agreement.
- c. The Council has no obligation to provide any additional prospective funding. Any amendment of this agreement to increase funding and to extend the project period is at the sole discretion of Council.
 - 1. Requests from the Servicing Agency for additional funds, including contingency costs associated with costs overruns, require express written approval of the Grants Officer.

4. INTERNAL CONTROLS

Any financial assistance awards made under this agreement to non-Federal entities must have internal controls consistent with 2 C.F.R. § 200.303

5. PROPERTY STANDARDS

.01 Real Property

- a. Any financial assistance awards made under this agreement to non-Federal entities must comply with the property standards as stipulated in 2 C.F.R. §§ 200.310 to 200.316.
- b. 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).
- c. 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.

.02 Equipment

Any financial assistance awards made under this agreement to non-Federal entities must comply with equipment standards provided in 2 C.F.R. §§ 200.313 “Equipment” and 200.439 “Equipment and other capital expenditures.”

.03 Supplies

Title to supplies vests in the Servicing Agency upon acquisition. Any financial assistance awards made under this agreement to non-Federal entities must comply with supply standards provided in 2 C.F.R. §§ 200.314 “Supplies” and 200.453 “Materials and supplies costs, including costs of computing devices.”

.04 Intangible Property

- a. Title to intangible property¹ acquired under a financial assistance award made under this agreement to non-Federal entities vests upon acquisition in the recipient. All financial assistance awards made under this agreement must comply with the intangible property standards in 2 C.F.R. § 200.315 “Intangible property”.
- b. A non-Federal entity receiving a financial assistance award made under this agreement may copyright any work that is subject to copyright and was developed, or for which ownership was acquired, under the award. The Servicing Agency must reserve, on behalf of the Council, a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.
- c. The Council and Servicing Agency, as permitted by Federal law, have the right to:
 - i. Obtain, reproduce, publish, or otherwise use the data produced under a financial assistance award made under this agreement to a non-Federal entity; and
 - ii. Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

.05 Disposition of Property

- a. Any financial assistance awards made under this agreement to non-Federal entities must comply with the disposition requirements in 2 C.F.R. § 200.313(e) and 2 C.F.R. § 200.311(a).
- b. If the Servicing Agency possesses appropriate legal authority, interest in property will vest with the Servicing Agency in accordance with 2 C.F.R. Part 200. In all other circumstances, disposition of property will be handled in accordance with government-wide regulations.

.06 Operations and Maintenance Costs

¹ 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).

Any operations and maintenance costs associated with a project are, subject to the availability of appropriations, the responsibility of the Servicing Agency, unless the Council has agreed to pay all or some portion of those expenses pursuant to the original agreement or an amendment to this agreement..

.07 Property Trust Relationship

Real property, equipment, and intangible property, that is acquired or improved with funds under this agreement – including financial assistance awards made under this agreement to non-Federal entities – must be held in trust by the Servicing Agency, or non-federal entity as applicable, as trustee for the beneficiaries of the project or program under which the property was acquired or improved. The Council may require the Servicing Agency to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with a Federal award and that use and disposition conditions apply to the property.

6. PROCUREMENT STANDARDS

Any financial assistance awards made under this agreement to non-Federal entities must comply with the procurement standards in 2 C.F.R. §§ 200.317 through 200.326.

7. NON-DISCRIMINATION REQUIREMENTS

No person in the United States shall, on the ground of race, color, national origin, handicap, age, religion, or sex, be excluded from participation in, be denied the benefits of, or be subject to discrimination under any program or activity receiving Federal financial assistance. The Servicing Agency must ensure that any non-Federal entity receiving a financial assistance award under this agreement complies with the non-discrimination requirements below.

.01 Statutory Provisions and Executive Orders

- a. Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*);
- b. Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681 *et seq.*);
- c. The Americans with Disabilities Act of 1990 (42 U.S.C. § 12101 *et seq.*);
- d. Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794);
- e. The Age Discrimination Act of 1975, as amended (42 U.S.C. § 6101 *et seq.*);
- f. Any other applicable non-discrimination law(s);
- g. Parts II and III of Executive Order (E.O.) 11246, “Equal Employment Opportunity,” as amended by E.O. 11375 and E.O. 12086, and Department of Labor regulations implementing E.O. 11246 (41 C.F.R. § 60-1.4(b)); and
- h. Executive Order 13166, “Improving Access to Services for Persons With Limited English Proficiency.”

.02 Title VII Exemption for Religious Organizations

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

8. AUDITS

Documentation related to this agreement and any financial assistance awards or contracts made under this agreement to non-Federal entities must be available for review or audit at any time by appropriate officials of the Servicing Agency, the Council, pass-through entity, and Government Accountability Office (GAO).

Additionally, under the Inspector General Act of 1978, as amended, 5 U.S.C. App. 3, § 1 *et seq.*, an audit of this agreement may be conducted at any time. The Department of the Treasury's Office of the Inspector General, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers, and records of the Servicing Agency, 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. The Treasury Office of Inspector General (OIG) and the Council are authorized to audit Council awards. *See* Section 1608 of the Resources and Ecosystem Sustainability, Tourist Opportunities, and Revived Economies of the Gulf Coast States Act of 2012 (Subtitle F of Title I of Pub. L. 112-141); *and see* 31 C.F.R. §§ 34.205, 34.406, and 34.805. If the Treasury OIG requires a program audit on a Council agreement, the OIG will usually make the arrangements to audit this agreement, whether the audit is performed by OIG personnel, an independent accountant under contract with Council, or any other Federal, State, or as appropriate, local audit entity. *See* 2 C.F.R. Part 200, Subpart F, "Audit Requirements."

9. DEBTS

The Servicing Agency must ensure that any non-Federal entities in receipt of a financial assistance award made under this agreement promptly pays any debts determined to be owed the Federal Government in accordance with 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 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 Servicing Agency 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 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 necessitate the Servicing Agency taking further action as

specified in the standard term and condition entitled “Non-Compliance With Agreement Provisions.” Except when required under the Treasury Offset Program, funds for payment of a debt cannot 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).

10. CODES OF CONDUCT AND SUBAWARD, CONTRACT, AND SUBCONTRACT PROVISIONS

.01 Code of Conduct for Servicing Agencies

The Servicing Agency must immediately report any indication of fraud, waste, abuse or potential criminal activity pertaining to financial assistance award funds made under this agreement to non-Federal entities to the Council, Treasury and the Treasury Inspector General in accordance with the requirements in 31 C.F.R. § 34.803(a).

.02 Applicability of Award Provisions to Subrecipients

- a. The Servicing Agency shall require all recipients and subrecipients receiving sub-grants or cooperative agreements, including lower tier subrecipients, under this agreement to comply with the provisions of this agreement, including applicable cost principles, administrative, 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). Servicing Agencies that directly contract with non-federal entities must do so in accordance with Federal Acquisition Regulations.
- b. Prior to dispersing funds to a recipient or subrecipient, the Servicing Agency must execute a legally-binding written agreement with the entity receiving the award or subaward in accordance with the requirements in 31 C.F.R. § 34.803(c). The written agreement will extend all the applicable program requirements to the recipient or subrecipient.
- c. A Servicing Agency is responsible for recipient and subrecipient monitoring, including the following:
 1. Federal Award Identification. The Servicing Agency must ensure that all subawards include the following information and applicable compliance requirements at the time of the subaward. If any of these data elements change, include the changes in 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. Recipient/subrecipient name (which must match registered name in DUNS);
 - ii. Recipient’s/subrecipient’s universal identifier (*e.g.*, 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. Award/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 recipient/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 this agreement is Research & Development; and
 - xiii. Indirect cost rate for the Federal award (including if the *de minimis* rate is charged per 2 C.F.R. § 200.414 “Indirect (F&A) costs”).
2. Award Monitoring. The Servicing Agency is responsible for oversight of the operations of supported activities under this agreement. The Servicing Agency must monitor its activities under this Agreement to assure compliance with applicable Federal requirements and performance expectations are being achieved. Monitoring by the Servicing Agency 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 Servicing Agency monitors activities of the recipient/subrecipient as necessary to ensure that the award/subaward is used for authorized purposes, in compliance with Federal statutes, regulations, and the terms and conditions of the award/subaward; and that award/subaward performance goals are achieved. Pass-through entity monitoring of the recipient/subrecipient must include:
- i. Reviewing financial and programmatic reports required by the pass-through entity.
 - ii. Following-up and ensuring that the recipient/subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the recipient/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 recipient/subrecipient from the pass-through entity as required by 2 C.F.R. § 200.521 “Management decision.”
3. Recipient/subrecipient Audits. The Servicing Agency is responsible for ensuring that recipients/subrecipients expending \$750,000 or more in Federal awards during the recipient’s/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 of the end of the recipient’s/subrecipient’s audit period. In addition, the Servicing Agency is required to issue a management decision on audit findings within six (6) months after receipt of the recipient’s/subrecipient’s audit report, and ensuring that the recipient/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

All awards/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,” or the Federal Acquisition Regulations unless otherwise approved in writing in advance by the Servicing Agency’s grants or contracting officer. The Servicing Agency must be alert to organizational conflicts of interest as well as other practices among recipients/subrecipients that may restrict or eliminate competition. In order to ensure

objective recipient/subrecipient performance and eliminate unfair competitive advantage, recipients/subrecipients that develop or draft work requirements, statements of work, or requests for proposals shall be excluded from competing for such awards/subawards.

.04 Applicability of Provisions to Subawards, Contracts, and Subcontracts²

- a. The Servicing Agency shall include the following notice in each request for applications or bids for an award, subaward, contract, or subcontract, as applicable:

Applicants/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/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).

- b. All non-federal contracts made under Federal assistance awards under this agreement must include the "Contract Provisions for Non-Federal Entity Contracts Under Federal Awards," in 2 C.F.R. Appendix II to part 200. These are in addition to other provisions required by the Council or Servicing Agency.
- c. The Servicing Agency shall include the following clauses in any contract solicitation conducted pursuant to this Agreement. Such terms should be incorporated by reference into the contract.³

This term requires an offeror to disclose its status as a Gulf Coast firm and represent that it will perform a minimum percentage of the cost of the contract.

(a) The offeror represents as part of its offer that it () is, () is not a firm residing, headquartered or principally engaged in business in a Gulf Coast state.

(b) If the offeror represents that it is a firm residing, headquartered or principally engaged in business in a Gulf Coast state, the offeror shall furnish documentation to support the representation if requested by the Contracting Officer. The solicitation may require the offeror to submit with its offer documentation to support the representation.

(c) The offeror represents that in the case of a contract for services (except construction), the firm will perform services representing at least 50 percent of the total labor costs under the contract with its own employees.

² This provision may be updated upon resolution of local contracting preference decisions.

³ It is a requirement that the Council develop ST&Cs for local contracting. As drafted, the FRN on local contracting requires the certification and one of the two options (tie-breaker or assigned weight).

(d) The offeror represents that in the case of a contract for supplies or products (other than procurement from a non-manufacturer of such supplies or products), the firm will itself manufacture such supplies or products representing at least 50 percent of the total manufacturing costs under the contract (excluding costs of materials).

(e) The offeror represents that in the case of a contract for general construction services, the firm will perform services representing at least 15 percent of the total labor costs under the contract with its own employees.

The Servicing Agency should choose one of the below evaluations factors in order to notify prospective vendors that the Servicing Agency will prefer Gulf Coast firms in making the award.

Proposal Preparation Instructions – Each offeror shall identify whether it is a firm residing, headquartered or principally engaged in business in a Gulf Coast state.

Evaluation Factor 1 – It is the policy of [Servicing Agency] to encourage the participation of Gulf Coast firms in the procurement process. As a result, this solicitation includes a preference for Gulf Coast firms. If [Servicing Agency] determines all other factors to be equivalent, [Servicing Agency] will give preference to a Gulf Coast firm. [Servicing Agency] will review your Gulf Coast firm status at the time the solicitation closes.

Evaluation Factor 2 [to be assigned relative weight by the Servicing Agency]– It is the policy of [Servicing Agency] to encourage the participation of Gulf Coast firms in the procurement process. As a result, this solicitation includes a preference for Gulf Coast firms. The Government will evaluate your proposal to determine if you are a Gulf Coast firm.

.05 Subaward and/or Contract to a Federal Agency

- a. The Servicing Agency, subrecipient, contractor, and/or subcontractor shall not sub-grant or sub-contract any part of the approved project to any agency or employee of 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 to the Council for review and approval. The Council will notify the Servicing Agency in writing of the final determination.

11. ENVIRONMENTAL COMPLIANCE

Non-federal entities receiving financial assistance awards under the agreement must comply with all applicable environmental laws, regulations, and policies. Laws, regulations, and policies potentially applicable to Servicing Agency actions and/or applicants and non-federal entities receiving financial assistance awards under this agreement may include but are not limited to the statutes and Executive Orders listed below:

- .01 The National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*)
- .02 The Endangered Species Act (16 U.S.C. § 1531 *et seq.*)
- .03 Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. § 1801 *et seq.*)
- .04 Clean Water Act Section 404 (33 U.S.C. § 1344 *et seq.*)

- .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
- .06 National Historic Preservation Act (16 U.S.C. § 470 *et seq.*)
- .07 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”)
- .08 Executive Order 13112 (“Invasive Species”)
- .09 Clean Air Act (42 U.S.C. § 7401 *et seq.*), Federal Water Pollution Control Act (Clean Water Act) (33 U.S.C. § 1251 *et seq.*), 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”)
- .10 The Flood Disaster Protection Act (42 U.S.C. § 4002 *et seq.*)
- .11 The Coastal Zone Management Act (16 U.S.C. § 1451 *et seq.*)
- .12 The Coastal Barriers Resources Act (16 U.S.C. § 3501 *et seq.*)
- .13 The Wild and Scenic Rivers Act (16 U.S.C. § 1271 *et seq.*)
- .14 The Safe Drinking Water Act (42 U.S.C. § 300 *et seq.*)
- .15 The Resource Conservation and Recovery Act (42 U.S.C. § 6901 *et seq.*)
- .16 The Comprehensive Environmental Response, Compensation, and Liability Act (Superfund) (42 U.S.C. § 9601 *et seq.*)
- .17 Executive Order 12898 (“Environmental Justice in Minority Populations and Low Income Populations”)
- .18 Rivers and Harbors Act (33 U.S.C. § 407)
- .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”)
- .20 Executive Order 13653 (“Preparing the United States for the Impacts of Climate Change”)
- .21 Farmland Protection Policy Act (7 U.S.C. § 4201 *et seq.*)
- .22 Fish and Wildlife Coordination Act (16 U.S.C. § 661 *et seq.*)
- .23 Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*)

12. MISCELLANEOUS REQUIREMENTS

The Servicing Agency must comply, or assure compliance on the part of non-Federal recipients receiving awards under this agreement, with the following statutes, regulations, Executive Orders and government-wide requirements:

- .01 Criminal and Prohibited Activities:
 - a. The Program Fraud Civil Remedies Act (31 U.S.C. § 3801 *et seq.*);
 - b. The False Claims Amendments Act and the False Statements Act (18 U.S.C. §§ 287 and 1001, respectively);
 - c. The Civil False Claims Act (31 U.S.C. § 3729 *et seq.*); and
 - d. The Copeland “Anti-Kickback” Act (18 U.S.C. § 874), and the Copeland “Anti-Kickback” Act as it applies to contractors and subcontractors pursuant to 40 U.S.C. § 3145.
- .02 Drug-Free Workplace 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)
- .03 The Fly America Act (49 U.S.C. § 40118) and implementing regulations of the Fly America Act (41 C.F.R. §§ 301-10.131 through 301-10.143)
- .04 Executive Order 13043 “Increasing Seat Belt Use in the United States”
- .05 Research Involving Human Subjects (15 C.F.R. Part 27, “Protection of Human Subjects”)

- .06 Minority Serving Institutions Initiative (Executive Orders 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”)
- .07 Research Misconduct (Federal Policy on Research Misconduct issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000 (65 FR 76260))
- .08 Publications, Videos 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). The Servicing Agency must obtain a copy of any publication materials, including but not limited to print, recorded or Internet materials, from non-federal entities receiving awards under this agreement.
 - b. When releasing information related to a funded project, the Servicing Agency must include a statement that the project or effort undertaken was or is sponsored by Council. The Servicing Agency is responsible for assuring that every publication of material based on, developed under, or otherwise produced under the agreement, except scientific articles or papers appearing in scientific, technical or professional journals, contains the following disclaimer or other disclaimer: *“This [report/video/etc.] was prepared by [Servicing Agency 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.”*
- .10 Care and Use of Live Vertebrate Animals:
- a. Laboratory Animal Welfare Act of 1966, as amended, (Pub. L. No. 89-544, 7 U.S.C. § 2131 *et seq.*) and implementing regulations (9 C.F.R. Parts 1, 2, and 3)
 - b. Endangered Species Act (16 U.S.C. § 1531 *et seq.*)
 - c. Marine Mammal Protection Act (16 U.S.C. § 1361 *et seq.*)
- .11 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.
- .12 Compliance with Department of Commerce Bureau of Industry and Security Export Administration Export Administration Regulations (15 C.F.R. §§ 730-774) and the Department of State International Traffic in Arms Regulations (22 C.F.R. §§ 120-130)
- .13 The Trafficking Victims Protection Act of 2000 (22 U.S.C. § 7104(g)), as amended; the implementing regulations (2 C.F.R. Part 175); and incorporate into all awards made under this agreement the term required by 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>)
- .14 The Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282, as amended by section 6202(a) of Public Law 110-252 (31 U.S.C. § 6101) (www.USASpending.gov); and incorporate into all awards made under this agreement the term required by 2 C.F.R. Part 170, Appendix A ([http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1-pdf/CFR-2011-title2-vol1-part170-appA.pdf](http://www.gpo.gov/fdsys/pkg/CFR-2011-title2-vol1/pdf/CFR-2011-title2-vol1-part170-appA.pdf))

13. CERTIFICATIONS

At a minimum, the Servicing Agency must include in all awards made under the agreement, the certifications and assurances required by 31 C.F.R. § 34.802 (See 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(s) of

the entity receiving IAA funds who can legally bind the organization or entity, and who has oversight for the administration and use of the funds in question.