

**EXHIBIT F**

**ADMINISTRATION/PROFESSIONAL SERVICES CONTRACT**

**PART I  
AGREEMENT**

**THIS AGREEMENT** entered into this 29<sup>th</sup> day of July, 2021, by and between GREGG COUNTY, hereinafter called the "County", acting herein by Bill Stoudt, County Judge hereunto duly authorized, and Traylor & Associates, Inc. hereinafter called "the Contractor," acting herein by Gary R. Traylor, President.

**WITNESSETH THAT:**

**WHEREAS**, the County desires to seek grant funding under the general direction of American Rescue Plan Act of 2021 funded through the United States Department of Treasury;

**WHEREAS**, the County has an interest in available American Rescue Plan Act 2021 funding; and,

**WHEREAS**, in June 2021, the County issued a Request for Proposal, RFP #2021-08, incorporated herein by reference, to solicit proposals from qualified Professional Services Companies to assist County in its application and administration of a contract, if awarded, from the American Rescue Plan Act 2021 funding program; and

**WHEREAS**, on or about July 19, 2020, on the basis of its Response to RFP #2021-08, which responses are incorporated fully herein by reference as if physically attached hereto, the County awarded RFP #2021-08 to the Contractor.

**WHEREAS**, the County desires to engage Traylor & Associates, Inc. to render certain professional /administration services in connection with a American Rescue Plan Act 2021 Contract:

**NOW THEREFORE**, the parties do mutually agree as follows:

1. Scope of Services - The Contractor will perform the services set out in Part II, Scope of Services.
2. Time of Performance - The services of the Contractor shall commence on the day following the execution of this contract. In any event, all of the services required and performed hereunder shall be completed no later than the time stipulated in the written contract between the County and the United States Department of Treasury and/or other agencies.
3. Local Program Liaison - For purposes of this Contract, the County Grants Officer or equivalent authorized person will serve as the Local Program Liaison and primary point of contact for the Contractor. All required progress reports and communication regarding the project shall be directed to this liaison and other local personnel as appropriate.
4. Access to Records - Records of non-Federal entities. United States Department of Treasury's Inspector General, the Comptroller General of the United States, the Texas Division of Emergency Management (TDEM), and the pass-through entity, or any of their authorized representatives, must have the right of access to any documents, papers, or other records of the non-Federal entity which are pertinent to the Federal award, in order to make audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the non-Federal entity's personnel for the purpose of interview and discussion related to such documents.

5. **Retention of Records** - Financial records, supporting documents, statistical records, and all other non-Federal entity records pertinent to a Federal award must be retained for a period of three years from the date of submission of the final expenditure report or, for Federal awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, respectively, as reported to the Federal awarding agency or pass-through entity in the case of a subrecipient. Federal awarding agencies and pass-through entities must not impose any other record retention requirements upon non-Federal entities. The only exceptions are the following:
- a. If any litigation, claim, or audit is started before the expiration of the 3-year period, the records must be retained until all litigation, claims, or audit findings involving the records have been resolved and final action taken.
  - b. When the non-Federal entity is notified in writing by the Federal awarding agency, cognizant agency for audit, oversight agency for audit, cognizant agency for indirect costs, or pass-through entity to extend the retention period.
  - c. Records for real property and equipment acquired with Federal funds must be retained for 3 years after final disposition.
  - d. When records are transferred to or maintained by the Federal awarding agency or pass-through entity, the 3-year retention requirement is not applicable to the non-Federal entity.
  - e. Records for program income transactions after the period of performance. In some cases, recipients must report program income after the period of performance. Where there is such a requirement, the retention period for the records pertaining to the earning of the program income starts from the end of the non-Federal entity's fiscal year in which the program income is earned.
  - f. Indirect cost rate proposals and cost allocations plans. This paragraph applies to the following types of documents and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).
    1. If submitted for negotiation. If the proposal, plan, or other computation is required to be submitted to the Federal Government (or to the pass-through entity) to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts from the date of such submission.
    2. If not submitted for negotiation. If the proposal, plan, or other computation is not required to be submitted to the Federal Government (or to the pass-through entity) for negotiation purposes, then the 3-year retention period for the proposal, plan, or computation and its supporting records starts from the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.
6. **Compensation and Method of Payment** - The maximum amount of compensation and reimbursement to be paid hereunder shall not exceed **\$750,000.00** based on a funding allocation of \$24,038,369.50. See ***Part III Payment Schedule*** of this Agreement.
7. **Indemnification** - The Contractor shall comply with the requirements of all applicable laws, rules and regulations, and shall exonerate, indemnify, and hold harmless the County and its agency members from and against any and all claims, costs, suits, and damages, including attorneys' fees, arising out of the Contractor's performance or nonperformance of the activities, services or subject matter called for in this agreement or in connection with the management and administration of the CRF contract, and shall assume full responsibility for payments of Federal, State and local taxes on contributions imposed or required under the Social Security, worker's compensation and income tax laws.

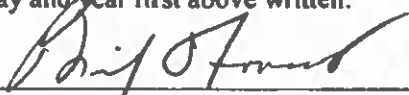
8. Miscellaneous Provisions

- a. This Agreement shall be construed under and in accord with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Gregg County, Texas.
- b. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.
- c. In any case one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein.
- d. This Agreement may be amended by mutual agreement of the parties hereto and a writing to be attached to and incorporated into this Agreement.

9. Extent of Agreement

This Agreement, which includes Parts I-IV and any attachments hereto, including those incorporated by reference, represents the entire and integrated agreement between the County and the Contractor and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by authorized representatives of both County and Contractor.

IN WITNESSETH WHEREOF, the parties have executed this Agreement by causing the same to be signed on the day and year first above written.

BY: 


(Local County Official)

Bill Stoudt

(Printed Name)

County Judge

(Title)

BY: 

(Contractor's Authorized Representative)

Gary R. Taylor

(Printed Name)

President

(Title)

**PART II**  
**SCOPE OF SERVICES**

The Contractor shall provide the following scope of services:

**A. Scope of Work**

- 1) Comprehensive administration and compliance of the United States of Treasury/TDEM programs and projects contemplated by allowable projects through the United States of Treasury/TDEM program;
- 2) Research, develop and prepare grant applications and/or other public assistance documents;
- 3) Research, monitor, report, document, manage, analyze, assess and design work related to disaster recovery, disaster planning, disaster mitigation and public assistance;
- 4) Attend meetings with TDEM and or state agency in conjunction with and on behalf of Gregg County;
- 5) Collaborate with Gregg County on project formulation; information gathering, project development (define both small and large project's scope, size and damages, including cost estimating that will be the basis of each project); project submittals (draft and submit small and large projects to TDEM and or other state agency);
- 6) Develop program guidelines, policies, procedures, implementation plans or other pertinent documents;
- 7) Assist with and or present public hearings in conjunction with Gregg County Commissioners Court;
- 8) Ensure that fraud prevention and abuse practices are in place and being implemented;
- 9) Provide ongoing guidance to maximize funding;
- 10) Coordinate and manage deliverables with the United States Department of Treasury and/or other state agency;
- 11) Assist with TDEM, United States Department of Treasury and/or other federal grants reporting requirements;
- 12) Generate time extension requests to the United States Department of Treasury and/or other federal grants and TDEM and/or state agency when necessary so that eligibility is not forfeited;
- 13) Review data and records for compliance with federal requirements including assist in document retention strategy and schedules;
- 14) Assist in retrieving any necessary legal documents necessary for proper filing;
- 15) Assist in responding to Requests for Information from the United States Department of Treasury and/or other federal grants and TDEM and/or state agency;
- 16) Track and report the status of the United States Department of Treasury/TDEM and/or other state agencies reimbursement and serve as a co-liaison between the United States Department of Treasury/TDEM and/or other state agencies and Gregg County;
- 17) Coordinate with Gregg County staff to obtain all costs and necessary backup documentation to develop, revise and submit PW Forms;
- 18) Assist with the submission of appeals for United States Department of Treasury/TDEM and/or other state agencies;
- 19) Provide detailed and periodic management reports on the status of the PW Forms including developments, revisions, submissions, approval, open issues and financial overview, etc.;
- 20) Provide cash management reports showing the projected schedule for reimbursement requests and the actual status of the reimbursements received;
- 21) Review, advise and assist on the management of the closeout process;
- 22) Enter expenses and request reimbursement in the grant portal; and monitor the comptroller website for the release of funds;
- 23) Provide and prepare public procurement documentation and any additional procurement

- assistance, including but not limited to preparing and writing requests for qualification, request for proposals, or other applicable procurement processes for identified projects that align with the grant and PW forms, all in compliance with Federal and State Law;
- 24) Assist with the procurement of services, materials, rental/lease equipment, professional design services, or other items needed to implement grant projects—may include multiple bids for contracted work for various projects; (in conjunction with Gregg County);
  - 25) Assist with any and all applicable procurement processes as required by Federal Grant and the State of Texas;
  - 26) Labor and procurement duties including but not limited to ensure compliance with all relevant labor standards regulations and procurement regulations and policies;
  - 27) If necessary, assist with preparation of construction and/or material contracts;
  - 28) Research, assist, coordinate and report any HUB program requirements;
  - 29) Review TxDOT, State and Federal contracts and related requirements to develop implementation guide and policies for County's participation in grants;
  - 30) Provide labor standards compliance for all contracted work in conformance with Federal and the State of Texas Government Code Title 10, Chapter 2258, including on-site employee interviews, review of all contractor payrolls, wage determination, calculation of wage restitution, etc.;
  - 31) Assist with documentation of any project related force account (county crew and equipment) hours and costs—requires on-site meetings with county commissioners and their staff;
  - 32) Assist in compilation of data for county owned equipment used for each project if applicable;
  - 33) Review of all contractor or materials invoices for compliance with financial reporting requirements;
  - 34) Assist in preparing Certifications and back-up documents related to individual projects for signature by local officials;
  - 35) Assist with and provide guidance regarding quality assurance documentation for conformance with the County's Design Criteria and Specification;
  - 36) Provide and present periodic reports for Commissioners Court regarding each project's status;
  - 37) Coordinate with the County's financial officers and staff on project-specific cost accounting and tracking;
  - 38) Prepare summary of allowable costs and amounts reimbursed from the fund in compliance with Federal and State Uniform Grant Management Standards for each project;
  - 39) Assist in preparation of amendments to Agreements and revisions to other Program Management Services as may be required by Grant or County; and
  - 40) Assist with any and all audit services and requirements.

**PART III  
PAYMENT SCHEDULE**

**PROFESSIONAL MANAGEMENT SERVICES**

Compensation and Method of Payment - The amount of compensation and reimbursement shall be determined on an hourly rate basis as shown in the Hourly Fee Chart below, but the total contract amount shall not exceed \$750,000.00

Payment to the Contractor will be on a monthly basis based on a calculation of hours worked multiplied by the applicable hourly rate; except that such payments shall not exceed the contract percentage of identified milestones set forth below.

---

**PROGRAM MANAGEMENT/PROJECT DELIVERY**

---

Milestone / Task	% of Contract Fee
• Establishment of Recordkeeping System	10%
• 20 % of project funds expended	20%
• 40 % of project funds expended	15%
• 60 % of project funds expended	15%
• 80 % of project funds expended	15%
• 100 % of project funds expended	15%
• Filing of all Required Program Close-out Information	10%
<b>Total</b>	<b>100%</b>

**Hourly Fee Chart**

Traylor & Associates Personnel	Title	Billable rate per hour
Gary Traylor	President/CEO	\$250.00
Mark Taylor	Sr. VP Director of Operations	\$200.00
Melinda Smith	VP Project Manager	\$200.00
Wesley Traylor	Project Manager	\$200.00
Linda Pettee	Project Manager	\$150.00
Kari Beth Smith	Enviro specialist/compliance	\$150.00
Christel Kikler	Labor Standards, SME	\$150.00
Keith Tijerina	IT Coordinator	\$75.00

**PART IV  
TERMS AND CONDITIONS**

1. **Termination for Cause.** If the Contractor fails to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contractor violates any of the covenants, conditions, agreements, or stipulations of this Agreement, the County shall have the right to terminate this Agreement by giving written notice to the Contractor of such termination and specifying the effective date thereof, which shall be at least five days before the effective date of such termination. In the event of termination for cause, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs and reports prepared by the Contractor pursuant to this Agreement shall, at the option of the County, be turned over to the County and become the property of the County. In the event of termination for cause, the Contractor shall be entitled to receive reasonable compensation for any necessary services actually and satisfactorily performed prior to the date of termination.

Notwithstanding the above, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of contract by the Contractor, and the County may set-off the damages it incurred as a result of the Contractor's breach of contract from any amounts it might otherwise owe the Contractor.

2. **Termination for Convenience of the County.** County may at any time and for any reason terminate Contractor's services and work at County's convenience upon providing written notice to the Contractor specifying the extent of termination and the effective date. Upon receipt of such notice, Contractor shall, unless the notice directs otherwise, immediately discontinue the work and placing of orders for materials, facilities and supplies in connection with the performance of this Agreement.

Upon such termination, Contractor shall be entitled to payment only as follows: (1) the actual cost of the work completed in conformity with this Agreement; plus, (2) such other costs actually incurred by Contractor as are permitted by the prime contract and approved by County; (3) plus ten percent (10%) of the cost of the work referred to in subparagraph (1) above for overhead and profit. There shall be deducted from such sums as provided in this subparagraph the amount of any payments made to Contractor prior to the date of the termination of this Agreement. Contractor shall not be entitled to any claim or claim of lien against County for any additional compensation or damages in the event of such termination and payment.

3. **Changes.** The County may, from time to time, request changes in the services the Contractor will perform under this Agreement. Such changes, including any increase or decrease in the amount of the Contractor's compensation, must be agreed to by all parties and finalized through a signed, written amendment to this Agreement.
4. **Resolution of Program Non-Compliance and Disallowed Costs.** In the event of any dispute, claim, question, or disagreement arising from or relating to this Agreement, or the breach thereof, including determination of responsibility for any costs disallowed as a result of non-compliance with federal, state or TDEM program requirements, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, the parties shall consult and negotiate with each other in good faith within 30 days of receipt of a written notice of the dispute or invitation to negotiate and attempt to reach a just and equitable solution satisfactory to both parties. If the matter is not resolved by negotiation within 30 days of receipt of written notice or invitation to negotiate, the parties agree first to try in good faith to settle the matter by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration, litigation, or some other dispute resolution procedure. The parties may enter into a written amendment to this Agreement and choose a mediator that is not affiliated with the American Arbitration Association. The parties shall bear the costs of such mediation equally. If the matter is not resolved through such mediation within 60 days of the initiation of that procedure, either party may proceed to file suit.

5. **Personnel.**
  - a. The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the County.
  - b. All of the services required hereunder will be performed by the Contractor or under its supervision and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and Local law to perform such services.
  - c. None of the work or services covered by this Agreement shall be subcontracted without the prior written approval of the County. Any work or services subcontracted hereunder shall be specified by written contract or agreement and shall be subject to each provision of this Agreement.
6. **Assignability.** The Contractor shall not assign any interest on this Agreement, and shall not transfer any interest in the same (whether by assignment or novation), without the prior written consent of the County thereto; Provided, however, that claims for money by the Contractor from the County under this Agreement may be assigned to a bank, trust company, or other financial institution without such approval. Written notice of any such assignment or transfer shall be furnished promptly to the County.
7. **Reports and Information.** The Contractor, at such times and in such forms as the County may require, shall furnish the County such periodic reports as it may request pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred or to be incurred in connection therewith, and any other matters covered by this Agreement.
8. **Records and Audits.** The Contractor shall insure that the County maintains fiscal records and supporting documentation for all expenditures of funds made under this contract in a manner that conforms to 2 CFR 200.300-.309, 24 CFR 570.490, and this Agreement. Such records must include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the funds provided under this Agreement. County shall retain such records, and any supporting documentation, for the greater of three years from closeout of the Agreement or the period required by other applicable laws and regulations.
9. **Findings Confidential.** All of the reports, information, data, etc., prepared or assembled by the Contractor under this contract are confidential and the Contractor agrees that they shall not be made available to any individual or organization without the prior written approval of the County.
10. **Copyright.** No report, maps, or other documents produced in whole or in part under this Agreement shall be the subject of an application for copyright by or on behalf of the Contractor.
11. **Compliance with Local Laws.** The Contractor shall comply with all applicable laws, ordinances and codes of the State and local governments, and the Contractor shall save the County harmless with respect to any damages arising from any tort done in performing any of the work embraced by this Agreement.
12. **Conflicts of interest.**
  - a. **Governing Body.** No member of the governing body of the County and no other officer, employee, or agent of the County, who exercises any functions or responsibilities in connection with administration, construction, engineering, or implementation of the award between the United States Department of Treasury and/or other agencies and the County shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.
  - b. **Other Local Public Officials.** No other public official who exercises any functions or responsibilities in connection with the planning and carrying out of administration, construction, engineering or implementation of the award between the United States Department of Treasury and/or other agencies and the County shall have any personal financial interest, direct or indirect, in the Contractor or this Agreement; and the Contractor shall take appropriate steps to assure compliance.



- c. **Contractor and Employees.** The Contractor warrants and represents that it has no conflict of interest associated with the award between the United States Department of Treasury and/or other agencies and the County or this Agreement. The Contractor further warrants and represents that it shall not acquire an interest, direct or indirect, in any geographic area that may benefit from the award between the United States Department of Treasury and/or other agencies and the County or in any business, entity, organization or person that may benefit from the award. The Contractor further agrees that it will not employ an individual with a conflict of interest as described herein.
13. **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.
14. **Debarment and Suspension (Executive Orders 12549 and 12689).** The Contractor certifies, by entering into this Agreement, that neither it nor its principals are presently debarred, suspended, or otherwise excluded from or ineligible for participation in federally-assisted programs under Executive Orders 12549 (1986) and 12689 (1989). The term "principal" for purposes of this Agreement is defined as an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the Contractor. The Contractor understands that it must not make any award or permit any award (or contract) at any tier to any party which is debarred or suspended or is otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, "Debarment and Suspension."

**Federal Civil Rights Compliance.**

15. **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."

41 CFR 60-1.4 Equal opportunity clause.

(b) Federally assisted construction contracts. (1) Except as otherwise provided, each administering agency shall require the inclusion of the following language as a condition of any grant, contract, loan, insurance, or guarantee involving federally assisted construction which is not exempt from the requirements of the equal opportunity clause:

The applicant hereby agrees that it will incorporate or cause to be incorporated into any contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at 41 CFR Chapter 60, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

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 considerations for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
3. The Contractor will not discourage 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, "Equal Employment Opportunity," 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 (a) and the provisions of paragraphs (a) through (h) 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.

(c) Subcontracts. Each nonexempt prime contractor or subcontractor shall include the equal opportunity clause in each of its nonexempt subcontracts.

(d) Inclusion of the equal opportunity clause by reference. The equal opportunity clause may be included by reference in all Government contracts and subcontracts, including Government bills of lading, transportation requests, contracts for deposit of Government funds, and contracts for issuing and paying U.S. savings bonds and notes, and such other contracts and subcontracts as the Director of OFCCP may designate.

(e) Incorporation by operation of the order. By operation of the order, the equal opportunity clause shall be considered to be a part of every contract and subcontract required by the order and the regulations in this part to include such a clause whether or not it is physically incorporated in such contracts and whether or not the contract between the agency and the contractor is written.

(f) Adaptation of language. Such necessary changes in language may be made in the equal opportunity clause as shall be appropriate to identify properly the parties and their undertakings.

[80 FR 54975, Sept. 11, 2015]

16. Civil Rights Act of 1964. Under Title VI of the Civil Rights Act of 1964, no person shall, on the grounds of race, color, religion, sex, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.

17. Age Discrimination Act of 1975. The Contractor shall comply with the Age Discrimination Act of 1975 which provides that no person in the United States shall on the basis of age be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.
18. Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
  - a. The non-Federal entity 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;
    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; and
    6. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (1) through (5) of this section.
19. Firm shall not use the DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
20. Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 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 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
21. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
22. A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a

manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

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