

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**STATE OF MISSISSIPPI****MDEQ AGREEMENT NO. 23-00046****COUNTY OF HINDS****SUB-AWARD AGREEMENT (NGO)**

This document is a Sub-Award Agreement (this “Agreement”) between the Mississippi Department of Environmental Quality (“MDEQ”) and National Audubon Society (“SUB-RECIPIENT”, and together with MDEQ, the “Parties”, and each, a “Party”) to provide grant funds for the Work specified in Article 3, Scope of Work.

1. Source of Funds

The grant funds provided by this Agreement are made available pursuant to the [Final Restoration Plan/Environmental Assessment 1: Birds, Marine Mammals, Oysters, and Sea Turtles](#) (“the Plan”) and approved by the Regionwide Trustee Implementation Group (RW TIG) and provided through MDEQ to partially address the injuries caused by the *Deepwater Horizon (DWH)* Oil Spill pursuant to and in accordance with the Oil Pollution Act and the Consent Decree entered in the case entitled *In Re: Oil Spill by the Oil Rig Deepwater Horizon in the Gulf of Mexico, on April 20, 2010*, MDL-2179 in the Eastern Federal District Court of Louisiana. The Plan is fully and expressly incorporated by reference into this Agreement, and is an integral part of this Agreement.

2. Project

Under this Agreement, MDEQ agrees to disburse funds to SUB-RECIPIENT in accordance with the terms herein to pay the costs associated with SUB-RECIPIENT’s implementation of the project entitled “Bird Nesting and Foraging Area Stewardship” (the “Project”).

3. Scope of Work

The sub-recipient will provide stewardship services for mainland, nearshore beaches and coastal islands to ensure long-term success to restore and conserve bird nesting and foraging habitat. The sub-recipient will significantly expand, enhance, and support the Bird Stewardship Project by completing the following tasks (the “Work”):

- A. Hire Audubon staff central to implementation of the Project;
- B. Recruit and train volunteers to support both site stewardship and coordinated monitoring;

- C. Create and install signage and symbolic fencing at nesting sites;
- D. Survey, protect, and monitor nesting areas;
- E. Improve habitat and nesting site quality through habitat management and restoration;
- F. Monitor bird presence and abundance, habitat quality and distribution at selected sites;
and
- G. Conduct outreach and engagement activities for beach visitors.

4. Terms and Conditions

SUB-RECIPIENT shall be bound to MDEQ by all terms and conditions of this Agreement, including the Standard Sub-Award Terms and Conditions attached hereto as Attachment “A”, and, except as otherwise provided herein, the Plan, the Trustee Council Standard Operating procedures for Implementation of the Natural Resource Restoration for the Deepwater Horizon (DWH) Oil Spill, as amended, which is fully and expressly incorporated by reference into this Agreement herein, and Resolutions # RW-2022-004, and its attachments, (“Resolution”), attached hereto as Attachment “B”. SUB-RECIPIENT shall assume toward MDEQ all the obligations and responsibilities which MDEQ, through the Plan and Resolution(s), assumes towards the MS TIG. SUB-RECIPIENT shall perform all Work in strict accordance with this Agreement. SUB-RECIPIENT and its Contractors/Contracted Parties are subject to and must abide by all of the Terms and Conditions of this Agreement. The terms and conditions of this Agreement apply to the SUB-RECIPIENT and its Contractors/Contracted Parties.

5. Period of Performance

The Period of Performance shall commence upon execution of this Agreement by MDEQ’s Executive Director and shall end on March 31, 2028 (“Period of Performance”). The SUB-RECIPIENT agrees to complete all tasks included in the Scope of Work within this Period of Performance, unless otherwise specified in writing by MDEQ. If, at any time during the Period of Performance of this Agreement, SUB-RECIPIENT determines, based on the work performed to date, that the work cannot be completed within the Period of Performance, SUB-RECIPIENT shall so notify MDEQ immediately in writing.

6. Consideration and Payment

- A. *Consideration.* As consideration for the performance of the tasks included in this Agreement, MDEQ agrees to pay SUB-RECIPIENT an amount not to exceed Two Million Three Hundred Forty Two Thousand Ten and 00/100 dollars (\$2,342,010.00) (the “Maximum Amount”).

B. *Payment.* Subject to available funding, as set forth in the Standard Sub-Award Terms and Conditions and all other terms and conditions of this Agreement, MDEQ shall pay all properly-invoiced amounts due to SUB-RECIPIENT within forty-five (45) days after MDEQ's receipt of such invoice, except for any amounts disputed by MDEQ in good faith. Legislative approval may be required where MDEQ receives any claim of payment from SUB-RECIPIENT that includes work performed outside a one-year period from receipt of such invoice.

i. *Request for Payment.* SUB-RECIPIENT shall request payment of funds hereunder for Project costs on a reimbursement basis (such requests, "Reimbursement Requests"), unless otherwise directed by MDEQ. SUB-RECIPIENT shall submit monthly Reimbursement Requests and supporting documentation of costs incurred as required by MDEQ to invoices@mdeq.ms.gov. All Reimbursement Requests for time periods ending June 30 of any year, during the Period of Performance under this Agreement, shall be submitted no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than forty-five (45) days after the end date of this Agreement. The monthly Reimbursement Request shall include breakdowns of personnel, position, dates worked, tasks performed, and totals for each personnel cost included in the Reimbursement Request. SUB-RECIPIENT shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:

1. SUB-RECIPIENT may make Reimbursement Requests no more frequently than once monthly during the Period of Performance of this Agreement.
2. SUB-RECIPIENT shall only request payment under this Agreement for the costs necessary to complete the Scope of Work specifically stated and required under this Agreement.
3. Prior to the submittal of a Reimbursement Request to MDEQ, SUB-RECIPIENT shall have paid all material, labor, equipment, taxes and all other obligations that relate to this Agreement through the period covered by SUB-RECIPIENT's Reimbursement Request.;
4. SUB-RECIPIENT shall not request payment under this Agreement for services the SUB-RECIPIENT or its contractors may provide under any other Sub-award or Contract.
5. Any funds that are paid by MDEQ to the SUB-RECIPIENT that are not necessary for the completion of the Work in this Agreement must be

returned to MDEQ within thirty (30) days from receiving MDEQ's written notification for return of funds. Any funds that are paid by MDEQ to the SUB-RECIPIENT which are deemed ineligible by NFWF must also be returned to MDEQ within thirty (30) days from receiving MDEQ's written notification for return of funds.

6. SUB-RECIPIENT understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUB-RECIPIENT shall remain responsible for performance in strict compliance with this Agreement. If MDEQ rejects, condemns or fails to approve any part of the Scope of Work, it may issue a Notice to Cure or terminate this Agreement.
7. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request for any of the following reasons: 1) at MDEQ's discretion, the costs SUB-RECIPIENT is seeking reimbursement for are not reasonable or necessary for the completion of the Work in this Agreement, 2) at MDEQ's discretion, the costs are ineligible for reimbursement under this Project, 3) at the time the request is submitted SUB-RECIPIENT has failed to comply with any term or condition of this Agreement 4.) at the time the request is submitted, the SUB-RECIPIENT has otherwise failed to perform the Work to date in accordance with the Scope of Work, or 5.) at the time the request is submitted, the SUB-RECIPIENT has otherwise failed to comply with applicable state, federal, or local laws and regulations.

7. Reporting

The SUB-RECIPIENT shall compile monthly reports containing all information in the monthly report form provided by MDEQ. SUB-RECIPIENT shall submit monthly reports to MDEQ each month during the Period of Performance of this Agreement.

8. Final Payment and Report

Notwithstanding any other provision of this Agreement, and notwithstanding the submission of any Reimbursement Request by SUB-RECIPIENT, MDEQ shall not pay more than ninety-five percent (95%) of the Maximum Amount until such time as the SUB-RECIPIENT has completed the Work, submitted the Final Report, as defined below, required pursuant to this section, and received MDEQ's written acceptance of such Final Report. Within forty-five (45) days after MDEQ's written acceptance of such Final Report, MDEQ shall disburse to SUB-RECIPIENT all or such portion of the five-percent (5%) holdback as is properly payable to SUB-RECIPIENT for Work performed under this Agreement. However, if MDEQ is satisfied that the Project is proceeding on schedule and on budget, MDEQ (acting in its sole discretion) may reduce the holdback from five-percent (5%).

When SUB-RECIPIENT has performed all the Work, SUB-RECIPIENT shall transmit to MDEQ a final report on the Work, along with the corresponding results (the "Final Report"). As appropriate, the Final Report should include copies of any publications, press releases, and other documents, materials, and products developed as part of the Project, including, without limitation, photographs, video footage, and other electronic representations of the Project and Work not previously submitted to MDEQ. The Final Report shall be provided by SUB-RECIPIENT to MDEQ within forty-five (45) days of Project completion. Upon acceptance of Final Report, MDEQ will process final Reimbursement Request.

Upon satisfactory completion of the Work performed under this Agreement, as a condition before final payment under this Agreement or as a termination settlement under this Agreement, the SUB-RECIPIENT shall execute and deliver to MDEQ a release of all claims, on a form provided by MDEQ, against MDEQ arising under, or by virtue of, this Agreement, except claims which are specifically exempted by the SUB-RECIPIENT to be set forth therein. Unless otherwise provided in the Agreement, by state law or otherwise expressly agreed to by the Parties in this Agreement, final payment under this Agreement or settlement upon termination of this Agreement shall not constitute a waiver of MDEQ's claims against the SUB-RECIPIENT or its sureties under this Agreement.

9. Financial Management and Compliance

MDEQ requires that the SUB-RECIPIENT have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this Agreement from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation are copies of checks paid to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUB-RECIPIENT shall redact, in accordance with the definition of "Protected Personally Identifiable Information" found in 2. C.F.R. § 200.1, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include Personally Identifiable Information (PII) that is required by law to be disclosed. (See also §200.1 PII). SUB-RECIPIENT and any Contracted Parties (as such term is defined in the "Contracts" provision of this Agreement) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUB-RECIPIENT shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUB-RECIPIENT certifies that all information provided to MDEQ or its representatives as part of the initial risk assessment for this Work is complete and accurate. SUB-RECIPIENT agrees to submit to and cooperate with MDEQ in any additional risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds. Further, SUB-RECIPIENT shall continue to implement any recommendations and/or corrective action plan set forth in the

report transmitted to SUB-RECIPIENT based on the findings of the systems and processes for financial management, a copy of which is attached hereto as Attachment "C" and incorporated herein in its entirety.

10. Contracts

SUB-RECIPIENT must notify MDEQ in writing prior to contracting any portion of the Work. MDEQ, in its sole discretion, shall have the right to reject the letting of any such contract. Should MDEQ, in its sole discretion, determine that any proposed contractor of SUB-RECIPIENT under this Agreement has a conflict of interest with respect to MDEQ, SUB-RECIPIENT or the Project, MDEQ shall have the right to reject the letting of any such contract. If any potential conflict of interest exists, the Parties will resolve it according to the applicable laws and regulations. MDEQ's failure to reject the letting of any contract under this Agreement shall not be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the Funds. If SUB-RECIPIENT makes or issues any contract in coordination with this Agreement, then SUB-RECIPIENT will be deemed to have represented and warranted to MDEQ at each such time, in connection with such contract, as follows:

- A. in making such contract, SUB-RECIPIENT has complied with all applicable State and Federal laws, regulations, rules, orders, and other governmental mandates, including, without limitation, those pertaining to procurement, acquisition, and other contracting actions by SUB-RECIPIENT;
- B. in making such contract, SUB-RECIPIENT has complied with its internal policies and procedures applicable to procurement, acquisition, or contracting actions;
- C. each contractor is qualified to perform the applicable Work and is authorized to do business in the State of Mississippi;
- D. each contractor is required under its agreement with SUB-RECIPIENT to perform the applicable Work within budgeted costs identified for such Work;
- E. each contractor has agreed to conduct its activities related to the Work in compliance with the terms and conditions of this Agreement, and all applicable State and Federal laws, regulations, rules, orders, and other governmental mandates;
- F. each contractor has agreed to obtain and maintain all appropriate bonds and insurance against liability for injury to persons or property from any and all activities undertaken by such contractor related to the Work in accordance with applicable state and federal laws, including, without limitation Miss. Code Ann. § 31-5-51; and
- G. no contractor has any conflict of interest with respect to MDEQ, SUB-RECIPIENT

or the Project.

SUB-RECIPIENT shall be responsible for accountability of funds, compliance with Project specifications, and Project management by its contractors. MDEQ shall not bear responsibility for any liability caused or incurred by any contractor in performing Work. MDEQ shall not be deemed by virtue of this Agreement to have any contractual obligation to, or relationship with, any of SUB-RECIPIENT's contractors, and the Parties agree and acknowledge that, as between MDEQ and SUB-RECIPIENT, all Work shall be deemed to be the responsibility of, and performed by, SUB-RECIPIENT. No contractor or other recipient of funds from MDEQ under this Agreement shall be deemed to be an agent, representative, employee or servant of MDEQ in connection with this Agreement. Parties with whom contracts or sub-award agreements are entered into by the SUB-RECIPIENT shall be referred to herein as "Contractor", "Contracted Party", or "Contracted Parties".

11. Public Communications and Logo Usage

Unless otherwise required by applicable law (based upon the reasonable advice of counsel), SUB-RECIPIENT shall not make any public announcements, communicate with any news media, or provide materials to the public related to this Agreement without first obtaining the written consent of MDEQ. This includes any materials prepared for presentations or materials prepared for distribution to the public. The Parties shall cooperate as to the timing and contents of any such announcement prior to any such communications to the public. The SUB-RECIPIENT must provide materials subject to this provision to MDEQ, for determination of approval, ten calendar (10) days prior to the anticipated publication or other form of public release of such materials. This provision shall not apply to any publications, notices, communications, transmittals or the like required of SUB-RECIPIENT to comply with its contractual obligations related to this Agreement, for procurement of vendors, or compliance with applicable state, federal or local law applicable to the Agreement or Work.

The SUB-RECIPIENT is authorized to use the MDEQ logo only for the above-mentioned purposes. The SUB-RECIPIENT may not alter the MDEQ logo in any way, except for its size.

12. Notices

All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of document(s) (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next business day if sent after normal business hours of the recipient; or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this subsection):

For the faithful performance and consideration provided under the terms of this Agreement, the parties hereto have caused this Agreement to be executed by their undersigned authorized representatives.

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY




Chris Wells
Executive Director

2/27/23

Date

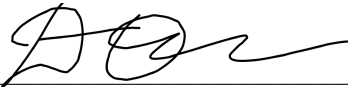
NATIONAL AUDUBON SOCIETY

By:  _____

Name: Neeta Hatley

Title: VP, Controller Treasury and Finance Operations

Date: 2/27/2023

By:  _____

Name: Dawn O'Neal

Title: VP, Executive Director, Audubon Delta

Date: 02/24/2023

ATTACHMENT A**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, 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's 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 State law in the procurement of commodities, services, construction work, real property and easement acquisition, and in

any other procurement required to complete the tasks in the Scope of Work and Project Description.

6. 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.

7. 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:

(1) cancel the stop work order; or,

(2) 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:

- (1) 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
- (2) 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.

8. 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.

9. E-VERIFICATION

If applicable, SUB-RECIPIENT 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. 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 warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this Agreement may subject SUB-RECIPIENT to the following:

- A. termination of this Agreement for services and ineligibility for any state or public Agreement 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 SUB-RECIPIENT 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 cancellation/termination, SUB-RECIPIENT would also be liable for any additional costs incurred by MDEQ due to Agreement cancellation or loss of license or permit to do business in the State.

10. 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.

11. 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.

12. TERMINATION

The Agreement may be terminated as follows:

A. TERMINATION FOR CONVENIENCE

- (1) *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.

- (2) *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 then 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.

13. 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.

14. 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.

15. ATTORNEY'S FEES AND EXPENSES

Subject to other terms and conditions of this Agreement, in the event SUB-RECIPIENT defaults in any obligations under this Agreement, SUB-RECIPIENT shall pay to MDEQ all costs and expenses (including, without limitation, investigative fees, court costs, and attorney's fees) incurred by MDEQ in enforcing this agreement or otherwise reasonably related thereto. SUB-RECIPIENT agrees that under no circumstances shall

the MDEQ be obligated to pay any attorney's fees or costs of legal action to SUB-RECIPIENT.

16. AUTHORITY TO PARTICIPATE IN THIS AGREEMENT

The SUB-RECIPIENT warrants: (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and 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 or prospective 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 Contractors/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) Otherwise disclosed as required by applicable 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

To the fullest extent allowed by law, SUB-RECIPIENT shall indemnify, defend, save and hold harmless, protect, and exonerate the agency, its commissioners, board members, officers, employees, agents, and representatives, and the State of Mississippi from and 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 attorney's fees, arising out of or caused by SUB-RECIPIENT and/or its partners, principals, agents, employees and/or contractors in the performance of or failure to perform this agreement. In MDEQ's sole discretion, SUB-RECIPIENT may be allowed to control the defense of any such claim, suit, etc. In the event SUB-RECIPIENT defends said claim, suit, etc., Contractor shall use legal counsel acceptable to MDEQ. SUB-RECIPIENT shall be solely responsible for all costs and/or expenses associated with such defense, and MDEQ shall be entitled to participate in said defense. SUB-RECIPIENT shall not settle any claim, suit, etc. without MDEQ's concurrence, which MDEQ shall not unreasonably withhold.

22. INFRINGEMENT INDEMNIFICATION

SUB-RECIPIENT warrants that the materials and deliverables provided to the customer under this agreement, and their use by the customer, will not infringe or constitute an infringement of any copyright, patent, trademark, or other proprietary right. Should any such items become the subject of an infringement claim or suit, SUB-RECIPIENT shall defend the infringement action and/or obtain for the customer the right to continue using such items. Should SUB-RECIPIENT fail to obtain for the customer the right to use such items, SUB-RECIPIENT shall suitably modify them to make them non-infringing or substitute equivalent software or other items at SUB-RECIPIENT's expense. In the event the above remedial measures cannot possibly be accomplished, and only in that event, SUB-RECIPIENT may require the customer to discontinue using such items, in which case SUB-RECIPIENT will refund to the customer the fees previously paid by the customer for the items the customer may no longer use, and shall compensate the customer for the lost value of the infringing part to the phase in which it was used, up to and including the contract/Agreement price for said phase. Said refund shall be paid within ten (10) working days of notice to the customer to discontinue said use. Scope of Indemnification: Provided that MDEQ promptly notifies SUB-RECIPIENT in writing of any alleged infringement claim of which it has knowledge, SUB-RECIPIENT shall defend, at its own expense, MDEQ against, and pay all costs, damages and attorney fees that a court finally awards for infringement based on the programs and deliverables provided under this agreement.

23. 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.

24. INSURANCE

SUB-RECIPIENT shall maintain during the Period of Performance of this Agreement the following liability insurance coverage, or shall require its contractors to maintain said coverage, related to the work of SUB-RECIPIENT and in connection with this Agreement.

- A. *Workers' Compensation and Employer's Liability Insurance.* This insurance shall protect SUB-RECIPIENT against all claims under applicable State workers' compensation laws. SUB-RECIPIENT 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). SUB-RECIPIENT shall supply MDEQ endorsements from its carriers evidencing waiver of subrogation in favor of MDEQ.
- B. *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.

- C. *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) SUB-RECIPIENT's own automobiles and trucks; (2) hired and non-owned automobiles and trucks; and (3) automobiles and trucks owned by SUB-RECIPIENTS. The aforementioned is to cover use of automobiles and trucks on and off the site of the Project.
- D. *Errors and Omissions/Professional Liability Coverage.* This insurance shall be in the amount of not less than One Million and 00/100 Dollars (\$1,000,000.00) per occurrence. This policy may be a claims-made policy.

For all of the insurance coverage required in (A-C) of this Paragraph, NFWF, MDEQ, MDEQ'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. SUB-RECIPIENT 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 SUB-RECIPIENT's respective policies shall provide primary coverage before any applicable policy otherwise covering NFWF and MDEQ and that any insurance covering NFWF and MDEQ shall be excess coverage over SUB-RECIPIENT's coverage. 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.

Prior to the commencement of Work under this Agreement, SUB-RECIPIENT shall provide MDEQ with copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Article within thirty (30) days after this Agreement is fully-executed, and shall not do anything to invalidate such insurance. This Article shall not be construed in any manner as waiving, restricting or limiting the liability of either party for any obligations imposed under this Agreement, including, without limitation, any provisions requiring a party hereto to indemnify, defend and hold the other harmless under this Agreement.

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.

25. 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.

26. AMENDMENTS OR MODIFICATION

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

27. NO LIMITATION OF LIABILITY

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

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.

28. 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.

29. 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.

30. EQUIPMENT

The obligations and conditions set forth in this section, title to equipment acquired under the Agreement will vest upon acquisition to the SUB-RECIPIENT subject to the following terms and conditions:

- (1) The use, management and disposition of equipment acquired under this Agreement must be performed in accordance with state laws and procedures.
- (2) The property cannot be encumbered without MDEQ's prior approval.
- (3) *Use.* Equipment must be used by the SUB-RECIPIENT in the Project for which it was acquired as long as needed, whether or not the Project continues to be supported by MDEQ. The equipment must be used for the authorized purposes of the Project during the Period of Performance, or until the property is no longer needed for the purposes of the Project. When property is no longer needed for the Project, funded under this Agreement, SUB-RECIPIENT must comply with the disposition procedures provided below.
- (4) *Disposition.* When equipment is no longer needed for the Project, SUB-RECIPIENT must request disposition instructions from MDEQ. Disposition of the equipment will be made as follows, in accordance with MDEQ's disposition instructions:
 - (i) Items of equipment with a current per unit fair market value of \$5,000 or less may be retained, sold or otherwise disposed of in accordance with state laws and procedures with no further obligation to MDEQ.
 - (ii) Items of equipment with a current per unit fair market value of more than \$5,000 may either be retained, maintained, and used for other projects or other purposes, or may be sold by the SUB-RECIPIENT in accordance with state laws and procedures and MDEQ's disposition instructions. MDEQ reserves the right to require the SUB-RECIPIENT to transfer title to MDEQ or another entity when the property is no longer needed for the Project before the SUB-RECIPIENT may use the equipment for other projects or other purposes or sell such equipment.
 - (iii) Where MDEQ requires title to be transferred from the SUB-RECIPIENT and the SUB-RECIPIENT has provided its own funds, not provided under this Agreement or another Agreement funded by MDEQ, to pay for a portion of a unit of equipment acquired for the Project, the SUB-RECIPIENT shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

31. 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, 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.

32. 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.

33. RIGHT TO INSPECT WORK; ACCESS

MDEQ, and their representatives, invitees, and consultants shall, 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 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.

34. 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.

35. 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.

36. 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. 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 environment, health, safety, or welfare of the 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.

37. 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.

38. 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.

39. 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.

40. SUCCESSORS 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.

41. 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.

42. 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. Environmental Education and Stewardship at Walter Anderson Museum of Art

43. 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.

44. HEADINGS

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

**ATTACHMENT B
PROJECT RESOLUTION**

REGIONWIDE RESTORATION AREA TRUSTEE IMPLEMENTATION GROUP
of the
DEEPWATER HORIZON TRUSTEE COUNCIL

In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico
on April 20, 2010,

Civil Action Nos. 10-4536; 10-04182; 10-03059; 13-4677; 13-158; 13-00123 (ED. La.)
MDL No. 2179

Resolution # RW-2022-004
Implementation of the RW RP1/EA Project:
Bird Nesting and Foraging Area Stewardship Project

1. In accordance with the Oil Pollution Act of 1990 (OPA), the National Environmental Policy Act (NEPA), the *Deepwater Horizon* (DWH) Oil Spill Final Programmatic Damage Assessment and Restoration Plan and Programmatic Environmental Impact Statement (Final PDARP/PEIS), the 2021 Trustee Council Standard Operating Procedures for Implementation of the Natural Resource Restoration for the DWH Oil Spill (TC SOPs), and the Consent Decree entered in *United States v. BXP et al.*, Civ. No. 10-4536, centralized in MDL 2179, In re: Oil Spill by the Oil Rig “Deepwater Horizon” in the Gulf of Mexico, on April 20, 2010 (E.D. La.)(Consent Decree), the undersigned representatives of the Regionwide Trustee Implementation Group (RW TIG) hereby approve the action set forth below to support the restoration of natural resources and services injured or lost as a result of the DWH oil spill, which occurred on or about April 20, 2010, in the Gulf of Mexico.
2. The undersigned Authorized Officials for the RW TIG hereby approve the attached Project Implementation Plan (PIP) and approve the commitment and disbursement of funds to the Alabama Department of Conservation and Natural Resources (ADCNR), Florida Fish and Wildlife Conservation Commission (FWC), Mississippi Department of Environmental Quality (MDEQ), and the Texas General Land Office (TGLO), the Implementing Trustees, to implement the **Bird Nesting and Foraging Area Stewardship Project** (Portal ID 296) selected in the *Deepwater Horizon* Oil Spill Regionwide Trustee Implementation Group Final Restoration Plan/Environmental Assessment 1: Birds, Marine Mammals, Oysters, and Sea Turtles (RP1/EA), which was approved by the RW TIG on September 15, 2021 and publicly released September 27, 2021. The Project Implementation Plan, which is attached hereto and made a part thereof, provides an overview and the tasks and activities to be conducted for this Project.
3. The Project to be funded through this Resolution supports restoration planning and implementation to carry out the restoration goals identified in the Final PDARP/PEIS and the Record of Decision that provides and explains the Trustees’ selection of the Preferred Alternative (Alternative A) for the Programmatic Restoration Plan. The Project is also consistent with the Consent Decree resolving the civil actions referenced above.

4. The Implementing Trustees for the Project, in accordance with Section 9.5(a) of the Trustee Council SOPs, will implement the Project according to the RP1/EA, the TC SOPs, the attached Project Implementation Plan, and as applicable, corrective action approved by the Regionwide TIG.

5. At the time this Resolution and the attached PIP were approved, environmental compliance with federal regulations was not yet complete for the Project. The Implementing Trustees will ensure that all applicable regulatory compliance activities will be completed prior to undertaking any regulated activities for the Project and that the terms and conditions of all federal, state, and local permits will be complied with in the course of implementing the Project. All compliance documents will be posted to the Administrative Record for the Project.

6. Funds transferred from the Department of the Interior’s Restoration Fund (DOI Restoration Fund) to the Implementing Trustees under this Resolution may be used only for the activities authorized by this Resolution and in accordance with the PIP. All funds will be used to pay, reimburse, or otherwise cover appropriate future expenses, and, if applicable, past expenses which have been incurred since the TIG approved the RP1/EA on September 15, 2021. Any other use of funds disbursed pursuant to this Resolution is prohibited. Any non-authorized use of disbursed funds must be reported to the full TIG immediately upon discovery of unauthorized use.

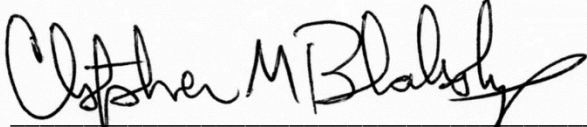
7. Through this Resolution and the associated DWH Trustee Withdrawal Form(s), the RW TIG authorizes the commitment and disbursement of up to \$8,510,750 in in Birds Restoration Type funding from the DOI Restoration Fund as summarized in the tables below.

Birds Restoration Type Funding, Portal ID # 296


Implementing Trustee	Project Restoration Type Budget
ADCNR	\$800,000
FWC	\$4,200,000
MDEQ	\$3,010,750
TGLO	\$500,000
Total	\$8,510,750

8. It is resolved that after a review of the tasks and proposed activities in the attached Project Implementation Plan, the duly authorized officials for the RW TIG authorize the release of funds. This resolution may be authorized in counterparts. The effective date of this Resolution is the date of the last signature below.

REGIONWIDE TRUSTEE IMPLEMENTATION GROUP




CHRISTOPHER M. BLANKENSHIP
Principal Representative for Alabama Trustees




GARETH G. LEONARD
Principal Representative for Florida Trustees

LAWRENCE B. "BREN" HAASE
Representative for Louisiana



CHRIS WELLS
Trustee Council Designee, Mississippi Department of Environmental Quality



ANGELA SUNLEY
Principal Representative for Texas Trustees

REGIONWIDE TRUSTEE IMPLEMENTATION GROUP

CHRISTOPHER M. BLANKENSHIP
Principal Representative for Alabama Trustees

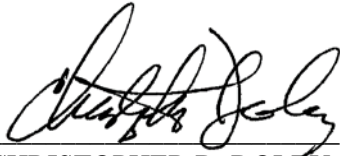
GARETH G. LEONARD
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LAWRENCE B. "BREN" HAASE
Representative for Louisiana

CHRIS WELLS
Trustee Council Designee, Mississippi Department of Environmental Quality

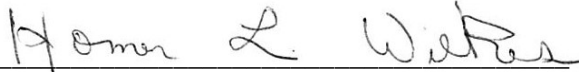
ANGELA SUNLEY
Principal Representative for Texas Trustees



CHRISTOPHER D. DOLEY
Principal Representative, National Oceanic and Atmospheric Administration



MARY JOSIE BLANCHARD
Principal Representative, Department of the Interior



HOMER L. WILKES
Primary Representative, U.S. Department of Agriculture



MARY KAY LYNCH
Alternate to Principal Representative, U.S. Environmental Protection Agency

DATE OF LAST SIGNATURE: March 21, 2022

Project Implementation Plan for the Bird Nesting and Foraging Area Stewardship Project

SECTION 1. DOCUMENT PURPOSE

The purpose of this project implementation plan is to establish project roles, responsibilities, and budgets, to the extent practicable, to implement the Bird Nesting and Foraging Area Stewardship project (Project; Portal ID 296). This alternative was selected in the Regionwide Trustee Implementation Group's (TIG) Final Restoration Plan/Environmental Assessment 1: Birds, Marine Mammals, Oysters, and Sea Turtles (RP1/EA).

The objective of this Project is to conserve and enhance nesting and foraging habitat for nesting shorebird species injured by the *Deepwater Horizon* (DWH) oil spill. Specifically, the Project will include stewarding and monitoring beach and bay shorebirds to reduce human disturbance and predation of nests and chicks to increase bird productivity and survival. This Project will likely utilize various activities at multiple locations along the Gulf of Mexico coast and select sites in northeast Florida (Nassau, Duval, and St. Johns counties). The activities will directly address anthropogenic stressors, protect and restore habitat, and reduce other stressors that impact birds that use beaches for nesting, rearing, foraging, resting, and refueling during migratory stopovers and overwintering. It may also increase public awareness of bird conservation issues. This Project will complement and enhance ongoing efforts of the Implementing Trustees and other partners to address habitat loss and degradation to nesting and foraging habitats through stewardship projects.

The Implementing Trustees for this Project are the Department of the Interior (DOI), the Texas General Land Office (TGLO), Mississippi Department of Environmental Quality (MDEQ), Alabama Department of Conservation and Natural Resources (ADCNR), and the Florida Fish and Wildlife Conservation Commission (FWC). The Implementing Trustees will conduct (or contract, as needed) all planning, implementation, monitoring, and oversight activities for each task as specified below.

SECTION 2. TASKS AND ACTIVITIES

Task 1: Complete all applicable regulatory consultations.

A. IMPLEMENTING TRUSTEES

The Implementing Trustees for this task are TGLO, MDEQ, ADCNR, FWC, and DOI.

B. ACTIVITIES

The State Implementing Trustees, in coordination with DOI, will perform, but are not limited to, the following activities:

1. Compile data from federal and state agencies and/or other relevant partners (e.g., state-specific seabird and shorebird networks [e.g., Florida Shorebird Database], NGOs, local

entities, the Gulf of Mexico Avian Monitoring Network [GoMAMN], etc.) to identify a location(s) and/or region(s) for stewardship activities that will conserve and enhance nesting and foraging habitat for nesting shorebird species injured by the DWH oil spill.

2. Develop applicable compliance documents (e.g., biological evaluation forms) outlining the proposed stewardship activities for each location(s)/region(s). Stewardship may be implemented in several ways, depending on the location/region, and could include:
 - Stewardship of nesting areas to reduce human disturbance (e.g., exclusion devices and vegetated buffers, virtual fencing around nesting areas, and/or beach wrack and distance buffers);
 - Lethal and nonlethal predator control;
 - Vegetation management;
 - Nesting platforms;
 - Placement of symbolic and/or permanent fencing;
 - Signage;
 - Development of site management plans;
 - Rooftop management;
 - Comprehensive monitoring coverage;
 - Lowered vehicle speed limits or reduced vehicular access;
 - Bird banding and recapture/re-sighting;
 - Patrols by wildlife stewards or law enforcement (including training and support); and
 - Targeted community engagement, outreach, and education.
3. Complete all applicable regulatory consultations including any permits or authorizations, rights of access, surveys, or plan(s) that may be required.

C. TIME FRAME

The Implementing Trustees will perform regulatory consultations in Year 1 of the Project. In Years 2–7 consultation will continue, as needed.

Task 2: Conduct stewardship activities.

A. IMPLEMENTING TRUSTEES

The Implementing Trustees for this task are TGLO, MDEQ, ADCNR, FWC and DOI.

B. ACTIVITIES

Upon completion of Task 1, the Implementing Trustees (on independent timelines) will conduct one or more of the approved stewardship activities, which are listed above in Task 1.B.2.

C. TIME FRAME

Once applicable consultations are complete, the Implementing Trustees will perform stewardship activities. An Implementing Trustee may conduct their stewardship activities over a smaller subset of the Project timeframe (e.g., Years 3 - 5) instead of every year of the Project.

Task 3: Conduct monitoring and adaptive management (MAM).

A. IMPLEMENTING TRUSTEES

The Implementing Trustees for this task are TGLO, MDEQ, ADCNR, FWC and DOI.

B. ACTIVITIES

The Implementing Trustees will perform, but are not limited to, the following activities:

1. Conduct monitoring in accordance with the Monitoring and Adaptive Management Plan: Bird Nesting and Foraging Area Stewardship, attached as Appendix B to the RP1/EA or as amended and approved by the Regionwide TIG and made available in the restoration portal (DIVER).
2. Submit to the Regionwide TIG recommendations on any adaptive management actions if they become appropriate.
3. Coordinate final close-out of the Project.

C. TIME FRAME

The Implementing Trustees will perform MAM activities in Years 1-7 of the Project, depending on the implementation timeline of Task 2. Baseline monitoring may occur at some locations/regions prior to implementation.

BUDGET

The Project’s budget is \$8,510,750 and is allocated accordingly:

Implementing Trustees	Birds Restoration Type Funding
DOI	\$0
TGLO	\$500,000
MDEQ	\$3,010,750
ADCNR	\$800,000
FWC	\$4,200,000
Total	\$ 8,510,750

SECTION 3. REQUIREMENTS AND TERMS

1. The Implementing Trustees will notify the Regionwide TIG of proposed material changes before taking further action on the Project. Notification will include a brief discussion of the change, impact, and proposed path forward. Any material changes must be approved by the Regionwide TIG.
2. Any potential costs over and above the overall Project’s budget as well as transferring funds between Implementing Trustees must be approved in advance and in writing by the Regionwide TIG.

3. Implementing Trustees will follow the most recent Trustee Council standard operating procedures as they pertain to reporting requirements, financial tracking, Project tracking, Project data portal entry, Regionwide TIG communications, and public information requests.

ATTACHMENT C**SYSTEMS AND PROCESSES FOR FINANCIAL MANAGEMENT
RECOMMENDATIONS AND/OR CORRECTIVE ACTION PLAN**

An evaluation for the assessment of uncontrolled risks of the SUB-RECIPIENT's systems and processes for financial management was performed as of part of the initial sub-award process by MDEQ, acting on behalf of the State of Mississippi, as administrator of this Sub-Award Agreement. No corrective action is required to the SUB-RECIPIENT's systems and processes at the time of this award. MDEQ requests the SUB-RECIPIENT provide the following information to MDEQ as part of observations made during the evaluation:

1. SUB-RECIPIENT agrees to provide MDEQ with a copy of their annual audited financial statements within 60 days of the report release date throughout the program performance period.
2. SUB-RECIPIENT agrees to promptly notify MDEQ of any significant changes made to the SUB-RECIPIENT's current policies and procedures that would impact financial management systems and processes, specifically those communicated as part of the evaluation, from which the current residual risk levels were derived.
3. SUB-RECIPIENT agrees to promptly notify MDEQ of any level of fraud or abuse discovered within the organization without regard to materiality that is related to the operation of the Project, as well as other pervasive deficiencies identified for grant management practices from any source, both external and internal, throughout the program performance period.
4. If deficiencies, significant deficiencies and/or material weaknesses are reported to the SUB-RECIPIENT, as part of any assurance, attestation, or monitoring engagement during the program performance period, SUB-RECIPIENT agrees to provide its response(s) and/or corrective action plan(s) to MDEQ so that prompt action can be taken by MDEQ to mitigate any elevated level of uncontrolled risk that could potentially impact MDEQ's or the SUB-RECIPIENT's ability to comply with Federal Award and/or Sub-Award requirements.