



State of Oklahoma
Office of Management and Enterprise Services

STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY & COMPANY

This State of Oklahoma Contract (“Contract”) is entered into between the State of Oklahoma by and through the Office of Management and Enterprise Services (“OMES”), for the benefit of the Oklahoma Corporation Commission (“State/Agency”), and C.H. Guernsey & Company (“Supplier”) and is effective as of the effective date set forth on a properly issued purchase order or, if no effective date is listed, the date of last signature to this Contract.

Contract Term and Renewal Options:

This Contract is subject to the State being awarded an Infrastructure Investment and Jobs Act (“IIJA”) grant by the U.S Department of Interior (“DOI”). The IIJA Grant is the “Program” for this Contract. The initial Contract term, which begins on the effective date of the Contract, is one year and there are four one-year options to renew the Contract, or until available Program funding ceases. The Contract may need to be amended later if the DOI changes the Program requirements and/or funding. Portions of the Scope and Functions will be contracted with the option to cancel or modify based on potential changes in the Program.

Purpose

The State is awarding this Contract to Supplier for the provision of for the purchase for Orphan Well Site Testing, Plugging, Remediation, and Reclamation Program Project Manager to be funded by the Program, as more particularly described in certain Contract Documents. This Contract memorializes the agreement of the parties with respect to terms of the Contract that is being awarded to Supplier.

Now, therefore, in consideration of the foregoing and the mutual promises set forth herein, the receipt and sufficiency of which are hereby acknowledged the parties agree as follows:

1. The parties agree that Supplier has not yet begun performance of work under this Contract. Issuance of a purchase order is required prior to payment to a Supplier.
2. The following Contract Documents are attached hereto and incorporated herein:
 - 2.1. Attachment A - Solicitation;
 - 2.2 Attachment A1 – Non-Negotiable Terms;
 - 2.2. Attachment B - Negotiable Terms;
 - 2.3. Attachment C - Agency Terms - Reserved;
 - 2.4. Attachment D – IT Terms;
 - 2.5. Attachment E1 -Pricing;
 - 2.6. Attachment E2 - Offer of Value-Added Products and Services;
 - 2.7 Attachment E3 – Additional Bidder Terms;
 - 2.8. Attachment E4 - Master Terms Between Bidder and State
 - 2.9. Attachment E5 - Third Party Terms;
 - 2.10. Attachment F – Requested Exceptions;
 - 2.11. Attachment G – Federal Funding Terms;

- 2.12. Attachment H-1 Grant Terms;
- 2.13. Attachment H-2 Grant Terms;
- 2.14. Attachment H-3 Grant Terms; and
- 2.15. Attachment H-1 Grant Terms.

3. The parties additionally agree:

3.1. Except for information deemed confidential by the State pursuant to applicable law, rule, regulation or policy, the parties agree Contract terms and information are not confidential and are disclosable without further approval of or notice to Supplier.

3.2. To the extent any term or condition in any Contract Document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract Document which contains a conflicting term or condition, the State or Customer makes no representation or warranty regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

4. The parties recognize that while the State of Oklahoma is executing this contract, payment obligations rest solely with the Agency. OMES shall not be responsible for such payment obligations. The Supplier shall bill the Agency on a per hour basis, not a “Monthly Fee or Annual Fee.” Please send invoices and billing inquiries to:

Oklahoma Corporation Commission
2401 North Lincoln Blvd
Oklahoma City, OK 73105
Invoice Email: OCCAccountsPayable@occ.ok.gov

Attachments referenced in this section are attached hereto and incorporated herein.

5. The undersigned Agency hereby attests that any required terms and conditions based on the Program applicable to this Contract are included herein.

6. Any reference to a Contract Document refers to such Contract Document as it may have been amended. If and to the extent any provision is in multiple documents and addresses the same or substantially the same subject matter but does not create an actual conflict, the more recent provision is deemed to supersede earlier versions.


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SIGNATURES

The undersigned represent and warrant that they are authorized, as representatives of the party on whose behalf they are signing, to sign this Contract and to bind their respective party thereto.

**STATE OF OKLAHOMA
by and through the OKLAHOMA
CORPORATION COMMISSION**

C.H. GUERNSEY & COMPANY

By: 
Brandy Wreath (Mar 17, 2025 10:03 CDT)

By: 

Name: **Brandy Wreath**

Name: Jeff Napoliello


Title: **Director**

Title: Executive Vice President

Date: **Mar 17, 2025**

Date: March 10, 2025

The Chief Information Officer is signing solely to approve the Contract pursuant to 62 O.S., § 34.11.1 concerning procurement of Information Technology and/or Telecommunications.

By: 
Amanda Otis (Mar 17, 2025 12:00 CDT)

Name: **Amanda Otis**

Title: **State Purchasing Director**

Date: **Mar 17, 2025**

Attachment A

Solicitation No. EV00000599

This Solicitation is a Contract Document and is a request for proposal in connection with the Contract awarded on behalf of Oklahoma Corporation Commission by and through the Office of Management and Enterprise Services as more particularly described below. Any defined term used herein but not defined herein shall have the meaning ascribed in the General Terms or other Contract document.

I. PURPOSE

The Office of Management and Enterprise Services (OMES), Central Purchasing Division, is seeking responses on behalf of Oklahoma Corporation Commission from potential Suppliers to provide a contract for the purchase for Orphan Well Site Testing, Plugging, Remediation, and Reclamation Program Project Manager. The contracted Manager will coordinate the administrative functions associated with the program, ensures that all Infrastructure Investment and Jobs Act [IIJA] requirements are met, and ensures that all available funding from the IIJA is received and properly paid to achieve the IIJA goals. A Contract resulting from this Solicitation may be designated for use as a Statewide Contract.¹

The Contract is awarded on behalf of Oklahoma Corporation Commission for the purchase for Orphan Well Site Testing, Plugging, Remediation, and Reclamation Program Project Manager.

1. Contract Term and Renewal Options:

The initial Contract term, which begins on the effective date of the Contract, is one year and there are four one-year options to renew the Contract, or until available funding ceases. The Contract may need to be amended later if the Department of Labor [DOL] and Department of Interior [DOI] changes the Program requirements and/or funding. Portions of the Scope and Functions will be contracted with the option to cancel or modify based on potential changes in the Federal Program.

2. Solicitation Criterion:

2.1. The Bid will be evaluated using a best value criterion, based on the following:

- i. **Work Plan:** The Manager's work plan will be a primary consideration and should include a general overview of the approach the Manager intends to take, explaining how they will meet each requirement. In this regard, the Oklahoma Corporation Commission (OCC) will evaluate the Manager's understanding of the Program's duties and their prior experience in administering similar projects. Additionally, the OCC will assess the qualifications of each individual expected to contribute to the project, as well as the estimated number of hours each person will work and the specific tasks they will undertake.
- ii. **Experience:** Managers must possess a fundamental understanding of the industry related to the testing, plugging, remediation, and reclamation of orphan wells. Preference will be given

¹ 74 O.S. 85.5(G)(3)

to those who have experience managing similar funds or projects. Additionally, preference may be afforded to Managers with a proven track record of coordinating with federal, tribal, and state agencies, as well as non-governmental organizations. This includes, but is not limited to, the Oklahoma Corporation Commission [OCC], the Oklahoma Energy Resources Board [OERB], the Oklahoma Office of Management and Enterprise Services [OMES], and the federal Department of the Interior [DOI]. Familiarity with managing wells on federal, tribal, state, and privately-owned land is essential. Managers should also highlight any relevant accounting or legal experience. Experience cited must pertain to individuals who will be assigned to this project, as well as the Manager's company as a whole. Any studies or projects referenced must be clearly identified, including the name of the customer and the contact details (name, address, and telephone number) of the responsible official at the customer's organization.

- iii. **Professional Independence:** The Oklahoma Corporation Commission [OCC] is seeking a neutral, independent third party to administer certain aspects of the Program. If the Manager or any of its associates has an affiliate or representational relationship with an OCC-regulated oil and gas operator, the Manager must disclose that relationship and provide a detailed explanation of the measures that will be implemented to avoid any potential conflicts of interest arising from this contract.
- iv. **Professional Personnel:** This pertains to the qualifications and appropriate assignments of the project management or lead personnel, as well as professional and administrative support staff proposed for each task area. The qualifications of personnel will be evaluated based on their education and experience, with a particular emphasis on their involvement in projects similar to those described in the RFP.
- v. **Cost:** This area will carry significant weight in the evaluation process, though it will not be the sole determining factor. Since bids may include one or more segments priced at a monthly or otherwise variable rate, they may not be directly comparable based on a single dollar amount. However, the Oklahoma Corporation Commission [OCC] will assess bids by considering all fixed and variable prices outlined in the proposals. All compensation to the Manager will be sourced from the Program, and the OCC will not provide any additional compensation. The cost submission should detail costs on a monthly and annual tribal throughout the contractual period.
- vi. **Familiarity with Current Laws, Programs, and Industries:**
 - a. Current federal laws and requirements pertaining to the IJA Program. Managers should stay informed of real-time updates from the IJA while preparing their proposals, as changes may arise during the bid period. The OCC will prioritize bids that comply with the latest IJA guidance.
 - b. Federal reporting requirements to ensure compliance with IJA Program requirements.
 - c. The Davis-Bacon Act.
 - d. National Historic Preservation Act of 1966 [à la carte]
 - e. Endangered Species Act of 1973 [à la carte]
 - f. Relevant Oklahoma laws relating to the Program.
 - g. Relevant Oklahoma Corporation Commission rules and requirements.

- h. Laws and processes relating to methane testing, well site plugging, remediation, and reclamation. [à la carte]
- i. Concepts relating to environmental justice. [à la carte]

2.2 Scope and Description:

- i. The Bid Response must indicate for each requirement whether it is met by an out-of-the-box solution or necessitates customization to the Manager's proposed solution. Additionally, throughout the contract period, the Manager is expected to coordinate subcontractors to ensure compliance with the Orphan Well Site Testing, Plugging, Remediation, and Reclamation Program.
- ii. The bid response must remain compliant with IJA requirements, which may be modified regularly, and include information as requested by the OCC or to comply with the Open Records Act. Additionally, it should provide details about current and past wells tested and plugged, as well as include a Geographic Information System (GIS) mapping tool that integrates with current OCC mapping services to display information about each well, testing records, and their status. The GIS map must allow for sortable data. Furthermore, the proposal should maintain compliance with all OMES, and state standards related to technology and information security, and permit subcontractors to securely upload information to the Manager.
 - a. The Manager certifies that they will comply with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148, and 3146-3148) as supplemented by Department of Labor regulations (29 C.F.R. Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction").
 - b. The Manager certifies that they will comply with 40 U.S.C. §§ 3702 and 3704, as supplemented by Department of Labor regulations (29 C.F.R. Part 5).
 - c. The Manager will comply with the requirements in 2 C.F.R. § 200.318 through 200.327.
 - d. The Manager will comply with the requirements in 2 CFR § 200.317 regarding procurements by states. When procuring property and services under a Federal award, the Manager must follow the same policies and procedures used for procurements from non-Federal funds. The Manager will also comply with §§ 200.321, 200.322, and 200.323, ensuring that every purchase order or contract includes any clauses required by § 200.327. All other non-Federal entities, including sub-recipients, must adhere to the procurement standards in §§ 200.318 through 200.327.
 - e. The Manager certifies that they will 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 (33 U.S.C. §§ 1251-1387), as amended.
 - f. The Manager certifies that they are not listed on the government-wide exclusions list for the System for Award Management (SAM), in accordance

with the OMB (Office of Management and Budget) guidelines at 2 C.F.R. Part 1989, Comp., p. 235, titled "Debarment and Suspension."

- iii. Develop and maintain a database that has report generation capabilities for preparing standard monthly reports as well as special reports that summarize information based on various selected data. The database must be designed to allow for the expansion of reported and tracked data, and it should provide remote access to the OCC, including report writing capabilities. Additionally, the database must be compatible with OCC's current database system and comply with OMES standards.
- iv. All information, including but not limited to the GIS mapping tool, spreadsheets, databases, and website content, will remain the property of the OCC during and after the completion of the Project. All files must be returned to the OCC or its designee upon project completion.
 - a. Information must be maintained in a manner that allows access for at least ten years from the date of creation. Before destroying any such materials, the Manager must notify OCC to allow the opportunity to take custody of the material, if so choose.
- v. None of the information received or created by the Manager shall be used for any other commercial purpose.
- vi. Prepare monthly activity reports for OCC detailing the plugging status of each well, testing results, costs incurred per well site, and any additional information requested. Subcontractors are required to maintain a daily log of all work performed and costs incurred for plugging and testing the wells, which must be provided to OCC upon request. Additionally, records must be maintained by subcontractors and by well, along with any records required by the Federal Program, which may be subject to regular modifications. Any further reports requested by OCC should also be provided.
- vii. Immediately inform OCC if the Manager has reason to believe that any subcontractor has submitted false information to the Manager with the intent of obtaining fraudulent reimbursement, or if any other irregularity occurs in the operation or administration of the Program.
- viii. Cooperate with the internal and independent auditor selected by OCC, and provide data and information reasonably required to support audit activities.
- ix. Maintain a system of internal controls including but not limited to GAAPXXX.
- x. Operate on a fiscal year which shall run from July 1st to June 30th of the following calendar year.
- xi. Maintain familiarity with OMES requirements for submission of invoices, including but not limited to:
 - a. Preparing a system for subcontractors to submit invoices and supporting information to the Manager.
 - b. Manager submits supported invoices monthly to OCC.
 - c. OCC will issue payment directly to the subcontractor for approved invoices.
- xii. Develop and assist OCC with preparing any audits and reports required by OCC, Oklahoma State Auditor, and Inspector, IJA and DOI.

- xiii. Comply with the procedures and guidelines established by OCC, but you may request amendments, modifications, or deletions. The Manager does not have the authority to develop or interpret OCC's procedures or guidelines related to the Program. Any dispute between the Manager and any contractor must be submitted to OCC for resolution.
- xiv. Treat all competitive and financial information received as confidential and proprietary, and release such information only with written approval from OCC.
- xv. Promptly respond to OCC requests for information pertaining to the Program.
- xvi. Maintain adequate principal liability insurance coverage, criminal liability coverage, and a sufficient umbrella liability policy.
- xvii. The Manager must maintain a physical office within the State of Oklahoma where all hard copies of information will be retained. Digital storage is preferred and must be kept in a secure cloud storage system approved by OCC, which will always have access to all stored information.
- xviii. Upon request, the Manager is expected to attend in-person meetings at OCC's primary office in Oklahoma City. Meetings via Teams or other agreed-upon platforms may be held at OCC's sole discretion.
- xix. Upon request, the Manager shall be expected to attend and/or present information to OCC in a public meeting.
- xx. The Manager, in coordination with OCC, will establish a fixed price for a subcontractor to perform methane testing for each well. For all other services, the Manager will select subcontractors through a competitive bidding process to ensure methane testing is conducted in the most cost-effective manner. All subcontractors must be registered suppliers with OMES and listed on the OMES supplier list.
 - a. https://financials.ok.gov/psc/SOKLFPRDS/SUPPLIER/ERP/c/NUI_FRAMEWORK.PT_LANDINGPAGE.GBL
- xxi. Data, records, and other materials collected or created by the Manager for this project are the property of OCC. This information must be maintained in a manner that allows access for at least ten years from the date of creation. Before destroying any such materials, the Manager must notify OCC to allow them the opportunity to take custody of the materials, if desired.

3.2 Executive Summary and Company Information are on Exhibit 02: Executive Summary and Company Information.

3.3 The response to pricing shall be proposed using supplier's own Price Template labeled Exhibit# 03: Price Template.

- i. Pricing shall be proposed of a detailed breakdown showing the supplier staffing roles necessary to complete the work; price broken down per month and annually over the contractual period, from date of award through June 30, 2025; include all information concerning fees, other costs, and any other information relevant to the total cost.
- ii. Deliverable-based pricing with proposed milestones and associated payments.

- iii. Hourly rates and roles for additional professional services in connection with the Project including, without limitation, maintenance and support services and enhancement services to the extent not included in a mutually agreed Statement of Work.
- iv. Subscription and/or other pricing for post-warranty ongoing maintenance and support; and

3.4 Business References are to be on Exhibit 04: Bidder Reference Worksheet.

3.5 Third-party vendor information is included on Exhibit 05: Third Party Supplier Information.

- i. Provide a company history, including relationship to the Program Manager, clients for whom both entities have collaborated, and the products and/or services proposed by the third-party supplier. Additionally, explain how these products and/or services will interface with the Manager's solution.
- ii. Include the names of executive and professional – such as analysts, auditors, researchers, programmers, consultants - who will be involved in the work. Specify their physical locations during their engagement in the Program.
- iii. Key personnel include those responsible for coordinating and planning the testing, plugging, remediation, and reclamation efforts, including supervisors, accountants, lawyers, and others involved in the Program. Please also include resumes for these personnel.

II. STATE OF OKLAHOMA NON-NEGOTIABLE GENERAL TERMS

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

1 Scope and Contract Renewal

- 1.1 Supplier may not add products or services to its offerings under the Contract without the State's prior written approval. Such request may require a competitive bid of the additional products or services. If the need arises for goods or services outside the scope of the Contract, Supplier shall contact the State.
- 1.2 At no time during the performance of the Contract shall the Supplier have the authority to obligate any Customer for payment for any products or services (a) when a corresponding encumbering document is not signed or (b) over and above an awarded Contract amount. Likewise, Supplier is not entitled to compensation for a product or service provided by or on behalf of Supplier that is neither requested nor accepted as satisfactory.
- 1.3 If applicable, prior to any Contract renewal, the State shall subjectively consider the value of the Contract to the State, the Supplier's performance under the Contract, and shall review certain other factors, including but not limited to the: a) terms and conditions of Contract documents to determine validity with current State and other applicable statutes and rules; b) current pricing and discounts offered by Supplier; and c) current products, services and support offered by Supplier. If the State determines changes to the Contract are required as a condition precedent to renewal, the State and Supplier will cooperate in good faith to evidence such required changes in an Amendment. Further, any request for a price increase in connection with a renewal or otherwise will be conditioned on the Supplier providing appropriate documentation supporting the request.
- 1.4 Upon mutual agreement, the Parties may extend the Contract for ninety (90) days beyond a final renewal term. The Parties may to the extent allowable by law, choose to exercise subsequent ninety (90) day extensions.
- 1.5 Supplier understands that supplier registration expires annually and, pursuant to OAC 260:115-3-3, Supplier shall maintain its supplier registration with the State as a precondition to a renewal of the Contract.

2 Contract Effectiveness

- 2.1 Unless specifically agreed in writing otherwise, the Contract is effective upon the date last signed by the parties. Supplier shall not commence work, commit funds, incur costs, or in any way act to obligate the State until a proper purchase order has been issued.
- 2.2 Any Contract document shall be legibly written in ink or typed. All Contract transactions, and any Contract document related thereto, may be conducted by electronic means pursuant to the Oklahoma Uniform Electronic Transactions Act.

3 Modification of Contract Terms and Contract documents

- 3.1 The Contract may only be modified, amended, or expanded by an Amendment. Any change to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials made unilaterally by the Supplier, is a material breach of the Contract. Unless otherwise specified by applicable law or rules, such changes, including without limitation, any unauthorized written Contract modification, shall be void and without effect and the Supplier shall not be entitled to any claim under the Contract based on those changes. No oral statement of any person shall modify or otherwise affect the terms, conditions, or specifications stated in the Contract.
- 3.2 Any additional terms on an ordering document provided by Supplier are of no effect and are void unless mutually executed. OMES bears no liability for performance, payment or failure thereof by the Supplier or by a customer other than OMES in connection with an Acquisition.
- 3.3 Except for information deemed confidential by the State pursuant to applicable law, rule, regulation, or policy, the parties agree Contract terms are not confidential and are disclosable without further approval of or notice to Supplier.
- 3.4 Unless mutually agreed to in writing by the State of Oklahoma by and through the Office of Management and Enterprise Services, no Contract document or other terms and conditions or clauses, including via a hyperlink or uniform resource locator, shall supersede or conflict with the terms of this Contract or expand the State's or Customer's liability or reduce the rights of Customer or the State.
- 3.5 To the extent any term or condition in any Contract document, including via a hyperlink or uniform resource locator, conflicts with an applicable Oklahoma and/or United States law or regulation, such term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, the State or Customer makes no representation or warranty

regarding the enforceability of such term or condition and the State or Customer does not waive the applicable Oklahoma and/or United States law or regulation which conflicts with the term or condition.

4 Pricing

- 4.1** Pursuant to 68 O.S. §§ 1352, 1356, and 1404, State agencies are exempt from the assessment of State sales, use, and excise taxes. Further, State agencies and political subdivisions of the State are exempt from Federal Excise Taxes pursuant to Title 26 of the United States Code. Any taxes of any nature whatsoever payable by the Supplier shall not be reimbursed.
- 4.2** Pursuant to 74 O.S. §85.40, all travel expenses of Supplier must be included in the total Acquisition price.
- 4.3** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery, and handling fees. All product deliveries will be free on board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery
- 4.4** Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance
- 4.5** Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

5 Invoices and Payments

- 5.1** Supplier shall be paid upon submission of a proper invoice(s) at the prices stipulated in the Contract in accordance with 74 O.S. §85.44B which requires that payment be made only after products have been provided and accepted or

services rendered and accepted This section shall not prohibit the payment of membership dues or payment for subscriptions to magazines, periodicals or books or for payment to vendors providing subscription services under 74 O.S. 85.44B.

The following terms additionally apply:

- A.** An invoice shall contain the purchase order number, description of products or services provided and the dates of such provision.
- B.** Failure to provide a timely and proper invoice may result in delay of processing the invoice for payment. Proper invoice is defined at OAC 260:10-1-2.
- C.** Payment of all fees under the Contract shall be due NET 30 days but shall not be deemed late until 45 days. Payment and interest on late payments are governed by 62 O.S. §34.72. Such interest is the sole and exclusive remedy for late payments by a state agency and no other late fees are authorized to be assessed pursuant to Oklahoma law.
- D.** The date from which an applicable early payment discount time is calculated shall be from the receipt date of a proper invoice. There is no obligation, however, to utilize an early payment discount.
- E.** If an overpayment or underpayment has been made to Supplier any subsequent payments to Supplier under the Contract may be adjusted to correct the account. A written explanation of the adjustment will be issued to Supplier.
- F.** If the Supplier accepts payment by Purchase Card they shall do so according to Oklahoma law.

6 Oklahoma Open Records Act

Supplier acknowledges that all State agencies and certain other Customers are subject to the Oklahoma Open Records Act set forth at 51 O.S. §24A-1 et seq. Supplier also acknowledges that compliance with the Oklahoma Open Records Act and all opinions of the Oklahoma Attorney General concerning the Act is required. Customer may be provided access to Supplier Confidential Information. State agencies are subject to the Oklahoma Open Records Act and Supplier acknowledges information marked confidential information will be disclosed to the extent permitted under the Open Records Act and in accordance with this section. Nothing herein is intended to waive the State Purchasing Director's authority under OAC 260:115-3-9 in connection with Bid information requested

to be held confidential by a bidder. Notwithstanding the foregoing, Supplier Confidential Information shall not include information that: (i) is or becomes generally known or available by public disclosure, commercial use or otherwise and is not in contravention of this Contract; (ii) is known and has been reduced to tangible form by the receiving party before the time of disclosure for the first time under this Contract and without other obligations of confidentiality; (iii) is independently developed without the use of any of Supplier Confidential Information; (iv) is lawfully obtained from a third party (without any confidentiality obligation) who has the right to make such disclosure or (v) pricing provided to the State. In addition, the obligations in this section shall not apply to the extent that the applicable law or regulation requires disclosure of Supplier Confidential Information, provided that the Customer provides reasonable written notice, pursuant to Contract notice provisions, to the Supplier so that the Supplier may promptly seek a protective order or other appropriate remedy.

7 Conflict of Interest

In addition to any requirement of law or of a professional code of ethics or conduct, the Supplier, its employees are required to disclose any outside activity or interest that conflicts or may conflict with the best interest of the State. Prompt disclosure is required under this section if the activity or interest is related, directly or indirectly, to any person or entity currently under contract with or seeking to do business with the State, its employees or any other third-party individual or entity awarded a contract with the State. Further, as long as the Supplier has an obligation under the Contract, any plan, preparation or engagement in any such activity or interest shall not occur without prior written approval of the State. Any conflict of interest shall, at the sole discretion of the State, be grounds for partial or whole termination of the Contract.

8 State Shall Not Indemnify

The State of Oklahoma cannot lawfully agree to indemnify a private contractor. The credit of the State shall not be given, pledged, or loaned to any individual, company, corporation, or association, municipality, or political subdivision of the State pursuant to Oklahoma Constitution article 10, Section 15, OAC 260:115-7-32(k)(3)(A) and Attorney General Opinion 2012-18.

9 Indemnification Coordination of Defense

9.1 In connection with indemnification obligations under the Contract, when a State agency is a named defendant in any filed or threatened lawsuit, the defense of the State agency shall be coordinated by the Attorney General of Oklahoma, or the Attorney General may authorize the Supplier to control the defense and any related settlement negotiations; provided, however, Supplier shall not agree to any settlement of claims against the State without obtaining advance written

concurrence from the Attorney General. If the Attorney General does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall have authorization to equally participate in any proceeding related to the indemnity obligation under the Contract and shall remain responsible to indemnify the applicable Indemnified Parties.

10 Termination for Funding Insufficiency

- 10.1** Notwithstanding anything to the contrary in any Contract document, the State may terminate the Contract in whole or in part if funds sufficient to pay obligations under the Contract are not appropriated or received from an intended third-party funding source. In the event of such insufficiency, Supplier will be provided at least fifteen (15) calendar days' written notice of termination. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated. The determination by the State of insufficient funding shall be accepted by, and shall be final and binding on, the Supplier.
- 10.2** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contractor certain obligations are terminated shall be refunded.
- 10.3** The State's exercise of its right to terminate the Contract under this section shall not be considered a default or breach under the Contract or relieve the Supplier of any liability for claims arising under the Contract.

11 Suspension of Supplier

- 11.1** Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.
- 11.2** Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the

incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

11.3 Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

12 Certification Regarding Debarment, Suspension, and Other Responsibility Matters

The certification made by Supplier with respect to Debarment, Suspension, certain indictments, convictions, civil judgments and terminated public contracts is a material representation of fact upon which reliance was placed when entering into the Contract. A determination that Supplier knowingly rendered an erroneous certification, in

addition to other available remedies, may result in whole or partial termination of the Contract for Supplier's default. Additionally, Supplier shall promptly provide written notice to the State Purchasing Director if the certification becomes erroneous due to changed circumstances.

13 Certification Regarding State Employees Prohibition from Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

14 Notices

All notices, approvals or requests allowed or required by the terms of any Contract shall be in writing, reference the Contract with specificity and deemed delivered upon receipt

or upon refusal of the intended party to accept receipt of the notice. Notice information may be updated in writing to the other party as necessary.

In addition to other notice requirements in the Contract and the designated Supplier contact provided in a successful Bid, notices shall be sent to the State at the email address set forth below.

Notwithstanding any other provision of the Contract, confidentiality, breach and termination-related notices shall be delivered to the address below in addition to e-mail.

If sent to the State:

State Purchasing Director
2401 North Lincoln Blvd., Second Floor
Oklahoma City, Oklahoma 73105

With a copy, which shall not constitute notice, to:

Purchasing Division Deputy General Counsel
2401 North Lincoln Blvd., Second Floor
Oklahoma City, Oklahoma 73105

15 Miscellaneous

15.1 Choice of Law and Venue

Any claim, dispute, or litigation relating to the Contract documents, in the singular or in the aggregate, shall be governed by the laws of the State of Oklahoma without regard to application of choice of law principles. Pursuant to 74 O.S. §85.7(F), where Federal awards are involved, applicable federal laws, rules and regulations shall govern to the extent necessary to insure ensure compliance with the terms of the Federal award. Venue for any action, claim, dispute, or litigation relating in any way to the Contract documents, shall be in Oklahoma County, Oklahoma. The State expressly declines any terms that minimize its rights under Oklahoma Law, including but not limited to, Statutes of Limitations.

15.2 Employment Relationship

The Contract does not create an employment relationship. Individuals providing products or performing services pursuant to the Contract are not employees of the State or Customer and, accordingly are not eligible for any rights or benefits whatsoever accruing to such employees.

15.3 Failure to Enforce

Failure by the State or a Customer at any time to enforce a provision of, or exercise a right under, the Contract shall not be construed as a waiver of any such provision. Such failure to enforce or exercise shall not affect the validity of any Contract document, or any part thereof, or the right of the State or a Customer to enforce any provision of, or exercise any right under, the Contract at any time in accordance with its terms. Likewise, a waiver of a breach of any provision of a Contract document shall not affect or waive a subsequent breach of the same provision or a breach of any other provision in the Contract.

15.4 Invalid Term or Condition

To the extent any term or condition in the Contract conflicts with a compulsory applicable State or United States law or regulation, such Contract term or condition is void and unenforceable. By executing any Contract document which contains a conflicting term or condition, no representation or warranty is made regarding the enforceability of such term or condition. Likewise, any applicable State or federal law or regulation which conflicts with the Contract or any non-conflicting applicable State or federal law or regulation is not waived.

15.5 Severability

If any provision of a Contract document, or the application of any term or condition to any party or circumstances, is held invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable and the application of such provision to other parties or circumstances shall remain valid and in full force and effect. If a court finds that any provision of this contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

15.6 Section Headings

The headings used in any Contract document are for convenience only and do not constitute terms of the Contract.

15.7 Sovereign Immunity

Notwithstanding any provision in the Contract, the Contract is entered into subject to the State's Constitution, statutes, common law, regulations, and the doctrine of sovereign immunity, none of which are waived by the State nor any other right or defense available to the State; provided, however, that the parties hereby agree that the doctrine of sovereign immunity does not apply to actions

grounded in contract and therefore does not prohibit Supplier from pursuing claims arising under the Contract against the State and Customers.

15.8 Survival

As applicable, performance under all license, subscription, service agreements, statements of work, transition plans and other similar Contract documents entered into between the parties under the terms of the Contract shall survive Contract expiration. Additionally, rights and obligations under the Contract which by their nature should survive including, without limitation, certain payment obligations invoiced prior to expiration or termination; confidentiality obligations; security incident and data breach obligations and indemnification obligations, remain in effect after expiration or termination of the Contract.

15.9 Gratuities

The Contract may be immediately terminated, in whole or in part, by written notice if it is determined that the Supplier, its authorized employee, agent, or another representative acting within the scope of their authority violated any federal, State, or local law, rule or ordinance by offering or giving a gratuity to any State employee directly involved in the Contract. In addition, Suspension or Debarment of the Supplier may result from such a violation.

15.10 Import/Export Controls

Neither party will use, distribute, transfer, or transmit any equipment, services, software, or technical information provided under the Contract (even if incorporated into other products) except in compliance with all applicable import and export laws, conventions and regulations.

ATTACHMENT B

STATE OF OKLAHOMA NEGOTIABLE GENERAL TERMS

This State of Oklahoma General Terms (“General Terms”) is a Contract document in connection with a Contract awarded by the Office of Management and Enterprise Services on behalf of the State of Oklahoma.

In addition to other terms contained in an applicable Contract document, Supplier and State agree to the following General Terms:

1 Contract Order of Priority

1.1 Contract documents shall be read to be consistent and complementary. Any conflict among the Contract documents shall be resolved by giving priority to Contract documents in the following order of precedence:

- A.** any Amendment.
- B.** terms contained in this Contract document.
- C.** any Contract-specific State terms contained in a Contract document including, without limitation, information technology terms and terms specific to a statewide Contract or a State agency Contract.
- D.** any applicable Solicitation.
- E.** any successful Bid as may be amended through negotiation and to the extent the Bid does not otherwise conflict with the Solicitation, Contract, or applicable law.
- F.** any statement of work, work order, or other mutually agreed Contract documents.

1.2 If there is a conflict between the terms contained in this Contract document or in Contract-specific terms and an agreement provided by or on behalf of Supplier including but not limited to linked or supplemental documents which alter or diminish the rights of Customer or the State, the conflicting terms provided by Supplier shall not take priority over this Contract document or Acquisition-specific terms. In no event will any linked document alter or override such referenced terms except as specifically agreed in an Amendment.

2 Definitions

In addition to any defined terms set forth elsewhere in the Contract, the Oklahoma Central Purchasing Act and the Oklahoma Administrative Code, Title 260, the parties agree that, when used in the Contract, the following terms are defined as set forth below and may be used in the singular or plural form:

- 2.1 **Acquisition** means items, products, materials, supplies, services, and equipment acquired by purchase, lease purchase, lease with option to purchase, value provided or rental under the Contract.
- 2.2 **Amendment** means any mutually executed, written modification to a Contract document or a written change, addition, correction, or revision to a Solicitation.
- 2.3 **Bid** means an offer a Bidder submits in response to the Solicitation.
- 2.4 **Bidder** means an individual or business entity that submits a Bid in response to the Solicitation.
- 2.5 **Contract** means the written, mutually agreed and binding legal relationship resulting from the Contract documents and an appropriate encumbering document as may be amended from time to time, which evidences the final agreement between the parties with respect to the subject matter of the Contract.
- 2.6 **Customer** means the entity receiving goods or services contemplated by the Contract.
- 2.7 **Debarment** means action taken by a debarring official under federal or state law or regulations to exclude any business entity from inclusion on the Supplier list; bidding; offering to bid; providing a quote; receiving an award of contract with the State and may also result in cancellation of existing contracts with the State.
- 2.8 **Destination** means delivered to the receiving dock or other point specified in the applicable Contract document.
- 2.9 **Federal award** means the Federal financial assistance that a recipient receives directly from a federal awarding agency or indirectly from a pass-through entity
- 2.10 **Governmental Entity** means any governmental entity specified as a political subdivision of the State pursuant to the Governmental Tort Claim Act including any associated institution, instrumentality, board, commission, committee, department, or other entity designated to act on behalf of the state.

- 2.11 Indemnified Parties** means the State and Customer and/or its officers, directors, agents, employees, representatives, contractors, assignees, and designees thereof.
- 2.12 Inspection** means examining and testing an Acquisition (including, when appropriate, raw materials, components, and intermediate assemblies) to determine whether the Acquisition meets Contract requirements.
- 2.13 Moral Rights** means any and all rights of paternity or integrity of the Work Product and the right to object to any modification, translation or use of the Work Product and any similar rights existing under the judicial or statutory law of any country in the world or under any treaty, regardless of whether or not such right is denominated or referred to as a moral right.
- 2.14 OAC** means the Oklahoma Administrative Code.
- 2.15 OMES** means the Office of Management and Enterprise Services.
- 2.16 Solicitation** means the document inviting Bids for the Acquisition referenced in the Contract and any amendments thereto.
- 2.17 State** means the government of the state of Oklahoma, its employees, and authorized representatives, including without limitation any department, agency, or other unit of the government of the state of Oklahoma.
- 2.18 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State.
- 2.19 Suspension** means action taken by a suspending official under federal or state law or regulations to suspend a Supplier from inclusion on the Supplier list; be eligible to submit Bids to State agencies and be awarded a contract by a state agency subject to the Central Purchasing Act.
- 2.20 Supplier Confidential Information** means certain confidential and proprietary information of Supplier that is clearly marked as confidential and agreed by the State Purchasing Director or Customer, as applicable, but does not include information excluded from confidentiality in provisions of the Contract or the Oklahoma Open Records Act.
- 2.21 Work Product** means any and all deliverables produced by Supplier under a statement of work or similar Contract document issued pursuant to this Contract, including any and all tangible or intangible items or things that have been or will be prepared, created, developed, invented or conceived at any time following the Contract effective date including but not limited to any (i) works

of authorship (such as manuals, instructions, printed material, graphics, artwork, images, illustrations, photographs, computer programs, computer software, scripts, object code, source code or other programming code, HTML code, flow charts, notes, outlines, lists, compilations, manuscripts, writings, pictorial materials, schematics, formulae, processes, algorithms, data, information, multimedia files, text web pages or web sites, other written or machine readable expression of such works fixed in any tangible media, and all other copyrightable works), (ii) trademarks, service marks, trade dress, trade names, logos, or other indicia of source or origin, (iii) ideas, designs, concepts, personality rights, methods, processes, techniques, apparatuses, inventions, formulas, discoveries, or improvements, including any patents, trade secrets and know-how, (iv) domain names, (v) any copies, and similar or derivative works to any of the foregoing, (vi) all documentation and materials related to any of the foregoing, (vii) all other goods, services or deliverables to be provided by or on behalf of Supplier under the Contract and (viii) all Intellectual Property Rights in any of the foregoing, and which are or were created, prepared, developed, invented or conceived for the use of benefit of Customer in connection with this Contract or with funds appropriated by or for Customer or Customer's benefit (a) by any Supplier personnel or Customer personnel or (b) any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.

3 Additional Pricing

- 3.1** The price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery, and handling fees. All product deliveries will be free on-board Customer's Destination. No additional fees shall be charged by Supplier for standard shipping and handling. If Customer requests expedited or special delivery, Customer may be responsible for any charges for expedited or special delivery.
- 3.2** Supplier shall have no right of setoff.
- 3.3** Because funds are typically dedicated to a particular fiscal year, an invoice will be paid only when timely submitted, which shall in no instance be later than six (6) months after the end of the fiscal year in which the goods are provided or services performed.

4 **Ordering, Inspection, and Acceptance**

- 4.1** Any product or service furnished under the Contract shall be ordered by issuance of a valid purchase order or other appropriate payment mechanism, including a pre-encumbrance, or by use of a valid Purchase Card. All orders and transactions are governed by the terms and conditions of the Contract. Any purchase order or other applicable payment mechanism dated prior to termination or expiration of the Contract shall be performed unless mutually agreed in writing otherwise.
- 4.2** Services will be performed in accordance with industry best practices and are subject to acceptance by the Customer. Notwithstanding any other provision in the Contract, deemed acceptance of a service or associated deliverable shall not apply automatically upon receipt of a deliverable or upon provision of a service.

Supplier warrants and represents that a product or deliverable furnished by or through the Supplier shall individually, and where specified by Supplier to perform as a system, be substantially uninterrupted and error-free in operation and guaranteed against faulty material and workmanship for a warranty period of the greater of ninety (90) days from the date of acceptance or the maximum allowed by the manufacturer. A defect in a product or deliverable furnished by or through the Supplier shall be repaired or replaced by Supplier at no additional cost or expense to the Customer if such defect occurs during the warranty period.

Any product to be delivered pursuant to the Contract shall be subject to final inspection and acceptance by the Customer at Destination. The Customer assumes no responsibility for a product until accepted by the Customer. Title and risk of loss or damage to a product shall be the responsibility of the Supplier until accepted. The Supplier shall be responsible for filing, processing, and collecting any and all damage claims accruing prior to acceptance.

Pursuant to OAC 260:115-9-1, payment for an Acquisition does not constitute final acceptance of the Acquisition. If subsequent inspection affirms that the Acquisition does not meet or exceed the specifications of the order or that the Acquisition has a latent defect, the Supplier shall be notified as soon as is reasonably practicable. The Supplier shall retrieve and replace the Acquisition at Supplier's expense or, if unable to replace, shall issue a refund to Customer. Refund under this section shall not be an exclusive remedy.

- 4.3** Supplier shall deliver products and services on or before the required date specified in a Contract document. Failure to deliver timely may result in liquidated damages as set forth in the applicable Contract document. Deviations, substitutions, or changes in a product or service, including changes of personnel directly providing services, shall not be made unless expressly authorized in writing by the Customer. Any substitution of personnel directly providing services shall be a person of comparable or greater skills, education, and experience for performing the services as the person being replaced. Additionally, Supplier shall provide staff sufficiently experienced and able to perform with respect to any transitional services provided by Supplier in connection with termination or expiration of the Contract.
- 4.4** Product warranty and return policies and terms provided under any Contract document will not be more restrictive or more costly than warranty and return policies and terms for other similarly situated customers for a like product.

5 Maintenance of Insurance, Payment of Taxes, and Workers' Compensation

- 5.1** As a condition of this Contract, Supplier shall procure at its own expense, and provide proof of, insurance coverage with the applicable liability limits set forth below and any approved subcontractor of Supplier shall procure and provide proof of the same coverage. The required insurance shall be underwritten by an insurance carrier with an A.M. Best rating of A- or better.

Such proof of coverage shall additionally be provided to the Customer if services will be provided by any of Supplier's employees, agents, or subcontractors at any Customer premises and/or employer vehicles will be used in connection with performance of Supplier's obligations under the Contract. Supplier may not commence performance hereunder until such proof has been provided. Additionally, Supplier shall ensure each insurance policy includes a notice of cancellation and includes the State and its agencies as certificate holder and shall promptly provide proof to the State of any renewals, additions, or changes to such insurance coverage. Supplier's obligation to maintain insurance coverage under the Contract is a continuing obligation until Supplier has no further obligation under the Contract. Any combination of primary and excess or umbrella insurance may be used to satisfy the limits of coverage for Commercial General Liability, Auto Liability and Employers' Liability. Unless agreed between the parties and approved by the State Purchasing Director, the minimum acceptable insurance limits of liability are as follows:

- A.** Workers' Compensation and Employer's Liability Insurance in accordance with and to the extent required by applicable law.

- B.** Commercial General Liability Insurance covering the risks of personal injury, bodily injury (including death) and property damage, including coverage for contractual liability, with a limit of liability of not less than \$2,000,000 per occurrence.
- C.** Automobile Liability Insurance with limits of liability of not less than \$2,000,000 combined single limit each accident.
- D.** If the Supplier will access, process, or store state data, then Security and Privacy Liability insurance, including coverage for failure to protect confidential information and failure of the security of Supplier's computer systems that results in unauthorized access to Customer data with limits \$5,000,000 per occurrence; and
- E.** Additional coverage required in writing in connection with a particular Acquisition.

5.2 Supplier shall be entirely responsible during the existence of the Contract for the liability and payment of taxes payable by or assessed to Supplier or its employees, agents, and subcontractors of whatever kind, in connection with the Contract. Supplier further agrees to comply with all state and federal laws applicable to any such persons, including laws regarding wages, taxes, insurance, and Workers' Compensation. Neither Customer nor the State shall be liable to the Supplier, its employees, agents, or others for the payment of taxes or the provision of unemployment insurance and/or Workers' Compensation or any benefit available to a State or Customer employee.

5.3 Supplier agrees to indemnify Customer, the State, and its employees, agents, representatives, contractors, and assignees for any and all liability, actions, claims, demands, or suits, and all related costs and expenses (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) relating to tax liability, unemployment insurance and/or Workers' Compensation in connection with its performance under the Contract.

6 Compliance with Applicable Laws

6.1 As long as Supplier has an obligation under the terms of the Contract and in connection with performance of its obligations, the Supplier represents its present compliance, and shall have an ongoing obligation to comply, with all applicable federal, State, and local laws, rules, regulations, ordinances, and orders, as amended, including but not limited to the following:

- A.** Drug-Free Workplace Act of 1988 set forth at 41 U.S.C. §81.

- B.** Section 306 of the Clean Air Act, Section 508 of the Clean Water Act, Executive Order 11738, and Environmental Protection Agency Regulations which prohibit the use of facilities included on the EPA List of Violating Facilities under nonexempt federal contracts, grants or loans.
- C.** Prospective participant requirements set at 45 C.F.R. part 76 in connection with Debarment, Suspension, and other responsibility matters.
- D.** 1964 Civil Rights Act, Title IX of the Education Amendment of 1972, Section 504 of the Rehabilitation Act of 1973, Americans with Disabilities Act of 1990, and Executive Orders 11246 and 11375.
- E.** Anti-Lobbying Law set forth at 31 U.S.C. §1325 and as implemented at 45 C.F.R. part 93.
- F.** Requirements of Internal Revenue Service Publication 1075 regarding use, access and disclosure of Federal Tax Information (as defined therein).
- G.** Obtaining certified independent audits conducted in accordance with Government Auditing Standards and Office of Management and Budget Uniform Guidance, 2 CFR 200 Subpart F §200.500 et seq. with approval and work paper examination rights of the applicable procuring entity.
- H.** Requirements of the Oklahoma Taxpayer and Citizen Protection Act of 2007, 25 O.S. §1312 and applicable federal immigration laws and regulations and be registered and participate in the Status Verification System. The Status Verification System is defined at 25 O.S. §1312, includes but is not limited to the free Employment Verification Program (E-Verify) through the Department of Homeland Security, and is available at [Home | E-Verify](#);
- I.** Requirements of the Health Insurance Portability and Accountability Act of 1996; Health Information Technology for Economic and Clinical Health Act; Payment Card Industry Security Standards; Criminal Justice Information System Security Policy and Security Addendum; and Family Educational Rights and Privacy Act; and
- J.** Be registered as a business entity licensed to do business in the State, have obtained a sales tax permit, and be current on franchise tax payments to the State, as applicable.

- 6.2** The Supplier's employees, agents and subcontractors shall adhere to applicable Customer policies including, but not limited to acceptable use of Internet and electronic mail, facility, and data security, press releases, and public relations. As applicable, the Supplier shall adhere to the State Information Security Policy, Procedures, Guidelines set forth at [Information Security Policy, Procedures, Guidelines \(oklahoma.gov\)](#) Supplier is responsible for reviewing and relaying such policies covering the above to the Supplier's employees, agents and subcontractors.
- 6.3** At no additional cost to Customer, the Supplier shall maintain all applicable licenses and permits required in association with its obligations under the Contract.
- 6.4** In addition to compliance under subsection 6.1 above, Supplier shall have a continuing obligation to comply with applicable Customer-specific mandatory contract provisions required in connection with the receipt of federal funds or other funding source.
- 6.5** The Supplier is responsible to review and inform its employees, agents, and subcontractors who provide a product or perform a service under the Contract of the Supplier's obligations under the Contract and Supplier certifies that its employees and each such subcontractor shall comply with minimum requirements and applicable provisions of the Contract. At the request of the State, Supplier shall promptly provide adequate evidence that such persons are its employees, agents or approved subcontractors and have been informed of their obligations under the Contract.
- 6.6** As applicable, Supplier agrees to comply with the Governor's Executive Orders related to the use of any tobacco product, electronic cigarette, or vaping device on any and all properties owned, leased, or contracted for use by the State, including but not limited to all buildings, land and vehicles owned, leased, or contracted for use by agencies or instrumentalities of the State.
- 6.7** The execution, delivery and performance of the Contract and any ancillary documents by Supplier will not, to the best of Supplier's knowledge, violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third party.
- 6.8** Supplier represents that it has the ability to pay its debts when due and it does not anticipate the filing of a voluntary or involuntary bankruptcy petition or appointment of a receiver, liquidator or trustee.

- 6.9** Supplier represents that, to the best of its knowledge, any litigation or claim or any threat thereof involving Supplier has been disclosed in writing to the State and Supplier is not aware of any other litigation, claim or threat thereof.
- 6.10** If services provided by Supplier include delivery of an electronic communication, Supplier shall ensure such communication and any associated support documents are compliant with Section 508 of the Federal Rehabilitation Act and with State standards regarding accessibility. Should any communication or associated support documents be non-compliant, Supplier shall correct and re-deliver such communication immediately upon discovery or notice, at no additional cost to the State. Additionally, as part of compliance with accessibility requirements where documents are only provided in non-electronic format, Supplier shall promptly provide such communication and any associated support documents in an alternate format usable by individuals with disabilities upon request and at no additional cost, which may originate from an intended recipient or from the State.

7 Audits and Records Clause

- 7.1** As used in this clause and pursuant to 67 O.S. §203, “record” includes a document, book, paper, photograph, microfilm, computer tape, disk, record, sound recording, film recording, video record, accounting procedures and practices, and other data, regardless of type and regardless of whether such items are in written form, in the form of computer data, or in any other form.
- 7.2** Supplier agrees any pertinent federal or State agency or governing entity of a Customer shall have the right to examine and audit, at no additional cost to a Customer, all records relevant to the execution and performance of the Contract except, unless otherwise agreed, costs of Supplier that comprise pricing under the Contract.
- 7.3** The Supplier is required to retain records relative to the Contract for the duration of the Contract and for a period of seven (7) years following completion or termination of an Acquisition unless otherwise indicated in the Contract terms. If a claim, audit, litigation, or other action involving such records is started before the end of the seven-year period, the records are required to be maintained for two (2) years from the date that all issues arising out of the action are resolved, or until the end of the seven (7) year retention period, whichever is later.
- 7.4** Pursuant to 74 O.S. §85.41, if professional services are provided hereunder, all items of the Supplier that relate to the professional services are subject to examination by the State agency, State Auditor and Inspector and the State Purchasing Director.

8 Confidentiality

- 8.1** The Supplier shall maintain strict security of all State and citizen data and records entrusted to it or to which the Supplier gains access, in accordance with and subject to applicable federal and State laws, rules, regulations, and policies and shall use any such data and records only as necessary for Supplier to perform its obligations under the Contract. The Supplier further agrees to evidence such confidentiality obligation in a separate writing if required under such applicable federal or State laws, rules, and regulations. The Supplier warrants and represents that such information shall not be sold, assigned, conveyed, provided, released, disseminated, or otherwise disclosed by Supplier, its employees, officers, directors, subsidiaries, affiliates, agents, representatives, assigns, subcontractors, independent contractors, successor or any other persons or entities without Customer's prior express written permission. Supplier shall instruct all such persons and entities that the confidential information shall not be disclosed or used without the Customer's prior express written approval except as necessary for Supplier to render services under the Contract. The Supplier further warrants that it has a tested and proven system in effect designed to protect all confidential information.
- 8.2** Supplier shall establish, maintain, and enforce agreements with all such persons and entities that have access to State and citizen data and records to fulfill Supplier's duties and obligations under the Contract and to specifically prohibit any sale, assignment, conveyance, provision, release, dissemination or other disclosure of any State or citizen data or records except as required by law or allowed by written prior approval of the Customer.
- 8.3** Supplier shall immediately report to the Customer any and all unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State or citizen data or records of which it or its parent company, subsidiaries, affiliates, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors is aware or have knowledge or reasonable should have knowledge. The Supplier shall also promptly furnish to Customer full details of the unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure, or other dissemination, or attempt thereof, and use its best efforts to assist the Customer in investigating or preventing the reoccurrence of such event in the future. The Supplier shall cooperate with the Customer in connection with any litigation and investigation deemed necessary by the Customer to protect any State or citizen data and records and shall bear all costs associated with the investigation, response and recovery in connection with any breach of State or citizen data or records including but not limited to credit monitoring services with a term of

at least three (3) years, all notice-related costs and toll free telephone call center services.

- 8.4** Supplier further agrees to promptly prevent a reoccurrence of any unauthorized use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of State or citizen data and records.
- 8.5** Supplier acknowledges that any improper use, appropriation, sale, assignment, conveyance, provision, release, access, acquisition, disclosure or other dissemination of any State data or records to others may cause immediate and irreparable harm to the Customer and certain beneficiaries and may violate state or federal laws and regulations. If the Supplier or its affiliates, parent company, subsidiaries, employees, officers, directors, assignees, agents, representatives, independent contractors, and subcontractors improperly use, appropriate, sell, assign, convey, provide, release, access, acquire, disclose or otherwise disseminate such confidential information to any person or entity in violation of the Contract, the Customer will immediately be entitled to injunctive relief and/or any other rights or remedies available under this Contract, at equity or pursuant to applicable statutory, regulatory, and common law without a cure period.
- 8.6** The Supplier shall immediately forward to the State Purchasing Director, and any other applicable person listed in the Notices section(s) of the Contract, any request by a third party for data or records in the possession of the Supplier or any subcontractor or to which the Supplier or subcontractor has access and Supplier shall fully cooperate with all efforts to protect the security and confidentiality of such data or records in response to a third party request.

9 Assignment and Permitted Subcontractors

- 9.1** Supplier's obligations under the Contract may not be assigned or transferred to any other person or entity without the prior written consent of the State which may be withheld at the State's sole discretion. Should Supplier assign its rights to payment, in whole or in part, under the Contract, Supplier shall provide the State and all affected Customers with written notice of the assignment. Such written notice shall be delivered timely and contain details sufficient for affected Customers to perform payment obligations without any delay caused by the assignment.
- 9.2** Notwithstanding the foregoing, the Contract may be assigned by Supplier to any corporation or other entity in connection with a merger, consolidation, sale of all equity interests of the Supplier, or a sale of all or substantially all of the assets of the Supplier to which the Contract relates. In any such case, said

corporation or other entity shall by operation of law or expressly in writing assume all obligations of the Supplier as fully as if it had been originally made a party to the Contract. Supplier shall give the State and all affected Customers prior written notice of said assignment. Any assignment or delegation in violation of this subsection shall be void.

- 9.3** If the Supplier is permitted to utilize subcontractors in support of the Contract, the Supplier shall remain solely responsible for its obligations under the terms of the Contract, for its actions and omissions and those of its agents, employees and subcontractors and for payments to such persons or entities. Prior to a subcontractor being utilized by the Supplier, the Supplier shall obtain written approval of the State of such subcontractor and each employee, as applicable to a particular Acquisition, of such subcontractor proposed for use by the Supplier. Such approval is within the sole discretion of the State. Any proposed subcontractor shall be identified by entity name, and by employee name, if required by the particular Acquisition, in the applicable proposal and shall include the nature of the services to be performed. As part of the approval request, the Supplier shall provide a copy of a written agreement executed by the Supplier and subcontractor setting forth that such subcontractor is bound by and agrees, as applicable, to perform the same covenants and be subject to the same conditions and make identical certifications to the same facts and criteria, as the Supplier under the terms of all applicable Contract documents. Supplier agrees that maintaining such agreement with any subcontractor and obtaining prior written approval by the State of any subcontractor and associated employees shall be a continuing obligation. The State further reserves the right to revoke approval of a subcontractor or an employee thereof in instances of poor performance, misconduct or for other similar reasons.
- 9.4** All payments under the Contract shall be made directly to the Supplier, except as provided in subsection A above regarding the Supplier's assignment of payment. No payment shall be made to the Supplier for performance by unapproved or disapproved employees of the Supplier or a subcontractor.
- 9.5** Rights and obligations of the State or a Customer under the terms of this Contract may be assigned or transferred, at no additional cost, to other Customer entities.

10 Background Checks and Criminal History Investigations

Prior to the commencement of any services, performance of background checks and criminal history investigations of the Supplier's employees and subcontractors who will be providing services may be required. If required, the Supplier agree to provide the State with a description of the background check process to include any vendor's

used to gather information. Supplier will further attest that each employee and subcontractor providing services has passed the background check. Supplier's access to facilities, data and information may be withheld prior to completion of background verification acceptable to the State. The costs of additional background checks beyond Supplier's normal hiring practices shall be the responsibility of the Customer unless such additional background checks are required solely because Supplier will not provide verification of results of its otherwise acceptable normal background checks; in such an instance, Supplier shall pay for the additional background checks. Supplier will coordinate with the State and its employees to complete the necessary background checks and criminal history investigations. Should any employee or subcontractor of the Supplier who will be providing services under the Contract not be acceptable as a result of the background check or criminal history investigation, the Customer may require replacement of the employee or subcontractor in question and, if no suitable replacement is made within a reasonable time, terminate the purchase order or other payment mechanism associated with the project or services.

11 Patents and Copyrights

Without exception, a product or deliverable price shall include all royalties or costs owed by the Supplier to any third party arising from the use of a patent, intellectual property, copyright, or other property right held by such third party. Should any third party threaten or make a claim that any portion of a product or service provided by Supplier under the Contract infringes that party's patent, intellectual property, copyright or other property right, Supplier shall enable each affected Customer to legally continue to use, or modify for use, the portion of the product or service at issue or replace such potentially infringing product, or re-perform or redeliver in the case of a service, with at least a functional non-infringing equivalent. Supplier's duty under this section shall extend to include any other product or service rendered materially unusable as intended due to replacement or modification of the product or service at issue. If the Supplier determines that none of these alternatives are reasonably available, the State shall return such portion of the product or deliverable at issue to the Supplier, upon written request, in exchange for a refund of the price paid for such returned goods as well as a refund or reimbursement, if applicable, of the cost of any other product or deliverable rendered materially unusable as intended due to removal of the portion of product or deliverable at issue. Any remedy provided under this section is not an exclusive remedy and is not intended to operate as a waiver of legal or equitable remedies because of acceptance of relief provided by Supplier.

12 Indemnification

12.1 Acts or Omissions

- A.** Supplier shall defend and indemnify the Indemnified Parties, as applicable, for any and all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising out of, or resulting from any action or claim for bodily injury, death, or property damage brought against any of the Indemnified parties to the extent arising from any negligent act or omission or willful misconduct of the Supplier or its agents, employees, or subcontractors in the execution or performance of the Contract.
- B.** To the extent Supplier is found liable for loss, damage, or destruction of any property of Customer due to negligence, misconduct, wrongful act, or omission on the part of the Supplier, its employees, agents, representatives, or subcontractors, the Supplier and Customer shall use best efforts to mutually negotiate an equitable settlement amount to repair or replace the property unless such loss, damage or destruction is of such a magnitude that repair or replacement is not a reasonable option. Such amount shall be invoiced to, and is payable by, Supplier sixty (60) calendar days after the date of Supplier's receipt of an invoice for the negotiated settlement amount.

12.2 Infringement

Supplier shall indemnify the Indemnified Parties, as applicable, for all liability, claims, damages, losses, costs, expenses, demands, suits and actions of third parties (including without limitation reasonable attorneys' fees and costs required to establish the right to indemnification) arising from or in connection with Supplier's breach of its representations and warranties in the Contract or alleged infringement of any patent, intellectual property, copyright or other property right in connection with a product or service provided under the Contract. Supplier's duty under this section is reduced to the extent a claimed infringement results from: (a) a Customer's or user's content; (b) modifications by Customer or third party to a product delivered under the Contract or combinations of the product with any non-Supplier-provided services or products unless Supplier recommended or participated in such modification or combination; (c) use of a product or service by Customer in violation of the Contract unless done so at the direction of Supplier, or (d) a non-Supplier product that has not been provided to the State by, through or on behalf of Supplier as opposed to its combination with products Supplier provides to or develops for the State or a Customer as a system.

12.3 Notice and Cooperation

In connection with indemnification obligations under the Contract, the parties agree to furnish prompt written notice to each other of any third-party claim. Any Customer affected by the claim will reasonably cooperate with Supplier and defense of the claim to the extent its interests are aligned with Supplier. Supplier shall use counsel reasonably experienced in the subject matter at issue and will not settle a claim without the written consent of the party being defended and where applicable the Attorney General of Oklahoma, which consent will not be unreasonably withheld or delayed, except that no consent will be required to settle a claim against Indemnified Parties that are not a State agency, where relief against the Indemnified Parties is limited to monetary damages that are paid by the defending party under indemnification provisions of the Contract.

12.4 Limitation of Liability

- A.** With respect to any claim or cause of action arising under or related to the Contract, neither the State nor any Customer shall be liable to Supplier for lost profits, lost sales or business expenditures, investments, or commitments in connection with any business, loss of any goodwill, or for any other indirect, incidental, punitive, special or consequential damages, even if advised of the possibility of such damages.
- B.** Notwithstanding anything to the contrary in the Contract, no provision shall limit damages, expenses, costs, actions, claims, and liabilities arising from or related to property damage, bodily injury or death caused by Supplier or its employees, agents or subcontractors; indemnity, security or confidentiality obligations under the Contract; the bad faith, negligence, intentional misconduct or other acts for which applicable law does not allow exemption from liability of Supplier or its employees, agents or subcontractors.
- C.** The limitation of liability and disclaimers set forth in the Contract will apply regardless of whether Customer has accepted a product or service. The parties agree that Supplier has set its fees and entered into the Contract in reliance on the disclaimers and limitations set forth herein, that the same reflect an allocation of risk between the parties and form an essential basis of the bargain between the parties. These limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

13 Termination for Cause

- 13.1** Supplier may terminate the Contract if (i) it has provided the State with written notice of material breach and (ii) the State fails to cure such material breach within thirty (30) days of receipt of written notice. If there is more than one Customer, material breach by a Customer does not give rise to a claim of material breach as grounds for termination by Supplier of the Contract as a whole. The State may terminate the Contract in whole or in part if (i) it has provided Supplier with written notice of material breach, and (ii) Supplier fails to cure such material breach within thirty (30) days of receipt of written notice. Any partial termination of the Contract under this section shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that are not terminated.
- 13.2** The State may terminate the Contract in whole or in part immediately without a thirty (30) day written notice to Supplier if (i) Supplier fails to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract; (ii) Supplier's material breach is reasonably determined to be an impediment to the function of the State and detrimental to the State or to cause a condition precluding the thirty (30) day notice or (iii) when the State determines that an administrative error in connection with award of the Contract occurred prior to Contract performance.
- 13.3** The State may terminate the Contract if the scope includes PR Vendor services and the Supplier, or Supplier's employee, violate the lobbying clause. PR Vendor services is defined to include a contract for public relations (PR), marketing or communication services. The State may immediately terminate the Contract with no more than 10-day notice under this section.
- 13.4** Upon receipt of notice of a termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination is not an exclusive remedy but is in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

13.5 The Supplier's repeated failure to provide an acceptable product or service; Supplier's unilateral revision of linked or supplemental terms that have a materially adverse impact on a Customer's rights or obligations under the Contract (except as required by a governmental authority); actual or anticipated failure of Supplier to perform its obligations under the Contract; Supplier's inability to pay its debts when due; assignment for the benefit of Supplier's creditors; or voluntary or involuntary appointment of a receiver or filing of bankruptcy of Supplier shall constitute a material breach of the Supplier's obligations, which may result in partial or whole termination of the Contract. This subsection is not intended as an exhaustive list of material breach conditions. Termination may also result from other instances of failure to adhere to the Contract provisions and for other reasons provided for by applicable law, rules, or regulations; without limitation, OAC 260:115-9-1 is an example.

14 Termination for Convenience

14.1 The State may terminate the Contract, in whole or in part, for convenience if it is determined that termination is in the State's best interest. In the event of a termination for convenience, Supplier will be provided at least thirty (30) days' written notice of termination. Any partial termination of the Contract shall not be construed as a waiver of, and shall not affect, the rights and obligations of any party regarding portions of the Contract that remain in effect.

14.2 Upon receipt of notice of such termination, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to the effective date of termination, the termination does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract or for any damages or other amounts caused by or associated with such termination. Such termination shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees that are unused when the Contract or certain obligations are terminated shall be refunded. Termination of the Contract under this section, in whole or in part, shall not relieve the Supplier of liability for claims arising under the Contract.

15 Suspension of Supplier

15.1 Supplier may be subject to Suspension without advance notice and may additionally be suspended from activities under the Contract if Supplier fails

to comply with confidentiality, privacy, security, environmental or safety requirements applicable to Supplier's performance or obligations under the Contract.

15.2 Upon receipt of a notice pursuant to this section, Supplier shall immediately comply with the notice terms and take all necessary steps to minimize the incurrence of costs allocable to the work affected by the notice. If a purchase order or other payment mechanism has been issued and a product or service has been accepted as satisfactory prior to receipt of notice by Supplier, the Suspension does not relieve an obligation to pay for the product or service but there shall not be any liability for further payments ordinarily due under the Contract during a period of Suspension or suspended activity or for any damages or other amounts caused by or associated with such Suspension or suspended activity. A right exercised under this section shall not be an exclusive remedy but shall be in addition to any other rights and remedies provided for by law. Any amount paid to Supplier in the form of prepaid fees attributable to a period of Suspension or suspended activity shall be refunded.

15.3 Such Suspension may be removed, or suspended activity may resume, at the earlier of such time as a formal notice is issued that authorizes the resumption of performance under the Contract or at such time as a purchase order or other appropriate encumbrance document is issued. This subsection is not intended to operate as an affirmative statement that such resumption will occur.

16 Certification Regarding State Employees Prohibition From Fulfilling Services

Pursuant to 74 O.S. § 85.42, the Supplier certifies that no person involved in any manner in development of the Contract employed by the State shall be employed to fulfill any services provided under the Contract.

17 Force Majeure

17.1 Either party shall be temporarily excused from performance to the extent delayed as a result of unforeseen causes beyond its reasonable control including fire or other similar casualty, act of God, strike or labor dispute, war or other violence, or any law, order or requirement of any governmental agency or authority provided the party experiencing the force majeure event has prudently and promptly acted to take any and all steps within the party's control to ensure continued performance and to shorten duration of the event. If a party's performance of its obligations is materially hindered as a result of a force majeure event, such party shall promptly notify the other party of its best reasonable assessment of the nature and duration of the force majeure event and steps it is taking, and plans to take, to mitigate the effects of the force majeure event. The party shall use commercially reasonable best efforts to

continue performance to the extent possible during such event and resume full performance as soon as reasonably practicable.

17.2 Subject to the conditions set forth above, non-performance as a result of a force majeure event shall not be deemed a default. However, a purchase order or other payment mechanism may be terminated if Supplier cannot cause delivery of a product or service in a timely manner to meet the business needs of Customer. Supplier is not entitled to payment for products or services not received and, therefore, amounts payable to Supplier during the force majeure event shall be equitably adjusted downward.

17.3 Notwithstanding the foregoing or any other provision in the Contract, (i) the following are not a force majeure event under the Contract: (a) shutdowns, disruptions or malfunctions in Supplier's system or any of Supplier's telecommunication or internet services other than as a result of general and widespread internet or telecommunications failures that are not limited to Supplier's systems or (b) the delay or failure of Supplier or subcontractor personnel to perform any obligation of Supplier hereunder unless such delay or failure to perform is itself by reason of a force majeure event and (ii) no force majeure event modifies or excuses Supplier's obligations related to confidentiality, indemnification, data security or breach notification obligations set forth herein.

18 Security of Property and Personnel

In connection with Supplier's performance under the Contract, Supplier may have access to Customer personnel, premises, data, records, equipment, and other property. Supplier shall use commercially reasonable best efforts to preserve the safety and security of such personnel, premises, data, records, equipment, and other property of Customer. Supplier shall be responsible for damage to such property to the extent such damage is caused by its employees or subcontractors and shall be responsible for loss of Customer property in its possession, regardless of cause. If Supplier fails to comply with Customer's security requirements, Supplier is subject to immediate suspension of work as well as termination of the associated purchase order or other payment mechanism.

19 Miscellaneous

19.1 Transition Services

If transition services are needed at the time of Contract expiration or termination, Supplier shall provide such services on a month-to-month basis, at the contract rate or other mutually agreed rate. Supplier shall provide a proposed transition plan, upon request, and cooperate with any successor

supplier and with establishing a mutually agreeable transition plan. Failure to cooperate may be documented as poor performance of Supplier.

19.2 Publicity

The existence of the Contract or any Acquisition is in no way an endorsement of Supplier, the products or services and shall not be so construed by Supplier in any advertising or publicity materials. Supplier agrees to submit to the State all advertising, sales, promotion, and other publicity matters relating to the Contract wherein the name of the State or any Customer is mentioned, or language used from which, in the State's judgment, an endorsement may be inferred or implied. Supplier further agrees not to publish or use such advertising, sales promotion, or publicity matter or release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the Contract or any Acquisition hereunder without obtaining the prior written approval of the State.

19.3 Mutual Responsibilities

- A.** No party to the Contract grants the other the right to use any trademarks, trade names, other designations in any promotion or publication without the express written consent by the other party.
- B.** The Contract is a non-exclusive contract, and each party is free to enter into similar agreements with others.
- C.** The Customer and Supplier each grant the other only the licenses and rights specified in the Contract and all other rights and interests are expressly reserved.
- D.** The Customer and Supplier shall reasonably cooperate with each other and any Supplier to which the provision of a product and/or service under the Contract may be transitioned after termination or expiration of the Contract.
- E.** Except as otherwise set forth herein, where approval, acceptance, consent, or similar action by a party is required under the Contract, such action shall not be unreasonably delayed or withheld.

19.4 Entire Agreement

The Contract documents taken together as a whole constitute the entire agreement between the parties. The Contract documents include this Contract, any Amendments to this Contract, applicable Solicitation, and any successful bid as may be amended or limited through negotiation. No statement, promise,

condition, understanding, inducement, or representation, oral or written, expressed or implied, which is not contained in a Contract document shall be binding or valid. The Supplier's certifications, including any completed electronically, are incorporated by reference into the Contract.

ATTACHMENT C
AGENCY TERMS

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ATTACHMENT D

STATE OF OKLAHOMA INFORMATION TECHNOLOGY TERMS

The parties further agree to the following terms (“Information Technology Terms”), as applicable, for any Acquisition of products or services with an information technology or telecommunication component. Pursuant to the Oklahoma Information Technology Consolidation and Coordination Act (“The Act” or “Act”), OMES- Information Services (“OMES-IS”) is designated to purchase information technology and telecommunication products and services on behalf of the State. The Act directs OMES-IS to acquire necessary hardware, software and services and to authorize the use by other State agencies. OMES, as the owner of information technology and telecommunication assets and contracts on behalf of the State, allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier. OMES-IS is the data custodian for State agency data; however, such data is owned by the respective State agency.

1 DEFINITIONS

- 1.1 **Customer Data** means all data supplied by or on behalf of a Customer in connection with the Contract, excluding any confidential information of Supplier. Customer Data includes both Non-Public Data and Personal Data.
- 1.2 **Data Breach** means the unauthorized access or the reasonable suspicion of unauthorized access, by an unauthorized person that results in the use, destruction, loss, alteration, disclosure, or theft of Customer Data.
- 1.3 **Host** includes the terms Hosted or Hosting and means the accessing, processing or storing of Customer Data.
- 1.4 **Intellectual Property Rights** means the worldwide legal rights or interests evidenced by or embodied in any idea, design, concept, personality right, method, process, technique, apparatus, invention, discovery or improvement including any patents, trade secrets and know-how; any work of authorship including any copyrights, Moral Rights or neighboring rights; any trademark, service mark, trade dress, trade name or other indicia of source or origin; domain name registrations; and any other proprietary or similar rights. Intellectual Property Rights of a party also includes all worldwide legal rights or interests that the party may have acquired by assignment or license with the right to grant sublicenses.
- 1.5 **Non-Public Data** means Customer Data, other than Personal Data, that is not subject to distribution to the public as public information. It is deemed to be sensitive and confidential by Customer because it contains information that is exempt by statute, ordinance or administrative rule from access by the general public as public information. Non-Public Data includes any data deemed confidential pursuant to the Contract, otherwise identified by Customer as Non-Public Data, or that a reasonable person would deem confidential.
- 1.6 **Personal Data** means Customer Data that contains 1) any combination of an individual’s name, social security numbers, driver’s license, state/federal identification number,

account number, credit or debit card number and/or 2) data subject to protection under a federal, state or local law, rule, regulation or ordinance.

- 1.7 Security Incident** means the attempted or successful unauthorized access, use, disclosure, modification, loss, theft, or destruction of information or interference with the Hosted environment used to perform the services.
- 1.8 Supplier** means the Bidder with whom the State enters into the Contract awarded pursuant to the Solicitation or the business entity or individual that is a party to the Contract with the State. A Supplier with whom the State enters into an awarded Contract shall also be known as a Contractor.
- 1.9 Supplier Intellectual Property** means all tangible or intangible items or things, including the Intellectual Property Rights therein, created or developed by Supplier and identified in writing as such (a) prior to providing any services or Work Product to Customer and prior to receiving any documents, materials, information or funding from or on behalf of a Customer relating to the services or Work Product, or (b) after the effective date of the Contract if such tangible or intangible items or things were independently developed by Supplier outside Supplier's provision of services or Work Product for Customer under the Contract and were not created, prepared, developed, invented or conceived by any Customer personnel who then became personnel to Supplier or any of its affiliates or subcontractors, where, although creation or reduction-to-practice is completed while the person is affiliated with Supplier or its personnel, any portion of same was created, invented or conceived by such person while affiliated with Customer.
- 1.10 Third Party Intellectual Property** means the Intellectual Property Rights of any third party that is not a party to the Contract, and that is not directly or indirectly providing any goods or services to a Customer under the Contract.

2 TERMINATION OF MAINTENANCE AND SUPPORT SERVICES

Customer may terminate maintenance or support services without an adjustment charge, provided any of the following circumstances occur:

- 2.1** Customer removes the product for which the services are provided, from productive use; or,
- 2.2** The location at which the services are provided is no longer controlled by Customer (for example, because of statutory or regulatory changes or the sale or closing of a facility).
- 2.3** If Customer chooses to renew maintenance or support after maintenance has lapsed, Customer may choose to pay the additional fee, if any, associated with renewing a license after such maintenance or support has lapsed, or to purchase a new license. Any amount paid to Supplier in the form of prepaid fees that are unused when services under the Contract or purchase order are terminated shall be refunded to Customer.

3 COMPLIANCE AND ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY

- 3.1** State procurement of information technology is subject to certain federal and State laws, rules and regulations related to information technology accessibility, including but not limited to Oklahoma Information Technology Accessibility Standards (“Standards”) set forth at [Information and Communication Technology Accessibility Standards \(oklahoma.gov\)](http://Information_and_Communication_Technology_Accessibility_Standards(oklahoma.gov)). Supplier shall provide a Voluntary Product Accessibility Template (“VPAT”) describing accessibility compliance via a URL linking to the VPAT and shall update the VPAT as necessary in order to allow a Customer to obtain current VPAT information as required by State law. If products require development or customization, additional requirements and documentation may be required and compliance shall be necessary by Supplier. Such requirements may be stated in appropriate documents including but not limited to a statement of work, riders, agreement, purchase order or Addendum.

All representations contained in the VPAT provided will be relied upon by the State or a Customer, as applicable, for accessibility compliance purposes.

4 MEDIA OWNERSHIP (Disk Drive and/or Memory Chip Ownership)

- 4.1** Any disk drives and memory cards purchased with or included for use in leased or purchased products under the Contract remain the sole and exclusive property of the Customer.
- 4.2** Personal information may be retained within electronic media devices and components; therefore, electronic media shall not be released either between Customers or for the resale, of refurbished equipment that has been in use by a Customer, by the Supplier to the general public or other entities. This provision applies to replacement devices and components, whether purchased or leased, supplied by Supplier, its agents or subcontractors during the downtime (repair) of products purchased or leased through the Contract. If a device is removed from a location for repairs, the Customer shall have sole discretion, prior to removal, to determine and implement sufficient safeguards (such as a record of hard drive serial numbers) to protect personal information that may be stored within the hard drive or memory of the device.

5 OFFSHORE SERVICES

No offshore services are provided for under the Contract. State data shall not be used or accessed internationally for troubleshooting or any other use not specifically provided for herein without the prior written permission, which may be withheld in the State’s sole discretion, from the appropriate authorized representative of the State. Notwithstanding the above, back office administrative functions of the Supplier may be located offshore and the follow-the-sun support model may be used by the Supplier to the extent allowed by law applicable to any Customer data being accessed or used.

6 COMPLIANCE WITH TECHNOLOGY POLICIES

- 6.1** The Supplier agrees to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>.

Supplier’s employees and subcontractors shall adhere to the applicable State IT

Standards, policies, procedures and architectures as set forth at <https://oklahoma.gov/omes/services/information-services.html> or as otherwise provided by the State.

- 6.2** Supplier shall comply with applicable Federal Information Processing Standards including, without limitation, FIPS 200, FIPS 140-2 or successor standards and all recommendations from the National Institute of Standards and Technology. The confidentiality of Customer Data shall be protected and maintained in accordance with these standards as well as other applicable Customer standards.

7 EMERGING TECHNOLOGIES

The State reserves the right to enter into an Addendum to the Contract at any time to allow for emerging technologies not identified elsewhere in the Contract Documents if there are repeated requests for such emerging technology or the State determines it is warranted to add such technology.

8 EXTENSION RIGHT

In addition to extension rights of the State set forth in the Contract, the State Chief Information Officer reserves the right to extend any Contract at his or her sole option if the State Chief Information Officer determine such extension to be in the best interest of the State.

9 SOURCE CODE ESCROW

Pursuant to 62 O.S. § 34.31, if customized computer software is developed or modified exclusively for a State agency, the Supplier has a continuing obligation to comply with such law and place the source code for such software and any modifications thereto into escrow with an independent third-party escrow agent. Supplier shall pay all fees charged by the escrow agent and enter into an escrow agreement, the terms of which are subject to the prior written approval of the State, including terms that provide the State receives ownership of all escrowed source code upon the occurrence of any of the following:

- 9.1** A bona fide material default of the obligations of the Supplier under the agreement with the applicable Customer;
- 9.2** An assignment by the Supplier for the benefit of its creditors;
- 9.3** A failure by the Supplier to pay, or an admission by the Supplier of its inability to pay, its debts as they mature;
- 9.4** The filing of a petition in bankruptcy by or against the Supplier when such petition is not dismissed within sixty (60) days of the filing date;
- 9.5** The appointment of a receiver, liquidator or trustee appointed for any substantial part of the Supplier's property;
- 9.6** The inability or unwillingness of the Supplier to provide the maintenance and support services in accordance with the agreement with the agency;
- 9.7** Supplier's ceasing of maintenance and support of the software; or

9.8 Such other condition as may be statutorily imposed by the future amendment or enactment of applicable Oklahoma law.

10 COMMERCIAL OFF THE SHELF SOFTWARE OR SUPPLIER TERMS

If Supplier specifies terms and conditions or clauses in an electronic license, subscription, maintenance, support or similar agreement, including via a hyperlink or uniform resource locator address to a site on the internet, that conflict with the terms of this Contract, the additional terms and conditions or conflicting clauses shall not be binding on the State and the provisions of this Contract shall prevail. Further, no such terms and conditions or clauses shall expand the State's or Customer's liability or reduce the rights of Customer or the State.

11 OWNERSHIP RIGHTS

Any software developed, modified, or customized by the Supplier in accordance with a mutually negotiated statement of work pursuant to this Contract is for the sole and exclusive use of the State including but not limited to the right to use, reproduce, re-use, alter, modify, edit, or change the software as it sees fit and for any purpose. The parties mutually agree the State as a licensee of the Supplier does not make a claim of ownership to the existing Intellectual Property of Supplier. Moreover, except with regard to any deliverable based on Supplier Intellectual Property, the State shall be deemed the sole and exclusive owner of all right, title, and interest therein, including but not limited to all source data, information and materials furnished to the State, together with all plans, system analysis, and design specifications and drawings, completed programs and documentation thereof, reports and listing, all data and test procedures and all other items pertaining to the work and services to be performed pursuant to this Contract including all copyright and proprietary rights relating thereto. With respect to Supplier Intellectual Property, the Supplier grants the State, for no additional consideration, a perpetual, irrevocable, royalty-free license, solely for the internal business use of the State, to use, copy, modify, display, perform, transmit and prepare derivative works of Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Except for any Supplier Intellectual Property, all work performed by the Supplier of developing, modifying or customizing software and any related supporting documentation shall be considered as Work for Hire (as defined under the U.S. copyright laws) and, as such, shall be owned by and for the benefit of State.

In the event that it should be determined that any portion of such software or related supporting documentation does not qualify as "Work for Hire", Supplier hereby irrevocably grants to the State, for no additional consideration, a non-exclusive, irrevocable, royalty-free license to use, copy, modify, display, perform, transmit and prepare derivative works of any such software and any Supplier Intellectual Property embodied in or delivered to the State in conjunction with the products.

Supplier shall assist the State and its agents, upon request, in preparing U.S. and foreign copyright, trademark, and/or patent applications covering software developed, modified or customized for the State when made in accordance with a mutually negotiated statement of work pursuant to this Contract. Supplier shall sign any such applications, upon request, and deliver them to the State. The State shall bear all expenses that incurred in connection with such copyright, trademark, and/or patent applications.

If any Acquisition pursuant to this Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation owned by the State may be shared with other publicly funded agencies at the discretion of the State without permission from or additional compensation to the Supplier.

12 INTELLECTUAL PROPERTY OWNERSHIP TO WORK PRODUCT

The following terms apply to ownership and rights related to Intellectual Property:

- 12.1** As to the Intellectual Property Rights to Work Product between Supplier and Customer, Customer shall be the exclusive owner and not Supplier. Supplier specifically agrees that the Work Product shall be considered “works made for hire” and that the Work Product shall, upon creation, be owned exclusively by Customer. To the extent that the Work Product, under applicable law, may not be considered works made for hire, Supplier agrees that all right, title and interest in and to all ownership rights and all Intellectual Property Rights in the Work Product is effectively transferred, granted, conveyed, assigned, and relinquished exclusively to Customer, without the necessity of any further consideration, and Customer shall be entitled to obtain and hold in its own name all Intellectual Property Rights in and to the Work Product. Supplier acknowledges that Supplier and Customer do not intend Supplier to be a joint author of the Work Product within the meaning of the Copyright Act of 1976. Customer shall have access, during normal business hours (Monday through Friday, 8:00 a.m. to 5:00 p.m.) and upon reasonable prior notice to Supplier, to all Supplier materials, premises and computer files containing the Work Product. Supplier and Customer, as appropriate, will cooperate with one another and execute such other documents as may be reasonably appropriate to achieve the objectives herein. No license or other right is granted under the Contract to any Third-Party Intellectual Property, except as may be incorporated in the Work Product by Supplier.
- 12.2** Supplier, upon request and without further consideration, shall perform any acts that may be deemed reasonably necessary or desirable by Customer to evidence more fully the transfer of ownership and/or registration of all Intellectual Property Rights in all Work Product to Customer to the fullest extent possible including, but not limited to, the execution, acknowledgement and delivery of such further documents in a form determined by Customer. In the event Customer shall be unable to obtain Supplier’s signature due to the dissolution of Supplier or Supplier’s failure to respond to Customer’s repeated requests for such signature on any document reasonably necessary for any purpose set forth in the foregoing sentence, Supplier hereby irrevocably designates and appoints Customer and its duly authorized officers and agents as Supplier’s agent and Supplier’s attorney-in-fact to act for and in Supplier’s behalf and stead to execute and file any such document and to do all other lawfully permitted acts to further any such purpose with the same force and effect as if executed and delivered by Supplier, provided however that no such grant of right to Customer is applicable if Supplier fails to execute any document due to a good faith dispute by Supplier with respect to such document. It is understood that such power is coupled with an interest and is therefore irrevocable. Customer shall have the full and sole power to prosecute such applications and to take all other action concerning the Work Product, and Supplier shall cooperate, at Customer’s sole expense, in the preparation and prosecution of all such applications and in any legal actions and proceedings concerning the Work Product.

- 12.3** Supplier hereby irrevocably and forever waives, and agrees never to assert, any Moral Rights in or to the Work Product which Supplier may now have or which may accrue to Supplier's benefit under U.S. or foreign copyright or other laws and any and all other residual rights and benefits which arise under any other applicable law now in force or hereafter enacted. Supplier acknowledges the receipt of equitable compensation for its assignment and waiver of such Moral Rights.
- 12.4** All documents, information and materials forwarded to Supplier by Customer for use in and preparation of the Work Product shall be deemed the confidential information of Customer, subject to the license granted by Customer to Supplier hereunder. Supplier shall not otherwise use, disclose, or permit any third party to use or obtain the Work Product, or any portion thereof, in any manner without the prior written approval of Customer.
- 12.5** These provisions are intended to protect Customer's proprietary rights pertaining to the Work Product and the Intellectual Property Rights therein and any misuse of such rights would cause substantial and irreparable harm to Customer's business. Therefore, Supplier acknowledges and stipulates that a court of competent jurisdiction may immediately enjoin a material breach of the Supplier's obligations with respect to confidentiality provisions of the Contract and the Work Product and a Customer's Intellectual Property Rights, upon a request by Customer, without requiring proof of irreparable injury, as same is presumed.
- 12.6** Upon the request of Customer, but in any event upon termination or expiration of this Contract or a statement of work, Supplier shall surrender to Customer all documents and things pertaining to the Work Product, generated or developed by Supplier or furnished by Customer to Supplier, including all materials embodying the Work Product, any Customer confidential information and Intellectual Property Rights in such Work Product, regardless of whether complete or incomplete. This section is intended to apply to all Work Product as well as to all documents and things furnished to Supplier by Customer or by anyone else that pertains to the Work Product.
- 12.7** Customer hereby grants to Supplier a non-transferable, non-exclusive, royalty-free, fully paid license to use any Work Product solely as necessary to provide services to Customer. Except as provided in this section, neither Supplier nor any subcontractor shall have the right to use the Work Product in connection with the provision of services to its other customers without the prior written consent of Customer, which consent may be withheld in Customer's sole discretion.
- 12.8** To the extent that any Third Party Intellectual Property is embodied or reflected in the Work Product or is necessary to provide services, Supplier shall obtain from the applicable third party for the Customer's benefit, an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for Customer's internal business purposes; likewise, with respect to any Supplier Intellectual Property embodied or reflected in the Work Product or necessary to provide services, Supplier grants to Customer an irrevocable, perpetual, non-exclusive, worldwide, royalty-free license, solely for the Customer's internal business purposes. Each such license shall allow the applicable Customer to (i) use, copy, modify, display, perform (by any means), transmit and prepare derivative works of any Third Party Intellectual Property or Supplier Intellectual Property embodied in or delivered to Customer in conjunction with the Work

Product and (ii) authorize others to do any or all of the foregoing. Supplier agrees to notify Customer on delivery of the Work Product or services if such materials include any Third Party Intellectual Property. The foregoing license includes the right to sublicense third parties, solely for the purpose of engaging such third parties to assist or carry out Customer's internal business use of the Work Product. Except for the preceding license, all rights in Supplier Intellectual Property remain in Supplier. On request, Supplier shall provide Customer with documentation indicating a third party's written approval for Supplier to use any Third Party Intellectual Property that may be embodied or reflected in the Work Product.

12.9 Supplier agrees that it shall have written agreement(s) that are consistent with the provisions hereof related to Work Product and Intellectual Property Rights with any employees, agents, consultants, contractors or subcontractors providing services or Work Product pursuant to the Contract, prior to the provision of such services or Work Product and that it shall maintain such written agreements at all times during performance of this Contract which are sufficient to support all performance and grants of rights by Supplier. Copies of such agreements shall be provided to the Customer promptly upon request.

12.10 To the extent not inconsistent with Customer's rights in the Work Product or other provisions, nothing in this Contract shall preclude Supplier from developing for itself, or for others, materials which are competitive with those produced as a result of the services provided under the Contract, provided that no Work Product is utilized, and no Intellectual Property Rights of Customer therein are infringed by such competitive materials. To the extent that Supplier wishes to use the Work Product or acquire licensed rights in certain Intellectual Property Rights of Customer therein in order to offer competitive goods or services to third parties, Supplier and Customer agree to negotiate in good faith regarding an appropriate license and royalty agreement to allow for such.

12.11 If any Acquisition pursuant to the Contract is funded wholly or in part with federal funds, the source code and all associated software and related documentation and materials owned by a Customer may be shared with other publicly funded agencies at the discretion of such Customer without permission from or additional compensation to the Supplier.

13 HOSTING SERVICES

A Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier Hosting Customer Data or providing products or services pursuant to an Acquisition, contributes to, or directly causes a Data Breach or a Security Incident. Likewise, Supplier shall be responsible for the obligations set forth in in this Contract, including those obligations related to breach reporting and associated costs when a Supplier's affiliate or subcontractor contributes to, or directly causes a Data Breach or a Security Incident.

14 CHANGE MANAGEMENT

When a scheduled change is made to products or services provided to a Customer that impacts the Customer's system related to such product or service, Supplier shall provide two (2) weeks' prior written notice of such change. When the change is an emergency change, Supplier shall provide twenty-four (24) hours' prior written notice of the change. Repeated failure to provide such notice may be an evaluation factor (as indicative of Supplier's past performance) upon

renewal or if future bids submitted by Supplier are evaluated by the State.

15 SERVICE LEVEL DEFICIENCY

In addition to other terms of the Contract, in instances of the Supplier's repeated failure to provide an acceptable level of service or meet service level agreement metrics, service credits shall be provided by Supplier and may be used as an offset to payment due.

16 OWNERSHIP OF IT AND TELECOMMUNICATION ASSETS

Notwithstanding any other provision in the Contract and pursuant to the Oklahoma Information Technology Consolidation and Coordination Act, all information technology and telecommunication assets and contracts on behalf of appropriated agencies of the State belong to OMES-IS. OMES-IS allows other State agencies to use the assets while retaining ownership and the right to reassign the assets, at no additional cost, upon written notification to Supplier.

17 CUSTOMER DATA

17.1 The parties agree to the following provisions in connection with any Customer Data accessed, processed transmitted, or stored by or on behalf of the Supplier and the obligations, representations and warranties set forth below shall continue as long as the Supplier has an obligation under the Contract.

17.2 Customer will be responsible for the accuracy and completeness of all Customer Data provided to Supplier by Customer. Customer shall retain exclusive ownership of rights, title, and interest in Customer Data. Non-Public Data and Personal Data shall be deemed to be Customer's confidential information. Supplier shall restrict access to Customer Data to their employees with a need to know (and advise such employees of the confidentiality and non-disclosure obligations assumed herein).

17.3 Supplier shall promptly notify the Customer upon receipt of any requests from unauthorized third parties which in any way might reasonably require access to Customer Data or Customer's use of the Hosted environment. Supplier shall notify the Customer by the fastest means available and also in writing pursuant to Contract notice provisions and the notice provision herein. Except to the extent required by law, Supplier shall not respond to subpoenas, service or process, Freedom of Information Act or other open records requests, and other legal request related to Customer without first notifying the Customer and obtaining the Customer's prior approval, which shall not be unreasonably withheld, of Supplier's proposed responses. Supplier agrees to provide its completed responses to the Customer with adequate time for Customer review, revision and approval.

17.4 Supplier will use commercially reasonable efforts to prevent the loss of or damage to Customer Data in its possession and will maintain commercially reasonable back-up procedures and copies to facilitate the reconstruction of any Customer Data that may be lost or damaged by Supplier. Supplier will promptly notify Customer of any loss, damage to, or unauthorized access of Customer Data. Supplier will use commercially reasonable efforts to reconstruct any Customer Data that has been lost or damaged by Supplier as a result of its negligence or willful misconduct. If Customer Data is lost or damaged for reasons other than as a result of Supplier's negligence or willful misconduct, Supplier, at

the Customer's expense, will, at the request of the State, use commercially reasonable efforts to reconstruct any Customer Data lost or damaged.

18 DATA SECURITY

- 18.1** Supplier will use commercially reasonable efforts, consistent with industry standards, to provide security for the Hosted environment and Customer Data and to protect against both unauthorized access to the Hosting environment, and unauthorized communications between the Hosting environment and the Customer's browser. Supplier shall implement and maintain appropriate administrative, technical and organizational security measures to safeguard against unauthorized access, disclosure or theft of Personal Data and Non-Public Data. Such security measures shall be in accordance with recognized industry practice and not less stringent than the measures the service provider applies to its own personal data and non-public data of similar kind.
- 18.2** All Personal Data and Non-public Data shall be encrypted at rest and in transit with controlled access. Unless otherwise stipulated, the service provider is responsible for encryption of Personal Data. All Personal Data and Non-Public Data shall be subject to controlled access. Any stipulation of responsibilities shall be included in a Statement of Work and will identify specific roles and responsibilities.
- 18.3** Supplier represents and warrants to the Customer that the Hosting equipment and environment will be routinely checked with a commercially available, industry standard software application with up-to-date virus definitions. Supplier will regularly update the virus definitions to ensure that the definitions are as up-to-date as is commercially reasonable. Supplier will promptly purge all viruses discovered during virus checks. If there is a reasonable basis to believe that a virus may have been transmitted to Customer by Supplier, Supplier will promptly notify Customer of such possibility in a writing that states the nature of the virus, the date on which transmission may have occurred, and the means Supplier has used to remediate the virus. Should the virus propagate to Customer's IT infrastructure, Supplier is responsible for costs incurred by Customer for Customer to remediate the virus.
- 18.4** At no time shall any Customer Data or processes – that either belong to or are intended for the use of the State - be copied, disclosed, or retained by Supplier or any party related to Supplier for subsequent use in any transaction that does not include the State unless otherwise agreed to by the State.
- 18.5** Supplier shall provide its services to Customer and its users solely from data centers in the U.S. Storage of Customer Data at rest shall be located solely in data centers in the U.S. Supplier shall not allow its personnel or contractors to store Customer Data on portable devices, including personal computers, except for devices that are used and kept only at its U.S. data centers. Supplier shall permit its personnel and contractors to access Customer Data remotely only as required to fulfill Supplier's obligations under the Contract.
- 18.6** Supplier shall allow the Customer to audit conformance to the Contract terms. The Customer may perform this audit or contract with a third party at its discretion and at Customer's expense.

- 18.7** Supplier shall perform an independent audit of its data centers at least annually at its expense and provide a redacted version of the audit report upon request. Supplier may remove its proprietary information from the redacted version. A Service Organization Control (SOC) 2 audit report or approved equivalent sets the minimum level of a third-party audit.
- 18.8** Any remedies provided are not exclusive and are in addition to other rights and remedies available under the terms of the Contract, at law or in equity.

19 SECURITY ASSESSMENT

- 19.1** The State requires any entity or third-party Supplier Hosting Oklahoma Customer Data to submit to a State Certification and Accreditation Review process to assess initial security risk. Supplier submitted to the review and met the State's minimum security standards at time the Contract was executed. Failure to maintain the State's minimum security standards during the term of the contract, including renewals, constitutes a material breach. Upon request, the Supplier shall provide updated data security information in connection with a potential renewal. If information provided in the security risk assessment changes, Supplier shall promptly notify the State and include in such notification the updated information; provided, however, Supplier shall make no change that results in lessened data protection or increased data security risk. Failure to provide the notice required by this section or maintain the level of security required in the Contract constitutes a material breach by Supplier and may result in a whole or partial termination of the Contract.
- 19.2** Any Hosting entity change must be approved in writing prior to such change. To the extent Supplier requests a different sub-contractor than the third-party Hosting Supplier already approved by the State, the different sub-contractor is subject to the State's approval. Supplier agrees not to migrate State's data or otherwise utilize the different third-party Hosting Supplier in connection with key business functions that are Supplier's obligations under the contract until the State approves the third-party Hosting Supplier's State Certification and Accreditation Review, which approval shall not be unreasonably withheld or delayed. In the event the third-party Hosting Supplier does not meet the State's requirements under the State Certification and Accreditation Review, Supplier acknowledges and agrees it will not utilize the third-party Supplier in connection with key business functions that are Supplier's obligations under the contract, until such third party meets such requirements.

20 SECURITY INCIDENT OR DATA BREACH NOTIFICATION

- 20.1** Supplier shall inform Customer of any Security Incident or Data Breach.
- 20.2** Supplier may need to communicate with outside parties regarding a Security Incident, which may include contacting law enforcement, fielding media inquiries and seeking external expertise as mutually agreed upon, defined by law or contained in the Contract. If a Security Incident involves Customer Data, Supplier will coordinate with Customer prior to any such communication.
- 20.3** Supplier shall report a Security Incident to the Customer identified contact set forth herein within five (5) days of discovery of the Security Incident or within a shorter notice

period required by applicable law or regulation (i.e., HIPAA requires notice to be provided within 24 hours).

- 20.4** Supplier shall maintain processes and procedures to identify, respond to and analyze Security Incidents; (ii) make summary information regarding such procedures available to Customer at Customer's request, (iii) mitigate, to the extent practicable, harmful effects of Security Incidents that are known to Vendor; and (iv) documents all Security Incidents and their outcomes.
- 20.5** If Supplier has reasonable belief or actual knowledge of a Data Breach, Supplier shall (1) promptly notify the appropriate Customer identified contact set forth herein within 24 hours or sooner, unless shorter time is required by applicable law, and (2) take commercially reasonable measures to address the Data Breach in a timely manner.

21 DATA BREACH NOTIFICATION AND RESPONSIBILITIES

This section only applies when a Data Breach occurs with respect to Personal Data or Non-Public Data within the possession or control of Supplier.

- 21.1** Supplier shall (1) cooperate with Customer as reasonably requested by Customer to investigate and resolve the Data Breach, (2) promptly implement necessary remedial measures, if necessary, and (3) document responsive actions taken related to the Data Breach, including any post-incident review of events and actions taken to make changes in business practices in providing the services, if necessary.
- 21.2** Unless otherwise stipulated, if a Data Breach is a direct result of Supplier's breach of its obligation to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall bear the costs associated with (1) the investigation and resolution of the Data Breach; (2) notifications to individuals, regulators or others required by state law; (3) credit monitoring services required by state or federal law; (4) a website or toll-free numbers and call center for affected individuals required by state law – all not to exceed the agency per record per person cost calculated for data breaches in the United States on the most recent Cost of Data breach Study: Global Analysis published by the Ponemon Institute at the time of the data breach; and (5) complete all corrective actions as reasonably determined by Supplier based on root cause.
- 21.3** If a Data Breach is a direct result of Supplier's breach of its obligations to encrypt Personal Data and Non-Public Data or otherwise prevent its release, Supplier shall indemnify and hold harmless the Customer against all penalties assessed to Indemnified Parties by governmental authorities in connection with the Data Breach.

22 SUPPLIER REPRESENTATIONS AND WARRANTIES

Supplier represents and warrants the following:

- 22.1** The product and services provided in connection with Hosting services do not infringe a third party's patent or copyright or other intellectual property rights.
- 22.2** Supplier will protect Customer's Non-Public Data and Personal Data from unauthorized dissemination and use with the same degree of care that each such party uses to protect

its own confidential information and, in any event, will use no less than a reasonable degree of care in protecting such confidential information.

22.3 The execution, delivery and performance of the Contract and any ancillary documents and the consummation of the transactions contemplated by the Contract or any ancillary documents by Supplier will not violate, conflict with, or result in a breach of any provision of, or constitute a default (or an event which, with notice or lapse of time or both, would constitute a default) under, or result in the termination of, any written contract or other instrument between Supplier and any third parties retained or utilized by Supplier to provide goods or services for the benefit of the Customer.

22.4 Supplier shall not knowingly upload, store, post, e-mail or otherwise transmit, distribute, publish or disseminate to or through the Hosting environment any material that contains software viruses, malware or other surreptitious code designed to interrupt, destroy or limit the functionality of any computer software or hardware or telecommunications equipment or circumvent any “copy-protected” devices, or any other harmful or disruptive program.

23 INDEMNITY

Supplier agrees to defend, indemnify and hold the State, its officers, directors, employees, and agents harmless from all liabilities, claims, damages, losses, costs, expenses, demands, suits and actions (including without limitation reasonable attorneys’ fees and costs required to establish the right to indemnification), excluding damages that are the sole fault of Customer, arising from or in connection with Supplier’s breach of its express representations and warranties in these Information Technology Terms and the Contract. If a third party claims that any portion of the products or services provided by Supplier under the terms of another Contract Document or these Information Technology Terms infringes that party’s patent or copyright, Supplier shall defend, indemnify and hold harmless the State and Customer against the claim at Supplier’s expense and pay all related costs, damages, and attorney’s fees incurred by or assessed to, the State and/or Customer. The State and/or Customer shall promptly notify Supplier of any third-party claims and to the extent authorized by the Attorney General of the State, allow Supplier to control the defense and any related settlement negotiations. If the Attorney General of the State does not authorize sole control of the defense and settlement negotiations to Supplier, Supplier shall be granted authorization to equally participate in any proceeding related to this section, but Supplier shall remain responsible to indemnify Customer and the State for all associated costs, damages and fees incurred by or assessed to the State and/or Customer. Should the software become, or in Supplier’s opinion, be likely to become the subject of a claim or an injunction preventing its use as contemplated in connection with Hosting services, Supplier may, at its option (i) procure for the State the right to continue using the software or (ii) replace or modify the software with a like or similar product so that it becomes non-infringing.

24 TERMINATION, EXPIRATION AND SUSPENSION OF SERVICE

24.1 During any period of service suspension, Supplier shall not take any action to intentionally disclose, alter or erase any Customer Data.

24.2 In the event of a termination or expiration of the Contract, the parties further agree:

Supplier shall implement an orderly return of Customer Data in a format specified by the Customer and, as determined by the Customer:

- a. return the Customer Data to Customer at no additional cost, at a time agreed to by the parties and the subsequent secure disposal of State Data;
- b. transitioned to a different Supplier at a mutually agreed cost and in accordance with a mutually agreed data transition plan and the subsequent secure disposal of State Data or
- c. a combination of the two immediately preceding options.

24.3 Supplier shall not take any action to intentionally erase any Customer Data for a period of:

- a. 10 days after the effective date of termination, if the termination is in accordance with the contract period;
- b. 30 days after the effective date of termination, if the termination is for convenience; or
- c. 60 days after the effective date of termination if the termination is for cause.

After such period, Supplier shall, unless legally prohibited or otherwise stipulated, delete all Customer Data in its systems or otherwise in its possession or under its control.

24.4 The State shall be entitled to any post termination or expiration assistance generally made available with respect to the services.

24.5 Disposal by Supplier of Customer Data in all of its forms, such as disk, CD/DVD, backup tape and paper, when requested by the Customer, shall be performed in a secure manner. Data shall be permanently deleted and shall not be recoverable, according to National Institute of Standards and Technology (NIST)-approved methods. Certificates of destruction shall be provided to Customer within thirty (30) calendar day of its request for disposal of data.

25 GENERAL INFORMATION SECURITY REQUIREMENTS

25.1 No employee of Contractor or its subcontractors will be granted access to State of Oklahoma agency information systems without the prior completion and approval of applicable logon authorization and acceptable use requests.

25.2 Contractor or its subcontractors will notify applicable State of Oklahoma agencies when employees who have access to agency information systems are terminated.

25.3 Contractor or its subcontractors will disclose to Client any suspected breach of the security of the information system or the data contained therein in the most expedient time possible and without unreasonable delay and will cooperate with Client during the investigation of any such incident.

- 25.4 Contractor or its subcontractors agree to adhere to the State of Oklahoma “Information Security Policy, Procedures, and Guidelines” available at: <https://oklahoma.gov/content/dam/ok/en/omes/documents/InfoSecPPG.pdf>

26 HIPAA REQUIREMENTS

26.1 Contractor shall agree to use and disclose Protected Health Information in its possession or control in compliance with the Standards for Privacy of Individually Identifiable Health Information (Privacy Rule) (45 C.F.R. Parts 160 and 164) under the Health Insurance Portability and Accountability Act (HIPAA) of 1996. The definitions set forth in the Privacy Rule are incorporated by reference into this Contract (45 C.F.R. §§ 160.103 and 164.501).

26.2 If applicable, Contractor will sign and adhere to a Business Associate Agreement (BAA). The Business Associate Agreement provides for satisfactory assurances that Contractor will use the information only for the purposes for which it was engaged. Contractor agrees it will safeguard the information from misuse and will comply with HIPAA as it pertains to the duties stated within the contract. Failure to comply with the requirements of this standard may result in funding being withheld from Contractor, and/or full audit and inspection of Contractor’s security compliance as it pertains to this contract.

26.3 Business Associate Terms Definitions:

- a. Unless otherwise defined in this BAA, all capitalized terms used in this BAA have the meanings ascribed in the HIPAA Regulations, provided; however, that “PHI” and “ePHI” shall mean Protected Health Information and Electronic Protected Health Information, respectively, as defined in 45 C.F.R. § 160.103, limited to the information Business Associate received from or created or received on behalf of the applicable State of Oklahoma agency as a Business Associate. “Administrative Safeguards” shall have the same meaning as the term “administrative safeguards in 45 C.F.R. § 164.304, with the exception that it shall apply to the management of the conduct of Business Associate’s workforce, not the State of Oklahoma agency workforce, in relation to the protection of that information.
- b. Business Associate. “Business Associate” shall generally have the same meaning as the term “Business Associate” at 45 C.F.R. 160.103, and in reference to the party to this agreement, shall mean the entity whose name appears below.
- c. Covered Entity. “Covered Entity” shall generally have the same meaning as the term “Covered Entity” at 45 C.F.R. 160.103.
- d. HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, all as may be amended.
- e. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of

Privacy Practices, Protected Health Information, required by law, Secretary, Security Incident, Sub-Contractor, Unsecured PHI, and Use.

26.4 Obligations of Business Associate: Business Associate may use Electronic PHI and PHI (collectively, “PHI”) solely to perform its duties and responsibilities under this Agreement and only as provided in this Agreement. Business Associate acknowledges and agrees that PHI is confidential and shall not be used or disclosed, in whole or in part, except as provided in this Agreement or as required by law. Specifically, Business Associate agrees it will, as applicable:

- a. use or further disclose PHI only as permitted in this Agreement or as Required by Law, including, but not limited to the Privacy and Security Rule;
- b. use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- c. implement and document appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI that it creates, receives, maintains, or transmits for or on behalf of Covered Entity in accordance with 45 C.F.R. 164;
- d. implement and document administrative safeguards to prevent, detect, contain, and correct security violations in accordance with 45 C.F.R. 164;
- e. make its applicable policies and procedures required by the Security Rule available to Covered Entity solely for purposes of verifying BA’s compliance and the Secretary of the Department of Health and Human Services (HHS);
- f. not receive remuneration from a third party in exchange for disclosing PHI received from or on behalf of Covered Entity;
- g. in accordance with 45 C.F.R. 164.502(e)(1) and 164.308(b), if applicable, require that any Sub-Contractors that create, receive, maintain or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information; this shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor;
- h. report to Covered Entity in writing any use or disclosure of PHI that is not permitted under this Agreement as soon as reasonably practicable but in no event later than five calendar days from becoming aware of it and mitigate, to the extent practicable and in cooperation with Covered Entity, any harmful effects known to it of a use or disclosure made in violation of this Agreement;
- i. promptly report to Covered Entity in writing and without unreasonable delay and in no case later than five calendar days any successful Security Incident, as defined in the Security Rule, with respect to Electronic PHI;
- j. with the exception of law enforcement delays that satisfy the requirements of 45 C.F.R. 164.412, notify Covered Entity promptly, in writing and without

unreasonable delay and in no case later than five calendar days, upon the discovery of a breach of Unsecured PHI. Such notice shall include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate shall also, to the extent possible, furnish Covered Entity with any other available information that Covered Entity is required to include in its notification to Individuals under 45 C.F.R. § 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available. As used in this Section, "breach" shall have the meaning given such term at 45 C.F.R. 164.402;

- k. to the extent allowed by law, indemnify and hold Covered Entity harmless from all claims, liabilities costs, and damages arising out of or in any manner related to the unauthorized disclosure by Business Associate of any PHI resulting from the negligent acts or omissions of Business Associate or to the breach by Business Associate of any applicable obligation related to PHI;
- l. provide access to PHI it maintains in a Designated Record Set to Covered Entity, or if directed by Covered Entity to an Individual in order to meet the requirements of 45 C.F.R. 164.524. In the event that any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within five working days of receiving a request. This shall be in the form of a written HIPAA Business Associate Contract and a fully executed copy will be provided to the Contract Monitor. Any denials of access to the PHI requested shall be the responsibility of Covered Entity;
- m. make PHI it maintains in a Designated Record Set available to Covered Entity for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. 164.526;
- n. document disclosure of PHI it maintains in a Designated Record Set and information related to such disclosure as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, in accordance with 45 C.F.R. 164.528, and within five working days of receiving a request from Covered Entity, make such disclosure documentation and information available to Covered Entity. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall forward within five working days of receiving a request such request to Covered Entity;
- o. make its internal practices, books, and records related to the use and disclosure of PHI received from or created or received by Business Associate on behalf of Covered Entity available to the Secretary of the Department of HHS, authorized governmental officials, and Covered entity for the purpose of determining Business Associate's compliance with the Privacy Rule. Business Associate shall give Covered Entity advance written notice of requests from HHS or government officials and provide Covered Entity with a copy of all documents made available; and

- p. require that all of its Sub-Contractors, vendors, and agents to whom it provides PHI or who create, receive, use, disclose, maintain, or have access to Covered Entity's PHI shall agree in writing to requirements, restrictions, and conditions at least as stringent as those that apply to Business Associate under this Agreement, including but not limited to implementing reasonable and appropriate safeguards to protect PHI, and shall require that its Sub-Contractors, vendors, and agents agree to indemnify and hold harmless Covered Entity for their failure to comply with each of the provisions of this Agreement.

26.5 Permitted Uses and Disclosures of PHI by Business Associate: Except as otherwise provided in this Agreement, Business Associate may use or disclose PHI on behalf of or to provide services to Covered Entity for the purposes specified in this Agreement, if such use or disclosure of PHI would not violate the Privacy Rule if done by Covered Entity. Unless otherwise limited herein, Business Associate may:

- a. use PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate;
- b. disclose PHI for its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that; (i) the disclosures required by law; or (ii) Business Associate obtains reasonable assurances from any person to whom the PHI is disclosed that such PHI will be kept confidential and will be used or further disclosed only as Required by Law or for the purpose(s) for which it was disclosed to the person, and the person commits to notifying Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- c. disclose PHI to report violations of law to appropriate federal and state authorities; or
- d. aggregate the PHI with other data in its possession for purposes of Covered Entity's Health Care Operations;
- e. make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures;
- f. de-identify any and all PHI obtained by Business Associate under this BAA, and use such de-identified data, all in accordance with the de-identification requirements of the Privacy Rule [45 C.F.R. § 164.502(d)].

26.6 Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

- c. Covered Entity shall not request Business Associate use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity.
- d. Covered Entity agrees to timely notify Business Associate, in writing, of any arrangements between Covered Entity and the Individual that is the subject of PHI that may impact in any manner the use and/or disclosure of the PHI by Business Associate under this BAA.
- e. Covered Entity shall provide the minimum necessary PHI to Business Associate.

26.7 Term and Termination:

- a. Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall as applicable:
 - i. retain only that PHI that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;
 - iii. continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out at above under “Permitted Uses and Disclosures By Business Associate” that applied prior to termination; and
 - v. return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- b. All other applicable obligations of Business Associate under this Agreement shall survive termination.
- c. Should the applicable State of Oklahoma agency become aware of a pattern of activity or practice that constitutes a material breach of a material term of this BAA by Business Associate, the agency shall provide Business Associate with written notice of such a breach in sufficient detail to enable Contractor to understand the specific nature of the breach. The Client shall be entitled to terminate the Underlying Contract associated with such breach if, after the applicable State of Oklahoma agency provides the notice to Business Associate, Business Associate fails to cure the breach within a reasonable time period not less than thirty (30) days specified in such notice; provided, however, that such

time period specified shall be based on the nature of the breach involved per 45 C.F.R. §§ 164.504(e)(1)(ii)-(iii) & 164.314 (a)(2)(i)(C).

26.8 Miscellaneous Provisions:

- a. No Third-Party Beneficiaries: Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- b. Business Associate recognizes that any material breach of this Business Associate Terms section or breach of confidentiality or misuse of PHI may result in the termination of this Agreement and/or legal action. Said termination may be immediate and need not comply with any termination provision in the parties' underlying agreement, if any.
- c. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and related laws and regulations.
- d. The applicable State of Oklahoma agency shall make available its Notice of Privacy Practices.
- e. Any ambiguity in this Agreement shall be resolved in a manner that causes this Agreement to comply with HIPAA.
- f. If Business Associate maintains a designated record set in an electronic format on behalf of Covered Entity, then Business Associate agrees that within 30 calendar days of expiration or termination of the parties' agreement, Business Associate shall provide to Covered Entity a complete report of all disclosures of and access to the designated record set covering the three years immediately preceding the termination or expiration. The report shall include patient name, date and time of disclosures/access, description of what was disclosed/accessed, purpose of disclosure/access, name of individual who received or accessed the information, and, if available, what action was taken within the designated record set.
- g. Amendment: To the extent that any relevant provision of the HIPAA Regulations is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to these revised obligations. The parties agree to amend this Agreement from time to time as is necessary for Covered Entity or to comply with the requirements of the Privacy Rule and related laws and regulations.

27 42 C.F.R. PART 2 RELATED PROVISIONS

- 27.1 Confidentiality of Information.** Contractor's employees and agents shall have access to private data to the extent necessary to carry out the responsibilities, limited by the terms of this Agreement. Contractor accepts the responsibilities for providing adequate administrative supervision and training to their employees and agents to ensure

compliance with relevant confidentiality, privacy laws, regulations and contractual provisions. No private or confidential data collected, maintained, or used shall be disseminated except as authorized by statute and by terms of this Agreement, whether during the period of the Agreement or thereafter. Furthermore, Contractor:

- 27.2** Acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any information received pursuant to this agreement that identifies or otherwise relates to the individuals under the care of or in the custody of a State of Oklahoma agency, it is fully bound by the provisions of the federal regulations governing the confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the HIPAA, 45 C.F.R. 45 Parts 142, 160, and 164, Title 43 A § 1-109 of Oklahoma Statutes, and may not use or disclose the information except as permitted or required by this Agreement or by law;
- 27.3** Acknowledges that pursuant to 43A O.S. §1-109, all mental health and drug or alcohol treatment information and all communications between physician or psychotherapist and patient are both privileged and confidential and that such information is available only to persons actively engaged in treatment of the client or consumer or in related administrative work. Contractor agrees that such protected information shall not be available or accessible to staff in general and shall not be used for punishment or prosecution of any kind;
- 27.4** Agrees to resist any efforts in judicial proceedings to obtain access to the protected information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2;
- 27.5** Agrees to, when applicable and to the extent within Contractor's control, use appropriate administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, or transmits on behalf of the State of Oklahoma agency and to use appropriate safeguards to prevent the unauthorized use or disclosure of the protected health information, and agrees that protected information will not be placed in the Child Protective Services (CPS) record of any individual involved with the Oklahoma Department of Human Services (DHS).
- 27.6** Agrees to report to the State of Oklahoma agency any use or disclosure or any security incident involving protected information not provided for by this Agreement. Such a report shall be made immediately when an employee becomes aware of such a disclosure, use, or security incident.
- 27.7** Agrees to provide access to the protected information at the request of the State of Oklahoma agency or to an authorized individual as directed by the State of Oklahoma agency, in order to meet the requirement of 45 C.F.R. §164.524 which provides clients with the right to access and copy their own protected information;
- 27.8** Agrees to make any amendments to the protected information as directed or agreed to by the State of Oklahoma agency, pursuant to 45 C.F.R. §164.526;
- 27.9** Agrees to make available its internal practices, books, and records, including policies and procedures, relating to the use and disclosure of protected information received from the

State of Oklahoma agency or created or received by the Contractor on behalf of the State of Oklahoma agency, to the State of Oklahoma agency and to the Secretary of the Department of Health and Human Services for purpose of the Secretary determining the giving party's compliance with HIPAA;

- 27.10** Agrees to provide the State of Oklahoma agency, or an authorized individual, information to permit the State of Oklahoma agency to respond to a request by an individual for an accounting of disclosures in accordance with 45 C.F.R. §164.528.

28 DATA SECURITY

The Contractor agrees to, when applicable and to the extent within Contractor's control, maintain the data in a secure manner compatible with the content and use. The Contractor will, when applicable to the extent within Contractor's control, control access to the data in Contractor's possession or control compliance with the terms of this Agreement. Only the Contractor's personnel whose duties require the use of such information, will have regular access to the data. The Contractor's employees will be allowed access to the data only for the purpose set forth in this Agreement.

- 28.1** Data Destruction. Contractor agrees to, when applicable and to the extent within Contractor's control, follow State of Oklahoma agency policies regarding secure data destruction.

- 28.2** Use of Information. Contractor agrees that the information received or accessed through this Agreement shall not be used to the detriment of any individual nor for any purpose other than those stated in this Agreement.

- 28.3** Redisclosure of Data. The Contractor agrees not to redisclose any information to a third party not covered by the Agreement unless written permission by the State of Oklahoma agency is received and redisclosure is permitted under applicable law.

29 FEDERAL TAX INFORMATION REQUIREMENTS IRS PUBLICATION 1075

- 29.1** PERFORMANCE: If Contractor takes possession or control of Federal Tax Information in performance of this contract, the Contractor agrees to, when applicable and to the extent within Contractor's control, comply with and assume responsibility for compliance by officers or employees with the following requirements:

- 29.2** All work will be performed under the supervision of the State of Oklahoma.

- 29.3** The contractor and contractor's officers or employees to be authorized access to FTI must meet background check requirements defined in IRS Publication 1075. The contractor will maintain a list of officers or employees authorized access to FTI. Such list will be provided to the agency and, upon request, to the IRS.

- 29.4** FTI in hardcopy or electronic format shall be used only for the purpose of carrying out the provisions of this contract. FTI in any format shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection or disclosure of FTI to anyone other than the contractor or the contractor's officers or employees authorized is prohibited.

- 29.5** FTI will be accounted for upon receipt and properly stored before, during, and after processing. In addition, any related output and products require the same level of protection as required for the source material.
- 29.6** The contractor will certify that FTI processed during the performance of this contract will be completely purged from all physical and electronic data storage with no output to be retained by the contractor at the time the work is completed. If immediate purging of physical and electronic data storage is not possible, the contractor will certify that any FTI in physical or electronic storage will remain safeguarded to prevent unauthorized disclosures.
- 29.7** Any spoilage or any intermediate hard copy printout that may result during the processing of FTI will be given to the agency. When this is not possible, the contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts and will provide the agency with a statement containing the date of destruction, description of material destroyed, and the destruction method.
- 29.8** All Contractor computer systems receiving, processing, storing, or transmitting FTI must meet the requirements in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to FTI.
- 29.9** No work involving FTI furnished under this contract will be subcontracted without the prior written approval of the IRS.
- 29.10** Contractor will ensure that the terms of FTI safeguards described herein are included, without modification, in any approved subcontract for work involving FTI.
- 29.11** To the extent the terms, provisions, duties, requirements, and obligations of this contract apply to performing services with FTI, the contractor shall assume toward the subcontractor all obligations, duties and responsibilities that the agency under this contract assumes toward the contractor, and the subcontractor shall assume toward the contractor all the same obligations, duties and responsibilities which the contractor assumes toward the agency under this contract.
- 29.12** In addition to the subcontractor's obligations and duties under an approved subcontract, the terms and conditions of this contract apply to the subcontractor, and the subcontractor is bound and obligated to the contractor hereunder by the same terms and conditions by which the contractor is bound and obligated to the agency under this contract.
- 29.13** For purposes of this contract, the term "contractor" includes any officer or employee of the contractor with access to or who uses FTI, and the term "subcontractor" includes any officer or employee of the subcontractor with access to or who uses FTI.
- 29.14** The agency will have the right to void the contract if the contractor fails to meet the terms of FTI safeguards described herein.

30 CRIMINAL/CIVIL SANCTIONS

- 30.1** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that FTI disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any FTI for a purpose not authorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution.
- 30.2** Each officer or employee of a contractor to whom FTI is or may be accessible shall be notified in writing that FTI accessible to such officer or employee may be accessed only for a purpose and to the extent authorized herein, and that access/inspection of FTI without an official need-to-know for a purpose not authorized herein constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution.
- 30.3** Each officer or employee of a contractor to whom FTI is or may be disclosed shall be notified in writing that any such unauthorized access, inspection or disclosure of FTI may also result in an award of civil damages against the officer or employee in an amount equal to the sum of the greater of \$1,000 for each unauthorized access, inspection, or disclosure, or the sum of actual damages sustained as a result of such unauthorized access, inspection, or disclosure, plus in the case of a willful unauthorized access, inspection, or disclosure or an unauthorized access/inspection or disclosure which is the result of gross negligence, punitive damages, plus the cost of the action. These penalties are prescribed by IRC sections 7213, 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- 30.4** Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- 30.5** Granting a contractor access to FTI must be preceded by certifying that each officer or employee understands the agency's security policy and procedures for safeguarding FTI. A contractor and each officer or employee must maintain their authorization to access FTI through annual recertification of their understanding of the agency's security policy and procedures for safeguarding FTI. The initial certification and recertifications must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, a contractor and each officer or employee must be advised of the provisions of IRC sections 7213, 7213A, and 7431 (see IRS Publication 1075, Exhibit 4, Sanctions for Unauthorized Disclosure, and IRS Publication 1075, Exhibit 5, Civil Damages for Unauthorized Disclosure). The training on the agency's security policy and procedures provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. For the initial certification and the annual recertifications, the contractor and each officer or employee must sign, either with ink or

electronic signature, a confidentiality statement certifying their understanding of the security requirements.

31 INSPECTION

The IRS and the Agency, with 24-hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. Based on the inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with FTI safeguard requirements.

32 SSA REQUIREMENTS

- 32.1** PERFORMANCE: If Contractor takes possession or control of in SSA provided information in the performance of this contract, the contractor agrees to, where applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by his or her employees with the following requirements:
- 32.2** All work will be done under the supervision of the State of Oklahoma.
- 32.3** Any SSA provided information made available shall be used only for carrying out the provisions of this Agreement. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of this contract. Inspection by or disclosure to anyone other than an officer or employee of the Contractor is prohibited.
- 32.4** All SSA provided information shall be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output and products will be given the same level of protection as required for the source material.
- 32.5** No work involving SSA provided information furnished under this contract shall be subcontracted without prior written approval by the applicable State of Oklahoma agency and the SSA.
- 32.6** The Contractor shall maintain a list of employees authorized access. Such list shall be provided upon request to the applicable State of Oklahoma agency or the SSA.
- 32.7** Contractor or agents may not legally process, transmit, or store SSA-provided information in a cloud environment without explicit permission from SSA's Chief Information Officer. Proof of this authorization shall be provided to the Contractor by the applicable State of Oklahoma agency prior to accessing SSA provided information.
- 32.8** Contractor shall provide security awareness training to all employees, contractors, and agents who access SSA-provided information. The training should be annual, mandatory, and certified by the personnel who receive the training. Contractor is also required to certify that each employee, contractor, and agent who views SSA-provided information certify that they understand the potential criminal, civil, and administrative sanctions or penalties for unlawful assess and/or disclosure.

- 32.9** Contractor shall require employees, contractors, and agents to sign a non-disclosure agreement, attest to their receipt of Security Awareness Training, and acknowledge the rules of behavior concerning proper use and security in systems that process SSA-provided information. Contractor shall retain non-disclosure attestations for at least five (5) to seven (7) years for each employee who processes, views, or encounters SSA-provided information as part of their duties.
- 32.10** The applicable State of Oklahoma agency shall provide the Contractor a copy of the SSA exchange agreement and all related attachments before initial disclosure of SSA data. Contractor is required to follow the terms of the applicable State of Oklahoma agency's data exchange agreement with the SSA. Prior to signing this Agreement, and thereafter at SSA's request, the applicable State of Oklahoma agency shall obtain from the Contractor a current list of the employees of such Contractor with access to SSA data and provide such list to the SSA.
- 32.11** Where the Contractor processes, handles, or transmits information provided to the applicable State of Oklahoma agency by SSA or has authority to perform on the agency's behalf, the applicable State of Oklahoma agency shall clearly state the specific roles and functions of the Contractor within the Agreement.
- 32.12** SSA requires all parties subject to this Agreement to exercise due diligence to avoid hindering legal actions, warrants, subpoenas, court actions, court judgments, state or Federal investigations, and SSA special inquiries for matters pertaining to SSA-provided information.
- 32.13** SSA requires all parties subject to this Agreement to agree that any Client-owned or subcontracted facility involved in the receipt, processing, storage, or disposal of SSA-provided information operate as a "de facto" extension of the Client and is subject to onsite inspection and review by the Client or SSA with prior notice.
- 32.14** If the Contractor must send a Contractor computer, hard drive, or other computing or storage device offsite for repair, the Contractor must have a non-disclosure clause in their contract with the vendor. If the Contractor used the item in a business process that involved SSA-provided information and the vendor will retrieve or may view SSA-provided information during servicing, SSA reserves the right to inspect the Contractor's vendor contract. The Contractor must remove SSA-provided information from electronic devices before sending it to an external vendor for service. SSA expects the Contractor to render SSA-provided information unrecoverable or destroy the electronic device if they do not need to recover the information. The same applies to excessed, donated, or sold equipment placed into the custody of another organization.
- 32.15** In the event of a suspected or verified data breach involving SSA provided information, the Contractor shall notify the Client immediately.
- 32.16** The Client shall have the right to void the contract if the contractor fails to provide the safeguards described above.

33 CRIMINAL/CIVIL SANCTIONS

The Act specifically provides civil remedies, 5 U.S.C. Sec. 552a(g), including damages, and criminal penalties, 5 U.S.C. Sec. 552a(i), for violations of the Act. The civil action provisions are premised violations of the Act committed by parties subject to this Agreement or regulations promulgated thereunder. An individual claiming such a violation by parties subject to this Agreement may bring civil action in a federal district court. If the individual substantially prevails, the court may assess reasonable attorney fees and other litigation costs. In addition, the court may direct the parties subject to this Agreement to grant the plaintiff access to his/her records, and when appropriate direct an amendment or correction of records subject to the Act. Actual damages may be awarded to the plaintiff for intentional or willful refusal by parties subject to this Agreement to comply with the Act.

33.1 Civil Remedies

- a. In any suit brought under the provisions of 5 U.S.C. § 552a(g)(1)(C) or (D) in which the court determines that the parties subject to this Agreement acted in a manner which was intentional or willful, shall be liable in an amount equal to the sum of
- b. actual damages sustained by the individual because of the refusal or failure, but in no case, shall a person entitled to recovery receive less than the sum of \$1,000; and
- c. the costs of the action together with reasonable attorney fees as determined by the court.
- d. An action to enforce any liability created under 5 U.S.C. § 552a may be brought in the district court of the United States in the district in which the complainant resides, or has his principal place of business, or in which the records are situated, or in the District of Columbia, without regard to the amount in controversy, within two years from the date on which the cause of action arises, except that where parties subject to this Agreement have materially and willfully misrepresented any information required under this section to be disclosed to an individual and the information so misrepresented is material to establishment of the liability of the agency to the individual under 5 U.S.C. § 552a, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. Nothing in this section shall be construed to authorize any civil action because of any injury sustained as the result of a disclosure of a record prior to September 27, 1975.

33.2 Criminal Penalties

- a. Any officer or employee of an agency, who by virtue of his employment or official position, has possession of, or access to, agency records which contain individually identifiable information the disclosure of which is prohibited by this section or by rules or regulations established thereunder, and who knowing that disclosure of the specific material is so prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(1).

- b. Any officer or employee of any agency who willfully maintains a system of records without meeting the notice requirements of subsection (e)(4) of this section shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(2).
- c. Any person who knowingly and willfully requests or obtains any record concerning an individual from an agency under false pretenses shall be guilty of a misdemeanor and fined not more than \$5,000. See 5 U.S.C. § 552a(i)(3).

34 CHILD SUPPORT FPLS REQUIREMENTS

- 34.1** Contractor, when applicable and to the extent within Contractor's control, and the applicable State of Oklahoma agency must comply with the security requirements established by the Social Security Act, the Privacy Act of 1974, the Federal Information Security Management Act of 2002 (FISMA), 42 United States Code (USC) 654(26), 42 UCS 654a(d)(1)-(5), the U.S. Department of Health and Human Services (HHS), the U.S. Department of Health and Human Services Administration of Children and Families Office of Child Support Enforcement Security Agreement and the Automated Systems for Child Support Enforcement: A Guide for States Section H Security and Privacy. Contractor and applicable State of Oklahoma agency also agree to use Federal Parent Locator Service (FPLS) information and Child Support (CS) program information solely for the authorized purposes in accordance with the terms in this agreement. The information exchanged between state Child Support agencies and all other state program information must be used for authorized purposes and protected against unauthorized access to reduce fraudulent activities and protect the privacy rights of individuals against unauthorized disclosure of confidential information.
- 34.2** This is applicable to the personnel, facilities, documentation, data, electronic and physical records and other machine-readable information systems of the applicable State of Oklahoma agency and Contractor, including, but not limited to, state employees and contractors working with FPLS information and CS program information and state CS agency data centers, statewide centralized data centers, contractor data centers, state Health and Human Services' data centers, comprehensive tribal agencies, data centers serving comprehensive tribes, and any other individual or entity collecting, storing, transmitting or processing FPLS information and CS program information. This is applicable to all FPLS information, which consists of the National Directory of New Hires (NDNH), Debtor File, and the Federal Case Registry (FCR). The NDNH, Debtor File and FCR are components of an automated national information system.
- 34.3** This is also applicable to all CS program information, which includes the state CS program information, other state and tribal program information, and confidential information. Confidential information means any information relating to a specified individual or an individual who can be identified by reference to one or more factors specific to him or her, including but not limited to the individual's Social Security number, residential and mailing addresses, employment information, and financial information. Ref. 45 Code of Federal Regulations (CFR) 303.21(a).

35 FERPA REQUIREMENTS

35.1 If Contractor takes possession or control of Information covered by FERPA in performance of this Agreement, Contractor agrees to, when applicable and to the extent within Contractor's control comply with and assume responsibility for compliance by its employees with the Family Educational Rights and Privacy Act; (20 U.S.C. § 1232g; 34 CFR Part 99) ("FERPA") and the Oklahoma Student Data Accessibility, Transparency, and Accountability Act of 2013; (70 O.S. § 3-168), where personally identifiable student education data is exchanged.

36 CJIS REQUIREMENTS

36.1 INTRODUCTION - This section shall be applicable to the extent that Contractor takes possession or control of CJIS data. The use and maintenance of all items of software or equipment offered for purchase herein must be in compliance with the most current version of the U.S. Department of Justice, Federal Bureau of Investigation ("FBI"), Criminal Justice Information Services (CJIS) Division's CJIS Security Policy ("CJIS Security Policy" or "Security Policy" herein).

36.2 The Entity or Affiliate acquiring the data or system is hereby ultimately responsible for compliance with the CJIS Security Policy and will be subject to an audit by the State of Oklahoma CJIS Systems Officer ("CSO") and the FBI CJIS Division's Audit Staff.

36.3 CJIS SECURITY POLICY REQUIREMENTS GENERALLY - The CJIS Security Policy outlines a number of administrative, procedural, and technical controls agencies must have in place to protect Criminal Justice Information ("CJI"). Our experience is that agencies will generally have many of the administrative and procedural controls in place but will need to implement additional technical safeguards in order to be in complete compliance with the mandate. A Criminal Justice Agency ("CJA") and certain other governmental agencies procuring technology equipment and services that could be used in hosting or connecting or transmitting or receiving CJI data may need to use the check list herein to make sure that the software, equipment, location, security, and persons having the ability to access CJI will meet the CJIS requirements per the then current CJIS Security Policy. A completed Appendix H to said Security Policy will need to be signed by Vendor or a 3rd party if it has access to CJI, such as incident to the maintenance or support of the purchased hardware or software within which resides CJI. Per Appendix "A" to said Security Policy, "access to CJI is the physical or logical (electronic) ability, right or privilege to view, modify or make use of CJI."

36.4 DIRECTIVE CONCERNING ACCESS TO CRIMINAL JUSTICE INFORMATION AND TO HARDWARE OR SOFTWARE WHICH INTERACTS WITH CJI AND CERTIFICATION- The FBI CJIS Division provides state-of-the-art identification and information services to the local, state, tribal, federal, and international criminal justice communities for criminal justice purposes, as well as the noncriminal justice communities for noncriminal justice purposes.

36.5 This Directive primarily concerns access to CJI and access to hardware and software in the use, retention, transmission, reception, and hosting of CJI for criminal justice purposes and not for noncriminal justice purposes. In that regard, this Directive is not only applicable to such data, but also to the hardware and software interacting with such data, their location(s), and persons having the ability to access such data. The CJIS data applicable to the Security Policy is the data described as such in said Policy plus all data

transmitted over the Oklahoma Law Enforcement Telecommunications System (“OLETS”) which is operated by DPS.

36.6 In order to have access to CJIS or to the aforesaid hardware or software, the vendor must be familiar with the FBI CJIS Security Policy, including but not limited to the following portions of said Security Policy:

- a. the Definitions and Acronyms in §3 & Appendices “A” & “B”;
- b. the general policies in §4;
- c. the Policies in §5;
- d. the appropriate forms in Appendices “D”, “E”, “F” & “H”; and
- e. the Supplemental Guidance in Appendices “J”.

36.7 This FBI Security Policy is located and may be downloaded at:

- a. https://le.fbi.gov/file-repository/cjis_security_policy_v5-9-2_20221207-5.pdf
- b. By executing the Contract to which this Directive is attached, the vendor hereby CERTIFIES that the foregoing directive has and will be followed, including but not limited to full compliance with the FBI CJIS Security Policy, as amended and as applicable.

37 NOTICES

37.1 In addition to notice requirements under the terms of the Contract otherwise, the following individuals shall also be provided the request, approval or notice, as applicable:

Chief Information Officer
3115 N. Lincoln Blvd
Oklahoma City, OK 73105

With a copy, which shall not constitute notice, to:

OMES Deputy General Counsel
3115 North Lincoln Blvd
Oklahoma City, Oklahoma 73105

**Attachment E1 to
STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY &
COMPANY RESULTING FROM SOLICITATION NO. EV00000599
Pricing Sheet**

LABOR CATEGORY	LABOR RATE	TOTAL HOURS (Monthly)	MONTHLY FEE	TOTAL HOURS (Annual)	ANNUAL FEE
Project Manager	\$184.00	80	\$14,720.00	960	\$176,640.00
Power BI Specialist	\$200.00	60	\$12,000.00	720	\$144,000.00
GIS Specialist	\$200.00	60	\$12,000.00	720	\$144,000.00
Total		200	\$38,720.00	2400	\$464,640.00

The fee outlined above is based on our past experience with on-call project management services and the requirements of the solicitation. Guernsey welcomes the opportunity to discuss your specific needs, requirements, and expectations upon selection to finalize the fee. This estimate includes several assumptions. Historically, contracts of this nature have been structured on a time-and-materials basis, where Guernsey invoices only for the time spent on the project. This approach provides a more practical and equitable arrangement for both the client and Guernsey.

**Attachment E2 to
STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY &
COMPANY RESULTING FROM SOLICITATION NO. EV00000599
Offer of Value-Added Products and/or Services**

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**Attachment E3 to
STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY &
COMPANY RESULTING FROM SOLICITATION NO. EV00000599
Additional Bidder Terms**

“INTENTIONALLY LEFT BLANK”

**Attachment E4 to
STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY &
COMPANY RESULTING FROM SOLICITATION NO. EV00000599
Master Terms Between Bidder and State**

“INTENTIONALLY LEFT BLANK”

**Attachment E5 to
STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY &
COMPANY RESULTING FROM SOLICITATION NO. EV00000599
Third Party Vendor Information**

“INTENTIONALLY LEFT BLANK”

**Attachment F to
STATE OF OKLAHOMA CONTRACT WITH C.H. GUERNSEY &
COMPANY RESULTING FROM SOLICITATION NO. EV00000599
Negotiated Exceptions and Additional Terms to the Contract**

Supplier has not taken any Exceptions to the State's terms and conditions. As such, there are no changes to the language of the Solicitation.

ATTACHMENT G

FEDERAL FUNDING TERMS

This State of Oklahoma Federal Funding Terms is a Contract Document in connection with a Contract awarded by and through the State of Oklahoma, Office of Management and Enterprise Services, with a vendor, supplier, or contractor (“Supplier”). Supplier acknowledges that acquisitions under this Contract may use federal assistance for purposes of funding the acquisition. When procuring property and services using Federal financial assistance, the State must follow the same policies it uses for procurements from its non-Federal funds along with all other requirements of the Title 2 U.S. Code of Federal Regulations Part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance). In addition, the State and Supplier (“Parties”) must agree to the standards identified in Federal Regulations 2 CFR Sections 200.321 through 200.323 and ensure purchase orders, contracts, or subcontracts include clauses required by 2 CFR Section 200.327.

The terms and conditions provided in this Attachment are general Federal award requirements. Additional terms, conditions, or exceptions may be required that are specific to the Federal financial assistance used in each procurement transaction. Any additional terms, conditions, or exceptions shall be incorporated into a purchase order, contract, or subcontract to ensure compliance with the Federal financial assistance attached to this Contract.

In addition to the terms contained in applicable Contract documents and the requirements mentioned above, the Parties agree to the following Federal Funding Terms.

1 AFFIRMATIVE STEPS FOR CONTRACTING.

- 1.1** Parties acknowledge that any non-Federal entity included in this Contract must take affirmative steps to assure that minority businesses, women’s business enterprises, and labor surplus area firms are used when possible. In addition to and in conjunction with 74 O.S. Sections 85.45 through 85.45i., those affirmative steps must include:
- a. Placing qualified small and minority businesses and women’s business enterprises on solicitation lists;
 - b. Assuring that small and minority businesses, and women’s business enterprises are solicited whenever they are potential sources;
 - c. 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;
 - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;

- e. 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
- f. Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (a.) through (e.) of this section.

2 INFORMATION SUBMITTED.

Supplier acknowledges that all information, reports, and other documents and data submitted to the State and its representatives in connection with this Contract were, at the time they were (or will be) furnished, and are, as of the date hereof (or will be as of the date they are furnished), true, correct, and complete in all material respects.

3 COMPETITIVE BIDDING.

All funds received by the Supplier herein are subject to the State Purchasing Act and the procurement standards found in 2 CFR Sections 200.321 through 200.323, and 2 CFR Section 200.327. The Supplier acknowledges and agrees that these funds were to the best of Supplier's knowledge competitively bid or covered by an exemption as described therein.

4 AUDITING AND MONITORING REQUIREMENTS.

Supplier acknowledges that the funds used in this transaction are subject to the requirements found in Sections 2 CFR Sections 200.500 through 2 CFR § 200.520; and therefore, the State is subject to audit by Federal and State entities.

4.1 The Supplier agrees to provide the State of Oklahoma, the U.S. Department of Treasury, the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Supplier which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts, and transcriptions. The Supplier agrees to permit any of the foregoing parties to copy or reproduce, by any means, excerpts and transcriptions as reasonably needed, and agrees to cooperate with all such requests. All records related to this transaction must be kept for five years after the completion of this Contract.

4.2 If applicable, the Supplier agrees to provide the Treasury Department or authorized representatives access to construction or other work sites pertaining to the work being completed under the Contract.

4.3 No language in this Contract is intended to prohibit audits or internal reviews by the Treasury Department or the Comptroller General of the United States.

4.4 The Supplier further agrees to include a provision requiring such compliance in its lower tier covered transactions.

5 BUYING PREFERENCES.

5.1 Domestic Preferences, 2 CFR Section 200.322. Supplier should, to the greatest extent practicable under the scope of this Contract, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this Contract. For purposes of this section:

- a. “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- b. “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber; and
- c. Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth below.

5.2 Buy America Preference, 2 CFR Part 184. Applies to Federal awards where funds are appropriated or otherwise made available for infrastructure projects in the United States, regardless of whether infrastructure is the primary purpose of the Federal award. Must be included in all subawards, contracts, and purchase orders for the work performed, or products supplied under the Federal award. Infrastructure encompasses public infrastructure projects in the United States, which includes, at a minimum, the structures, facilities, and equipment for roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property; and structures, facilities, and equipment that generate, transport, and distribute energy including electric vehicle (EV) charging.

6 STATUTES AND REGULATIONS PROHIBITING DISCRIMINATION.

6.1 Executive Order 11246, “Equal Employment Opportunity,” as amended by EO 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor. Applies to any construction work and subcontract work, or modification thereof, which is paid for in whole or in part with funds obtained from the Federal Government, unless otherwise exempted.

Construction Contracts 41 CFR Section 60-1.4(b). During the performance of this contract, the contractor agrees as follows:

- a. 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.

- b. 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. which includes that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- c. The contractor will not discharge or discriminate against any employee or applicant for employment because they inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This does not apply to instances in which an employee who has access to the compensation as part of the employee's essential job function discloses the compensation 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.
- d. The contractor will send to each labor union or representative of workers with which a collective bargaining agreement is in place or other contract or understanding, a notice to be provided advising the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

6.2 Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d, *et seq.*) and Treasury's implementing regulations at 31 C.F.R. Part 22, which prohibits discrimination on the basis of race, color, or national origin under programs or activities receiving Federal financial assistance.

6.3 Fair Housing Act, Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601, *et seq.*), which prohibits discrimination in housing on the basis of race, color, religion, national origin, sex, familial status, or disability.

- 6.4 Section 504 of the Rehabilitation Act of 1973**, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of disability under any program or activity receiving federal financial assistance.
- 6.5 Age Discrimination Act of 1975**, as amended (42 U.S.C. §§ 6101, *et seq.*), and Treasury’s implementing regulations at 31 C.F.R. Part 23, which prohibit discrimination on the basis of age in programs or activities receiving federal financial assistance.
- 6.6 Title II of the Americans with Disabilities Act of 1990**, as amended (42 U.S.C. §§ 12101, *et seq.*), which prohibits discrimination on the basis of disability under programs, activities, and services provided or made available by state and local governments or instrumentalities or agencies thereto.
- 6.7 Protections for Whistleblowers.** In accordance with 41 U.S.C. § 4712, the Parties may not discharge, demote, or otherwise discriminate against an employee in reprisal for disclosing to any of the list of persons or entities provided below, information that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract (including the competition for or negotiation of a contract) or grant. The list of persons and entities referenced includes the following:
- a. A member of Congress or a representative of a committee of Congress;
 - b. An Inspector General;
 - c. The Government Accountability Office;
 - d. A Treasury employee responsible for contract or grant oversight or management;
 - e. An authorized official of the Department of Justice or other law enforcement agency;
 - f. A court or grand jury; or
 - g. A management official or other employee of Recipient, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

7 CONTRACT AND SUBCONTRACT LEVEL REQUIREMENTS.

In addition to State procurement regulations, the following Federal regulations apply.

- 7.1 Contracts and Purchases in Excess of \$2,000.** The following applies to contractors and subcontractors performing on Federal funded or assisted contracts in excess of \$2,000 for the construction, alteration, or repair (including painting and decorating) of public buildings or public works, and requires that Supplier must comply with two sets of regulations:

- a. **The Davis–Bacon Act (40 U.S.C. §§ 3141-3144, and 3146-3148)** as supplemented by Department of Labor regulations (29 CFR Part 5, “Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction”). When applicable, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non–Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non–Federal entity must report all suspected or reported violations to the Federal awarding agency.
- b. **Copeland “Anti–Kickback” Act (40 U.S.C. § 3145)**, as supplemented by Department of Labor regulations (29 CFR Part 3, “Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States”). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non–Federal entity must report all suspected or reported violations to the Federal awarding agency.

7.2 Contracts and Purchases in Excess of \$10,000.

- a. **Recovered Materials.** Any state agency or agency of a political subdivision of a state and its suppliers or 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.

7.3 Contracts and Subcontracts for \$25,000 and Above

- a. **Suspension and Debarment.** Restricts awards, subawards, contracts, and subcontracts with Suppliers that are debarred, suspended, or otherwise excluded, or declared ineligible for participation in federal assistance programs and activities. This Contract is a covered transaction for purposes of 2 CFR pt. 180 and 2 CFR pt. 3000. As such, the Supplier is required to verify that none of Supplier’s principals (defined at 2 CFR § 180.995) or its affiliates (defined at 2 CFR § 180.905) are excluded (defined at 2 CFR § 180.940) or disqualified (defined at 2 CFR § 180.935). The Supplier must comply with 2 CFR part 180,

subpart C and 2 CFR part 3000, subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into. This certification is a material representation of fact relied upon by the State of Oklahoma. If it is later determined that the Supplier did not comply with 2 CFR part 180, subpart C and 2 CFR pt. 3000, subpart C, in addition to remedies available to the State, the federal government may pursue available remedies, including but not limited to suspension and/or debarment.

7.4 Contracts and Purchases \$100,000 and Above

- a. **The Contract Work Hours and Safety Standards Act, 40 U.S.C. §§ 3701-3708.** Applies to all contracts and subcontracts of more than \$100,000 that involve the employment of mechanics or laborers. Under Section 3702 of the Act, contractors and subcontractors shall be required to compute the wages of every mechanic and laborer (including guards and watchmen) on the basis of a standard workweek of 40 hours. Work in excess of the standard workweek is permissible provided that the worker is compensated at a rate of not less than 1 1/2 times the basic rate of pay for all hours worked in excess of 40 hours in the workweek. The requirements of 40 U.S.C. § 3704 are applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous. *These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.*
- b. **Byrd Anti-Lobbying Amendment, 31 U.S.C. § 1352, as amended.** Supplier certifies 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. This Supplier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award and require any entities receiving subawards or contracts to do the same. Such disclosures are forwarded from tier-to-tier up to the recipient who in turn will forward the certification(s) to the awarding agency.
** Contractors must sign the attached certification.*

7.5 Contracts and Purchases \$150,000 and Above

- a. **Clean Air Act (42 U.S.C. §§ 7401– 7671q.) and the Federal Water Pollution Control Act (33 U.S.C. §§ 1251-1387), as amended.** Supplier agrees to comply with, and require all subcontractors to comply with, all applicable standards, orders, or regulations issued pursuant to these Acts. Supplier agrees to report each violation to the State entity that is party to this Contract and understands and agrees that the State entity will, in turn, report each violation as required to assure notification to the appropriate Environmental Protection Agency.

7.6 Contracts and Purchases \$250,000 and Above

- a. **Remedies.** Contracts for more than the simplified acquisition threshold, currently set at \$250,000, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

8 OTHER APPLICABLE LAWS

- 8.1 **Increasing Seat Belt Use in the United States.** Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Supplier is encouraged to adopt and enforce on-the-job seat belt policies and programs for employees when operating company-owned, rented or personally owned vehicles.
- 8.2 **Reducing Text Messaging While Driving.** Pursuant to Executive Order 13513, 74 FR 51225 (Oct. 6, 2009), Supplier is encouraged to adopt and enforce policies that ban text messaging while driving and establish workplace safety policies to decrease accidents caused by distracted drivers.
- 8.3 **Publications.** Any publications produced with funds from a Federal award must display the following language: “This project [is being] [was] supported, in whole or in part, by federal award number [enter project FAIN] awarded to [name of Recipient] by the U.S. Department of the Treasury.”
- 8.4 **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.

The term *funding agreement* means any contract, grant, or cooperative agreement entered into between any Federal agency, other than the Tennessee Valley Authority, and any contractor for the performance of experimental, developmental, or research work funded in whole or in part by the Federal government. This term also includes any assignment, substitution of parties, or subcontract of any type entered into for the performance of experimental, developmental, or research work under a funding agreement as defined in the first sentence of this paragraph.

8.5 Prohibition of Certain Telecommunications and Video Surveillance Services or Equipment.

- a. Parties agree that no Federal funds may be obligated or expended in any contract or subcontract that includes obtaining any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system.

As described in Public Law 115–232, section 889, *Covered telecommunications equipment* is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- b. This prohibition does not prevent parties to this Contract or subcontractors from using covered telecommunications equipment and services for their own purposes, provided the covered telecommunications equipment or services are not procured with Federal funds.
- c. In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.

8.6 Termination for Cause and Convenience – Provisions under Contract Attachment B apply.

This form is required for purchases of \$100,000 and above

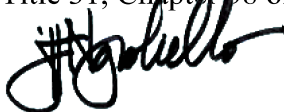
**CERTIFICATION REGARDING LOBBYING
Required by 31 CFR Part 21**

The undersigned certifies, to the best of their knowledge and belief, that:

- I. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- II. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- III. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subawards, and contracts under grants, loans, and cooperative agreements) and that all Suppliers shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, of the U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Supplier certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Supplier understands and agrees that the remedies found in Title 31, Chapter 38 of the U.S. Code applies to this certification and disclosure.



Signature of Supplier's Authorized Official

Jeff Napoliello

03/11/2025

Name

Date

Executive Vice President

Title

ESA & NHPA Webinar for State Grant Recipients

Formula Grant Award Terms 25 & 26

June 12, 2024



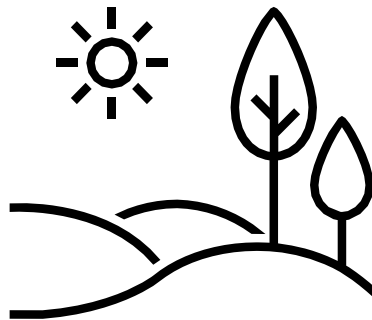
U.S. DEPARTMENT OF THE INTERIOR
Orphaned Wells Program Office



Welcome!

Overview & Objectives

- Introductions
- Webinar Goals & Objectives
- Agenda



Agenda

- I. Opening Remarks
 - Welcome
 - Overview & Objectives
- II. Notice of Award
 - Roles & Responsibilities
- III. Getting Started
 - Developing your Workplan
- IV. Endangered Species Act
 - Award Term #25
 - Delegated Roles and Responsibilities
 - Consultation Overview
- V. National Historic Preservation Act
 - Award Term #26
 - Delegated Roles and Responsibilities
 - Consultation Overview
- VI. Question & Answer
- VII. Closing Remarks



Tools and Resources Tables

Learning ESA and NHPA

ESA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying federally listed species and critical habitats near orphaned well project areas.	
ESA	https://www.fws.gov/law/angered-species-act
U.S. Code of Federal Regulations	
CFR ESA§7 Process	https://www.ecfr.gov/current/title-50/chapter-IV/subchapter-A/part-402
CFR Listed Species	https://www.ecfr.gov/current/title-50/chapter-I/subchapter-B/part-17/subpart-B/section-17.11
FWS & NMFS Joint Consultation Handbook	
ESA§7 Consultation Handbook	https://www.fws.gov/sites/default/files/documents/angered-species-consultation-handbook.pdf
	Chpt. 1.1 Introduction to ESA§7 Consultation Chpt. 2.1(F) Role of Non-Federal Representative Chpt. 3 Informal Consultation
FWS	
ESA§7 Consultation Overview	https://www.fws.gov/service/esa-section-7-consultation
ESA§7 Flowchart	https://www.fws.gov/media/section-7-consultation-process-flow-chart
FWS Action Area	https://www.fws.gov/media/action-area-diagram
IPaC	https://ipac.ecosphere.fws.gov/HelpfulVideosandFrequentlyAskedQuestions
Critical Habitat Map	https://fws.maps.arcgis.com/home/webmap/viewer.html
FWS YouTube Channel	1 Welcome to Section 7 https://www.youtube.com/watch?v=QHFbYY49IAI
	2 ESA Overview https://www.youtube.com/watch?v=zWQeJtTsF2Q
Section 7 Interagency Consultation Playlist	3 What is ESA§7 https://www.youtube.com/watch?v=hDEw9bbtQv8
	4 Incidental Take https://www.youtube.com/watch?v=Rdv5_rw8JFU
	5 Introduction to the Federal Register https://www.youtube.com/watch?v=rVDtpDGx5Kc
	6 Use of 50 CFR https://www.youtube.com/watch?v=bTeGn33xaFM
	7 The Process of ESA§7 https://www.youtube.com/watch?v=pNMLVzSwgI&t=3s
	8 Definitions https://www.youtube.com/watch?v=2fAenXl05M
	9 Section 7(a)(1) https://www.youtube.com/watch?v=6h19XHjx0UI&list=PLZb5DyVcCk96Ulq44opZaGZVtKLSLmDEo&index=10
	10 Deep Dive into ESA§7 https://www.youtube.com/watch?v=6h19XHjx0UI&list=PLZb5DyVcCk96Ulq44opZaGZVtKLSLmDEo&index=10
NMFS	
ESA§7 Consultation	https://www.fisheries.noaa.gov/topic/consultations/angered-species-act-consultations
ESA§7 Implementation	https://www.fisheries.noaa.gov/topic/angered-species-conservation/angered-species-act-implementation
ESA§7 Sp. Directory	https://www.fisheries.noaa.gov/species-directory/threatened-angered
Critical Habitat	https://www.fisheries.noaa.gov/national/angered-species-conservation/critical-habitat
Critical Habitat Map	https://www.fisheries.noaa.gov/resource/map/national-esa-critical-habitat-mapper

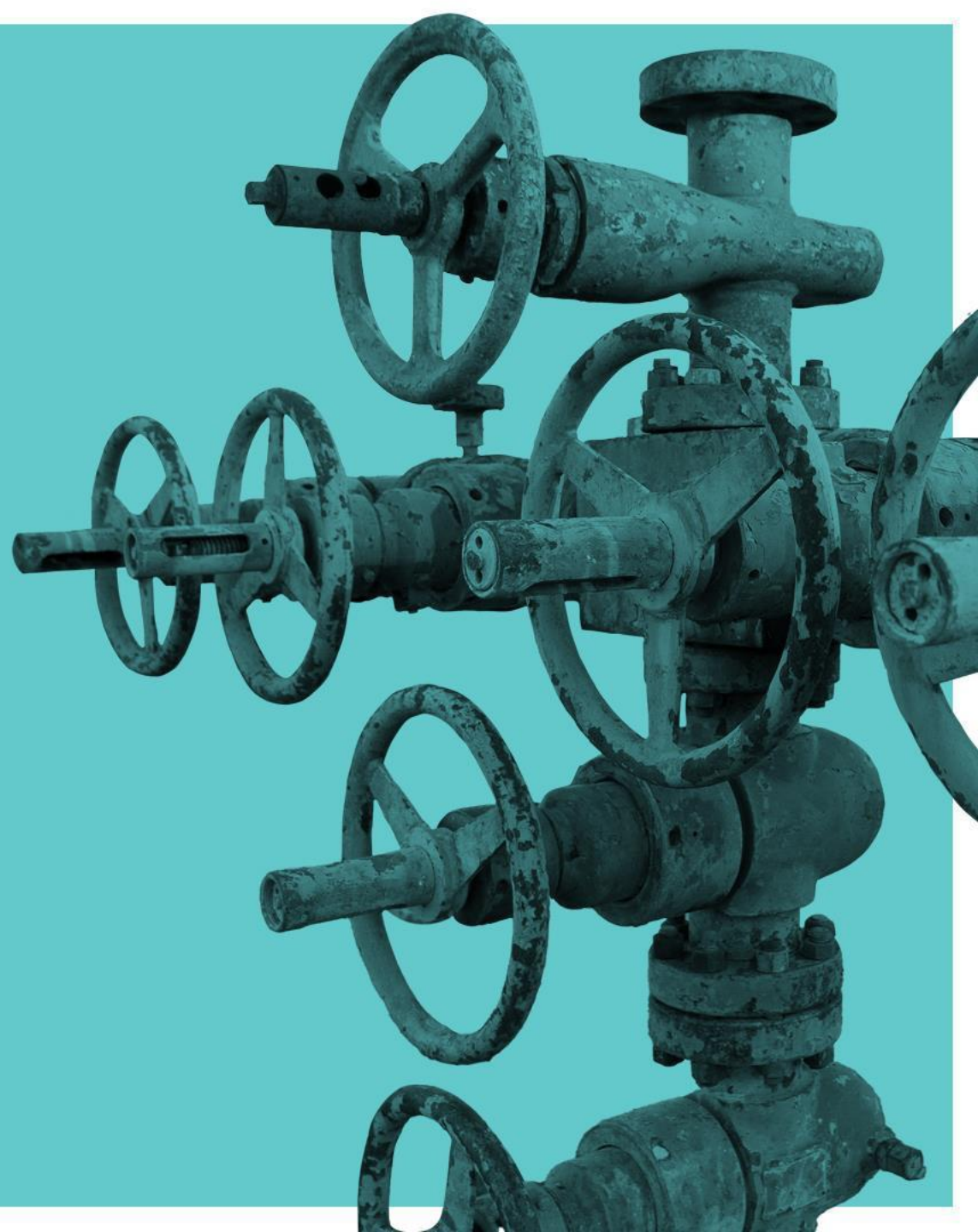
NHPA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying historic properties near orphaned well project areas.	
NHPA	https://www.achp.gov/sites/default/files/2018-06/nhpa.pdf
U.S. Code of Federal Regulations	
CFR NHPA	https://www.ecfr.gov/current/title-36/chapter-VIII/part-800
ACHP	
An Introduction to §106	https://www.achp.gov/protecting-historic-properties/section-106-process/introduction-section-106
§106 Review Process Flowchart	https://www.achp.gov/digital-library-section-106-landing/section-106-review-process-flowchart
§106 Applicant Toolkit	https://www.achp.gov/digital-library-section-106-landing/section-106-applicant-toolkit
Q&A NHPA§106	https://www.achp.gov/digital-library-section-106-landing/section-106-regulations-section-section-questions-and-answers
Citizen's Guide to §106 Review	https://www.achp.gov/sites/default/files/documents/2021-01/CitizenGuide2021_011321.pdf
Reasonable & Good Faith Identification Standard §106	https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf
NPS	
Historic Preservation: NHPA	https://www.nps.gov/subjects/historicpreservation/national-historic-preservation-act.htm
National Register of Historic Places (NRHP)	https://www.nps.gov/subjects/nationalregister/index.htm
NRHP Database	https://www.nps.gov/subjects/nationalregister/database-research.htm
SHPO/THPO	
SHPO Directory	https://ncshpo.org/directory/ Visit your SHPO website for §106 consultation package & submission requirements
ACHP Role of THPO in §106 Process	https://www.achp.gov/digital-library-section-106-landing/role-tribal-historic-preservation-officer-section-106-process
National Association of THPOs	https://members.natipo.org/thpodirectory/FindStartsWith?term=2%23%21
NPS Find a THPO	https://www.nps.gov/subjects/historicpreservationfund/tribal-historic-preservation-office-program.htm
Tribal Nations	
White House Memo Standards for Tribal Consultation	https://www.whitehouse.gov/briefing-room/presidential-actions/2022/11/30/memorandum-on-uniform-standards-for-tribal-consultation/
ACHP §106 Consultation w/ Tribes in the Review Process: The Handbook	https://www.achp.gov/sites/default/files/2021-06/ConsultationwithIndianTribesHandbook6-11-21Final_0.pdf
ACHP Limitations on Delegation of Authority by Federal Agencies to Initiate Tribal Consult §106	https://www.achp.gov/sites/default/files/guidance/2018-06/LimitationsontheDelegationofAuthoritybyFederalAgenciesToInitiateTribalConsultationunderSection106oftheNHPA01Jul2011.pdf
BIA Tract Viewer	https://biamaps.geoplatform.gov/biatracts/
BIA Tribal Leaders Directory	https://www.bia.gov/service/tribal-leaders-directory
Tribal Directory Assessment Tool	https://egis.hud.gov/tdat/
National Archives: Treaties	https://www.archives.gov/research/native-americans/treaties/catalog-links
OK Tribal Treaties Database	https://treaties.okstate.edu/

 **New Tools for Recipients**



Notice of Award

You received an award, now what?



Notice of Award

Understanding Roles & Responsibilities

- Award Terms & Conditions


- State Formula Grants: Phase 1
- Award Term 24: Environmental Compliance
- Award Term 25: Endangered Species Act Compliance Reviews
- Award Term 26: Historic Preservation

- Recipient Acceptance

- Roles & Responsibilities

- Use of Grant Funds

- Generally, may be used to complete TC25 and TC26
- Contact IBC Awarding Officer for additional details

1. DATE ISSUED MM/DD/YYYY		1a. SUPERSEDES AWARD NOTICE if it is except that any additions or restrictions previously imposed remain in effect unless specifically rescinded.		 <p>NOTICE OF AWARD</p> <p>AUTHORIZATION (Legislation/Regulations) P.L. 117-58 The Infrastructure Investment and Jobs Act, Part Title VI, Section 40601</p>		
2. CFDA NO. 15015 - Energy Community Revitalization Program						
3. ASSISTANCE TYPE Formula Grant						
4. GRANT NO. Originating MCA #		5. TYPE OF AWARD				
4a. FAIN		5a. ACTION TYPE New				
6. PROJECT PERIOD From MM/DD/YYYY		Through MM/DD/YYYY				
7. BUDGET PERIOD From MM/DD/YYYY		Through MM/DD/YYYY				
8. TITLE OF PROJECT (OR PROGRAM)						
9a. GRANTEE NAME AND ADDRESS				9b. GRANTEE PROJECT DIRECTOR		
10a. GRANTEE AUTHORIZING OFFICIAL				10b. FEDERAL PROJECT OFFICER		
ALL AMOUNTS ARE SHOWN IN USD						
11. APPROVED BUDGET (Excludes Direct Assistance)				12. AWARD COMPUTATION		
I Financial Assistance from the Federal Awarding Agency Only				a. Amount of Federal Financial Assistance (from Item 11i) \$		
II Total project costs including grant funds and all other financial participation				b. Less Unobligated Balance From Prior Budget Periods \$		
a. Salaries and Wages \$				c. Less Cumulative Prior Awards (This Budget Period) \$		
b. Fringe Benefits \$				d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION \$		
c. Total Personnel Costs \$				13. Total Federal Funds Awarded to Date for Project Period \$		
d. Equipment \$				14. RECOMMENDED FUTURE SUPPORT		
e. Supplies \$				(Subject to the availability of funds and satisfactory progress of the project):		
f. Travel \$				YEAR TOTAL DIRECT COSTS YEAR TOTAL DIRECT COSTS		
g. Construction \$				a. 2 \$ d. 5 \$		
h. Other \$				b. 3 \$ e. 6 \$		
i. Contractual \$				c. 4 \$ f. 7 \$		
j. TOTAL DIRECT COSTS \$				15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING:		
k. INDIRECT COSTS \$				A. TOBACCO		
l. TOTAL APPROVED BUDGET \$				a. REDUCTION		
m. Federal Share \$				b. ADDITIONAL COSTS		
n. Non-Federal Share \$				c. MATCHING		
				d. OTHER FEDERAL FUNDS (Add / Deduct Option)		
				e. OTHER (See REMARKS)		
16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:						
a. The grant program legislation.						
b. The grant program regulations.						
c. The award terms and conditions, if any, noted below under REMARKS.						
d. Federal award related requirements, cost principles and/or other requirements applicable to the grant.						
e. In the event there are conflicts or otherwise inconsistent provisions applicable to the grant, the order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.						
REMARKS (Other Terms and Conditions Attached - <input checked="" type="radio"/> Yes <input type="radio"/> No)						
Please refer to the Grant Continuation Document included with the Notice of Award for Specific Award Terms and Conditions and all attached Exhibits.						
GRANTS MANAGEMENT OFFICIAL:						
Ashley Riba, Grant Management Officer / Financial Assistance Officer						
Acquisitions Services Directorate, Interior Business Center						
381 Eldon St Suite 2000 A						
Hamden, VA, 20170-2017						
Phone: 571-388-3084						
17. VENDOR CODE 0270191281		18a. UIC 01CZA6WQ2.85		18b. DUNS 929327890		
19. CONG. DIST. 08						
LINE#	FINANCIAL ACCT	AMT OF FIN ASST	START DATE	END DATE	TAS ACCT	PO LINE DESCRIPTION
1						



Non-Federal Representative

Understanding Roles & Responsibilities

Delegated Responsibilities to Grant Recipients

1. Prepare compliance documentation and consultation materials.
2. Maintain and submit documentation for the Administrative Record.
3. Initiate informal and assist with formal consultation.

Tip: Recommended Qualifications

★ This is to help recognize the minimum expertise generally necessary for performing professionally credible work within the field.

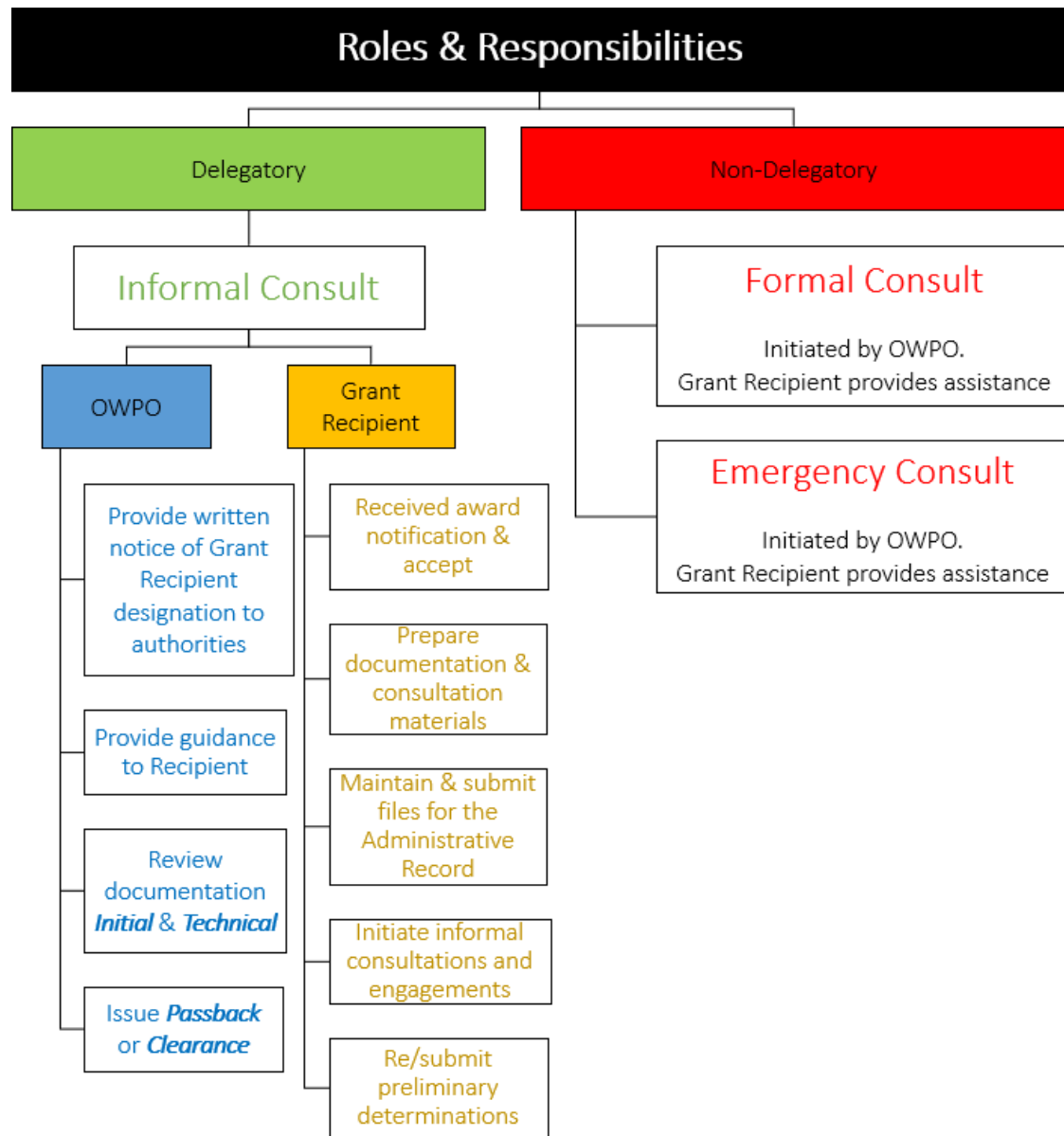
ESA: Degree in Biology, Natural Resources, or similar.

NHPA: Degree in History, Archaeology, Architecture

DOI Secretary Professional Qualification Standards

<https://www.doi.gov/pam/asset-management/historic-preservation/pqs>





★ Note...

Retention requirements for records

3 years

from date of the submission of the final expenditure report

2 CFR 200.334



Understanding Award Term 24

Environmental Compliance

★ *Reminder...*

AWARD TERM 24

Environmental Compliance

Recipients of financial assistance under this award must comply with all applicable federal statutes, regulations, and executive orders (EOs) and with all applicable Tribal, state, and local statutes and regulations to ensure that potential impacts to the environment are considered before undertaking any action funded with financial assistance under this award. The Recipient must ensure that documentation of compliance with all applicable statutes and regulations is included in project files and must produce this documentation upon request.



NEPA

NEPA is the *umbrella* that facilitates project coordination by integrating compliance requirements that may otherwise proceed independently.

Clean Water Act

Clean Air Act

Noise Control Act

Executive Orders

★ National Historic Preservation Act

Marine Mammal Protection Act

Coastal Zone Management Act

★ Endangered Species Act

Occupational Safety & Health Act

Other federal, state, and local environmental laws, policies, and regulations

Resource Conservation & Recovery Act



Common Misconceptions

Actualities

1 - Use a Categorical Exclusion (CE) to exempt Recipients from ESA and NHPA requirements.

- Use of a CE is specific to NEPA procedures.
- A CE exempts from “**formal**” preparation of EA or EIS.
- A CE often requires “**informal**” documentation.
- ESA and NHPA statutory requirement still apply when a CE is used.
- “Extraordinary Circumstances” elevate NEPA level of analysis.

2 - Award terms and conditions 25 and 26 do not require grant recipient to prepare and submit documentation demonstrating compliance.

- Under ESA§7 and NHPA§106, the ultimate responsibility for compliance belongs to the federal action agency (OWPO).
- Recipients are the operational experts and designated to help streamline the process.

As the designated representative all grant recipients are responsible for:

1. preparing information, analyses, and recommendations as well as conduct informal consultations and initial engagements on behalf of OWPO.
2. providing OWPO with the information needed to properly characterize impacts as well as maintain supportive project files that substantiate the associated determinations.



Common Misconceptions

Actualities

3 – Efforts are restorative in nature and should not be considered destructive nor as construction.

- ESA & NHPA require **PROACTIVE** consideration of potential impacts from proposed federal “**actions**” and “**undertakings**.”
- “Actions” and “undertakings” are broadly defined to include federal authorization on projects, lands, and providing funding opportunities.

4 – The proposed action will take place in an area that is previously disturbed or near areas with high levels of human disturbance (e.g., urban areas, housing developments).

- Disturbances frequently occurred prior to passage of many environmental statutes.
- Dated and/or incomplete understanding of ancestral uses and historic properties.
- Vegetative succession changes disturbance levels and habitat quality over time.
- Urban areas occur within the biological and cultural landscapes albeit heavily modified at times.



Understanding Award Term 25

Endangered Species Act

★ Applies to all federal
“**Actions**”

AWARD TERM 25

Endangered Species Act Compliance Reviews

This grant is being awarded pursuant to Section 40601 of the Infrastructure Investment and Jobs Act (P.L 117-58), commonly known as the "Bipartisan Infrastructure Law (BIL)." Under the BIL, the Secretary of the Interior is directed to award grants to eligible States to carry out activities that address orphaned wells. Under Section 7(a)(2) of the ESA, the Department of the Interior is required to ensure that activities funded by this award are not likely to jeopardize species listed on the Federal List of Endangered and Threatened Wildlife and Plants or result in the destruction or adverse modification of critical habitat designated for Federal Endangered and Threatened Wildlife and Plants.



Understanding Award Term 26

National Historic Preservation Act

★ Applies to all federal
“**Undertaking**”

AWARD TERM 26

Historic Preservation

With the exception of those activities listed below, the activities funded under Section 40601 of the BIL are “undertakings” with the potential to affect historic properties and, as such, are subject to review under Section 106 of the National Historic Preservation Act (NHPA), 54 U.S.C. § 306108, and the implementing regulations, 36 CFR Part 800.

Section 106 applies to historic properties listed in or eligible for listing in the National Register of Historic Places. By and through this Term and Condition of award, the OWPO authorizes the Recipient to initiate NHPA, Section 106 consultation, and to assume responsibility for steps in the process consistent with 36 CFR 800.2(c)(4). As a condition for receipt of the grant, the Recipient must conduct the initial steps of the Section 106 process, which includes identifying and evaluating historic properties within the area of potential effects associated with specific projects and assessing effects (36 CFR 800.4 through 800.5)



Streamlined Processing

Coordinating Submittals

★ Encouraging **Coordinated** submittals

- 1) Project Description
- 2) ESA§7 documentation
- 3) NHPA§106 documentation



New eMail



Recipient Submittals

TO: Primary OWPO Contact assigned EPS

CC: environmentalcompliance_orphanedwells@ios.doi.gov

- Award Term 25 “10-day” clock applies **only** to ESA “**No Effect**” determinations submitted by the Recipient.
- Resolution of any “May Affect” determinations are subject to ESA statutory timelines.
- Historic properties are subject to NHPA statutory timelines.



Streamlined Processing

Coordinating Submittals



OWPO Submittal Processing

- The 10-day clock will be counted in terms of a OWPO business day.
- An OWPO business day is defined as Monday through Friday, from 8am to 5pm Mountain, **excluding** federal holidays and events qualifying under OMB administrative leave procedures (e.g., weather and safety dismissals).
- Day 0: Recipient submission date.
- Day 1: begins at 8 am Mountain on the first OWPO business day following the submission.
- Day 10: ends at 5pm Mountain on the tenth OWPO business day following the submission.

OWPO Submittal Prioritization

- 1st = complete packages submitted by a Grant Recipient for the first time, keep as many recipients moving forward as early as possible.
- 2nd = subsequent packages submitted by a Grant Recipient that are complete.
- 3rd = incomplete packages that only contain TC25 (ESA) documentation.
- 4th = incomplete packages that only contain TC26 (NHPA) documentation.



Streamlined Processing

Coordinating Submittals



OWPO Submittal Determinations

ESA

- If OWPO accepts a preliminary ESA “No Effect” determination(s), the Grant Recipient is notified via email from the Environmental Compliance Inbox no later than 5pm Mountain on the 10th business day following the submission. If you have not heard from OWPO by 10th day, preliminary ESA determination has been accepted.
 - Every effort will be made to review ESA expeditiously and notify grant recipients prior to expiration of the 10-day clock provided NHPA documentation has been accepted by OWPO and is ready to distribute to NHPA Consulting Parties.
- If OWPO, does not accept the preliminary ESA “No Effect” determination, the 10-day clock stops until the grantee resolves the concerns identified – providing time for coordination between the parties – and the Grant Recipient will be notified.
- The 10-Day clock does not “reset” at any point.

NHPA

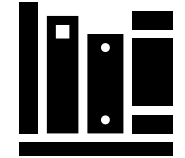
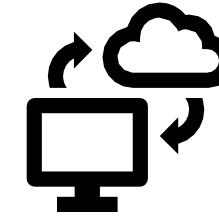
- The 10-Day clock does not apply to preliminary NHPA determinations.
- NHPA Consulting Parties have up to 30 days to review and respond.
- Tribal Nations may voice interest/ request consult **at any time** for projects using federal funding.



The BIG Three

Coordinating Submittals

1. Project Scope & Description
2. ESA§7 Documentation
3. NHPA§106 Documentation



All documentation must be received BEFORE a clearance to proceed will be issued by OWPO

To proceed with project implementation, Grant Recipients must receive an affirmative OWPO acknowledgement that signifies agreement with preliminary ESA and NHPA determinations, denoting that all documentation has been accepted into the Administrative Record.



5-minute BREAK

- Please take this opportunity to place all questions related to this section in the chat.
- We are all learning and encourage you to share. Your thoughts will spark thoughts and ideas in others.
- Contributions to the chat will be used in the development of future FAQs, webinars, and tools.

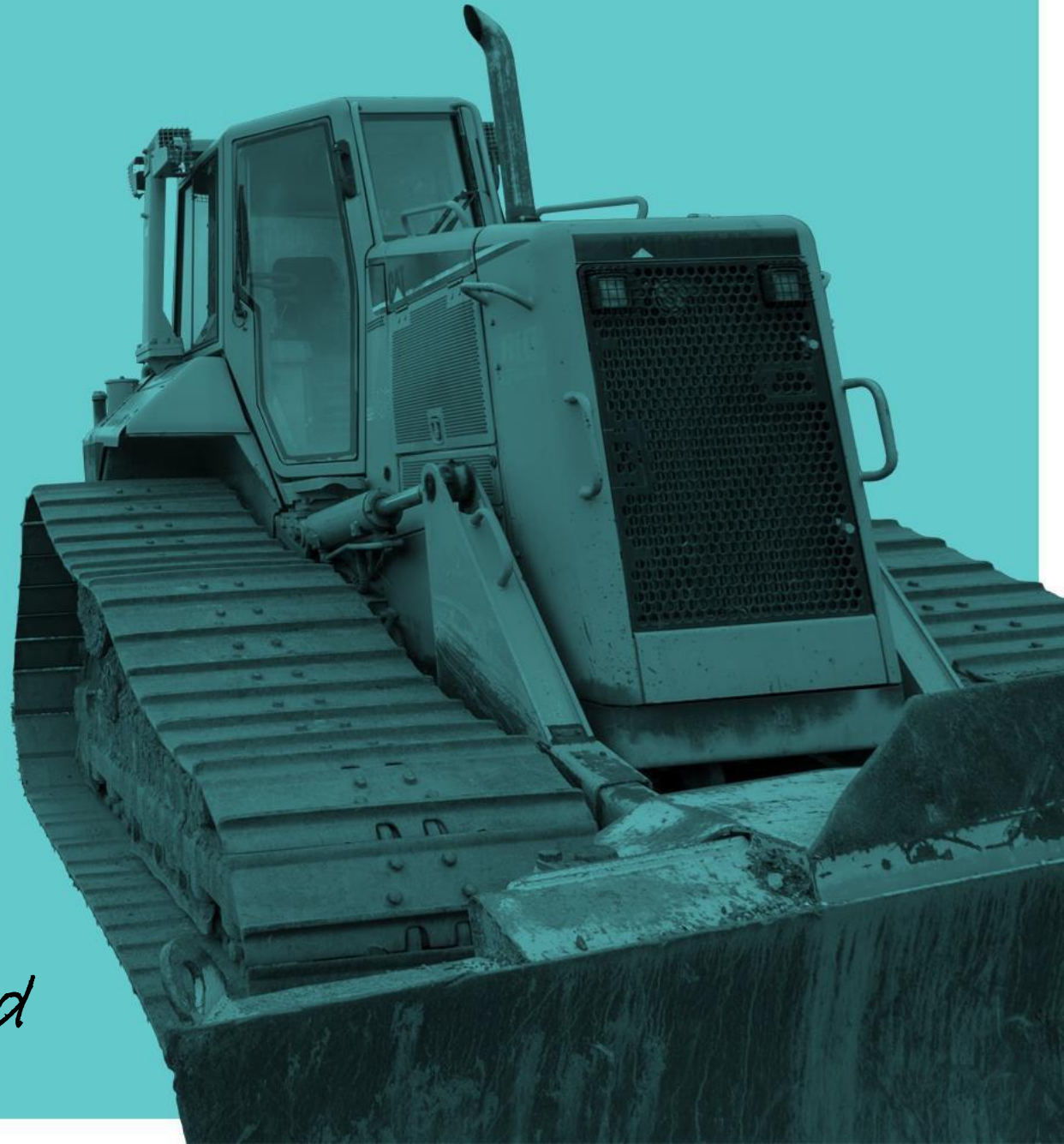
Return Time: 12:46



Getting Started

Developing your Workplan

Obtaining **Clearance** to proceed

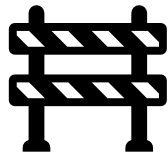


Getting Started

Developing Your Workplan

1) Strategize

- Workplan Scope
- Recommended Workplan Prioritization
- Workplan and Project Descriptions



★ Encouraging Workplan Prioritization

Priority	Infrastructure	Ground Disturbance
1	Existing No new – temporary or permanent	None
2	Existing expansion, removal, or demolition New – temporary	Minor
3	Existing expansion, removal, or demolition New – temporary and/or permanent	Major
4	Full site remediation New – temporary and/or permanent	Major

As a stand-alone action, inserting a well plug into existing infrastructure is **unlikely** to be characterized as “new” infrastructure.



Getting Started

Developing Your Workplan

2) Compile EID

- EID – Environmental Information Documentation
- Recipient submittal package:
 - General Requirement: Project Scope & Description
 - TC25: Endangered Species Compliance Reviews
 - TC:26 Historic Preservation

★ **New Tool for Recipients**

- Optional Checklist: EID

OPTIONAL CHECKLIST: Environmental Information Documentation

Project implementation cannot be initiated by the grant recipient until OWPO notifies the organization that the processes outlined in Award Terms 25 and 26 are complete. Recipients must submit all documentation and correspondence associated with the Award Terms to obtain environmental compliance clearance.

Wherever possible, OWPO encourages the use of project files already compiled for Award Term 24 which indicates, “The Recipient must ensure that documentation of compliance with all applicable statutes and regulations is included in project files and must produce this documentation upon request.” As a general requirement to meet Award Terms 25 and 26, the Recipient must share a project description that outlines the scope and basic parameters of the proposed action.

General Requirement	
Project Scope & Description	<i>Per TC24, OWPO requests project plan description & documentation</i>
Project Intent	<ul style="list-style-type: none">• Background, Goals, & Objectives
Existing Conditions	<ul style="list-style-type: none">• Oil & Gas Infrastructure• Biological & Cultural Landscapes• Guiding Documents & Realty Permissions
Project Area Mapping (implementation footprint / maximum extent / de-construction limits)	<ul style="list-style-type: none">• transportation/access routes, materials and equipment staging locations, equipment travel corridors, and de-construction areas.
Project Components	<ul style="list-style-type: none">• Implementation Dates• Equipment & Staging• Proposed Actions (Operational Steps)• Vegetation (total ground disturbance, removal & revegetation)

Award Term 25: Endangered Species Act Compliance Reviews	
Recipient ESA Point of Contact	
Action Area (AA) Mapping	
Identification of Species & Critical Habitat	<ul style="list-style-type: none">• Official FWS IPaC List and/or• NMFS Species & Critical Habitat Lists
Effects Determination Table	
Engagement & Consultation	<ul style="list-style-type: none">• FWS correspondence/concurrence (as required)• NHFS correspondence/concurrence (as required)

Award Term 26: Historic Preservation	
Recipient NHPA Point of Contact	
Area of Potential Effect (APE) Mapping	
Identification of Historic Properties	
Assessment of Effect	
Engagement & Consultation	<ul style="list-style-type: none">• SHPO correspondence/concurrence• Indian tribes, Alaskan Native and Native Hawaiian Organization's ancestral interest & invitation to consult.• Representatives of local governments• The public• Advisory Council on Historic Preservation (as required)• THPO correspondence/concurrence (as required)• Additional Consulting parties (as identified)



General Requirement

Project Scope & Description

Per TC24, OWPO requests project plan description & documentation

Project Intent

- Background, Goals, & Objectives

Existing Conditions

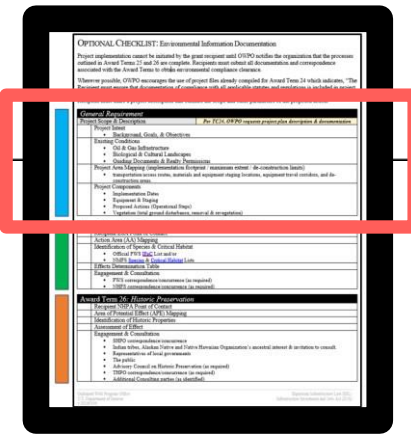
- Oil & Gas Infrastructure
- Biological & Cultural Landscapes
- Guiding Documents & Realty Permissions

Project Area Mapping (implementation footprint / maximum extent / de-construction limits)

- transportation/access routes, materials and equipment staging locations, equipment travel corridors, and de-construction areas.

Project Components

- Implementation Dates
- Equipment & Staging
- Proposed Actions (Operational Steps)
- Vegetation (total ground disturbance, removal & revegetation)

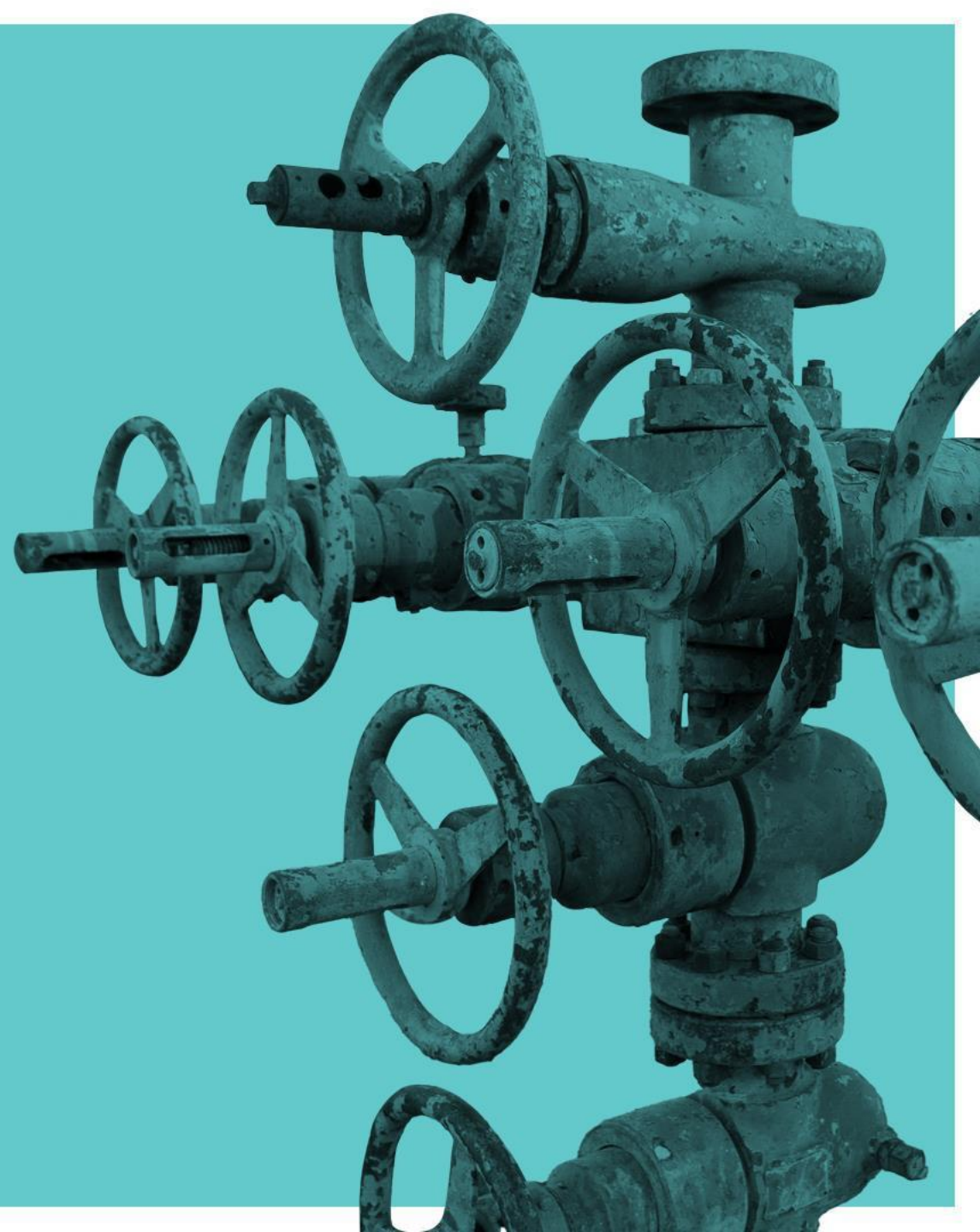


Tip: Coordinating early and often with sister agencies and integrating existing state resources is key.



Award Term 25

Endangered Species Act

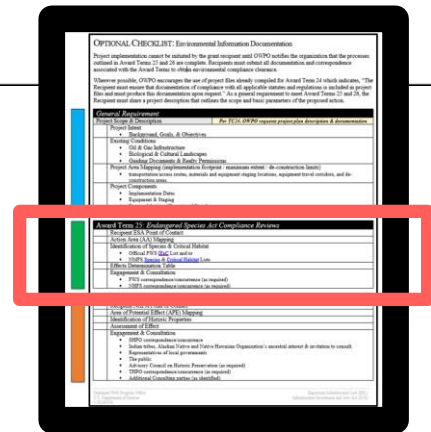


Award Term 25: *Endangered Species Act Compliance Reviews*

	Recipient ESA Point of Contact
	Action Area (AA) Mapping
	Identification of Species & Critical Habitat <ul style="list-style-type: none"> • Official FWS IPaC List and/or • NMFS Species & Critical Habitat Lists
	Effects Determination Table
	Engagement & Consultation <ul style="list-style-type: none"> • FWS correspondence/concurrence (as required) • NMFS correspondence/concurrence (as required)

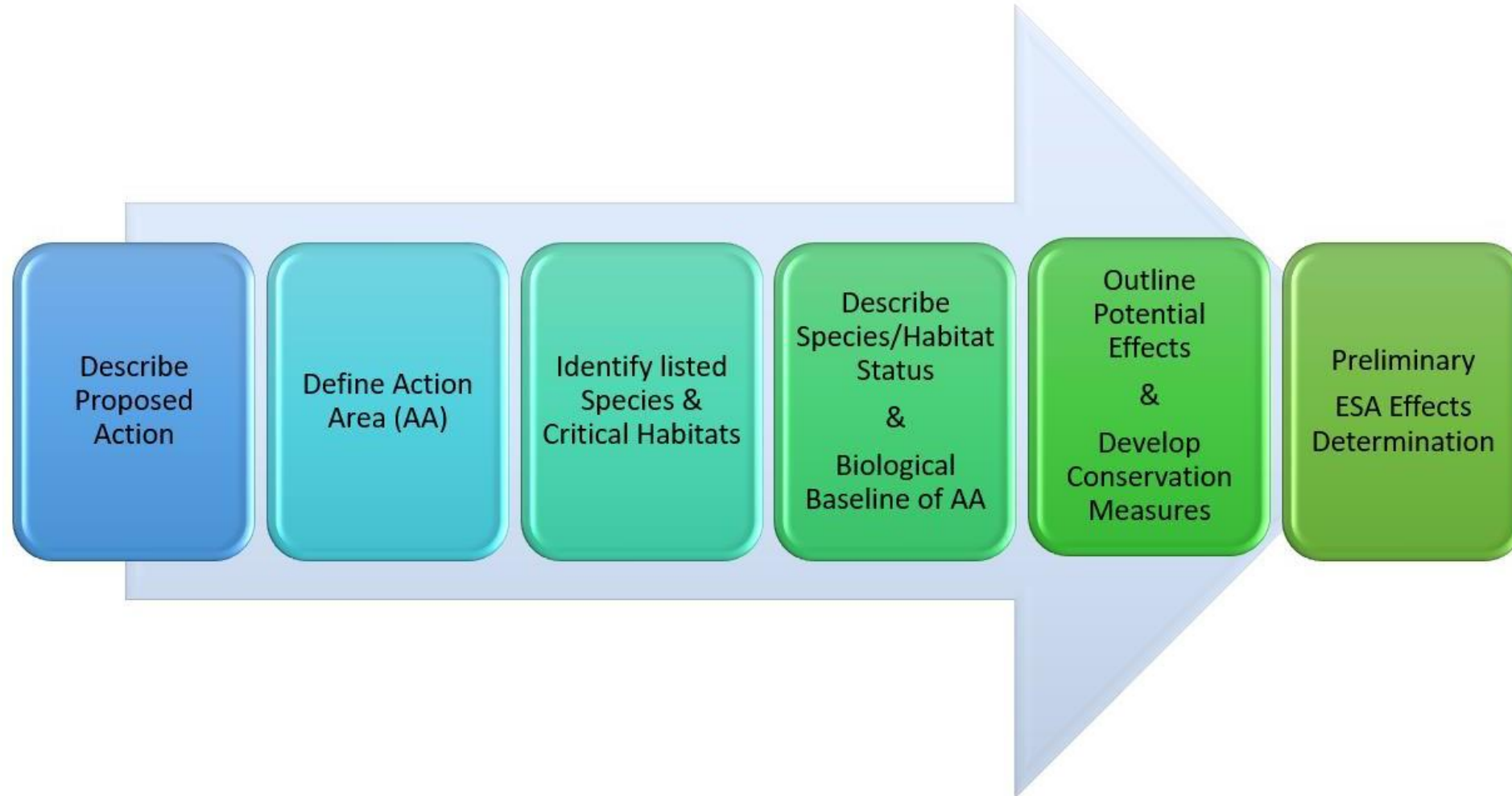
TIP:

Engage with your State wildlife agencies and local FWS Ecological Services Office to better understand the range and occurrence of species and critical habitats.



Developing a Preliminary “Effects Determination”

Endangered Species Act



What is an Action Area?

Endangered Species Act

Definition 50 CFR §402.2

- All areas affected directly or indirectly by the Federal action and not merely the immediate area involved in the action.
- Not limited to the “footprint of the action nor is it limited by the Federal action agency’s authority.
- A biological determination of the reach of the proposed action on listed species based on the subsequent analyses of the environmental baseline, effects of the action, and levels of incidental take are based upon the action area.

FWS &/or NMFS can only consult when an action area is properly defined.

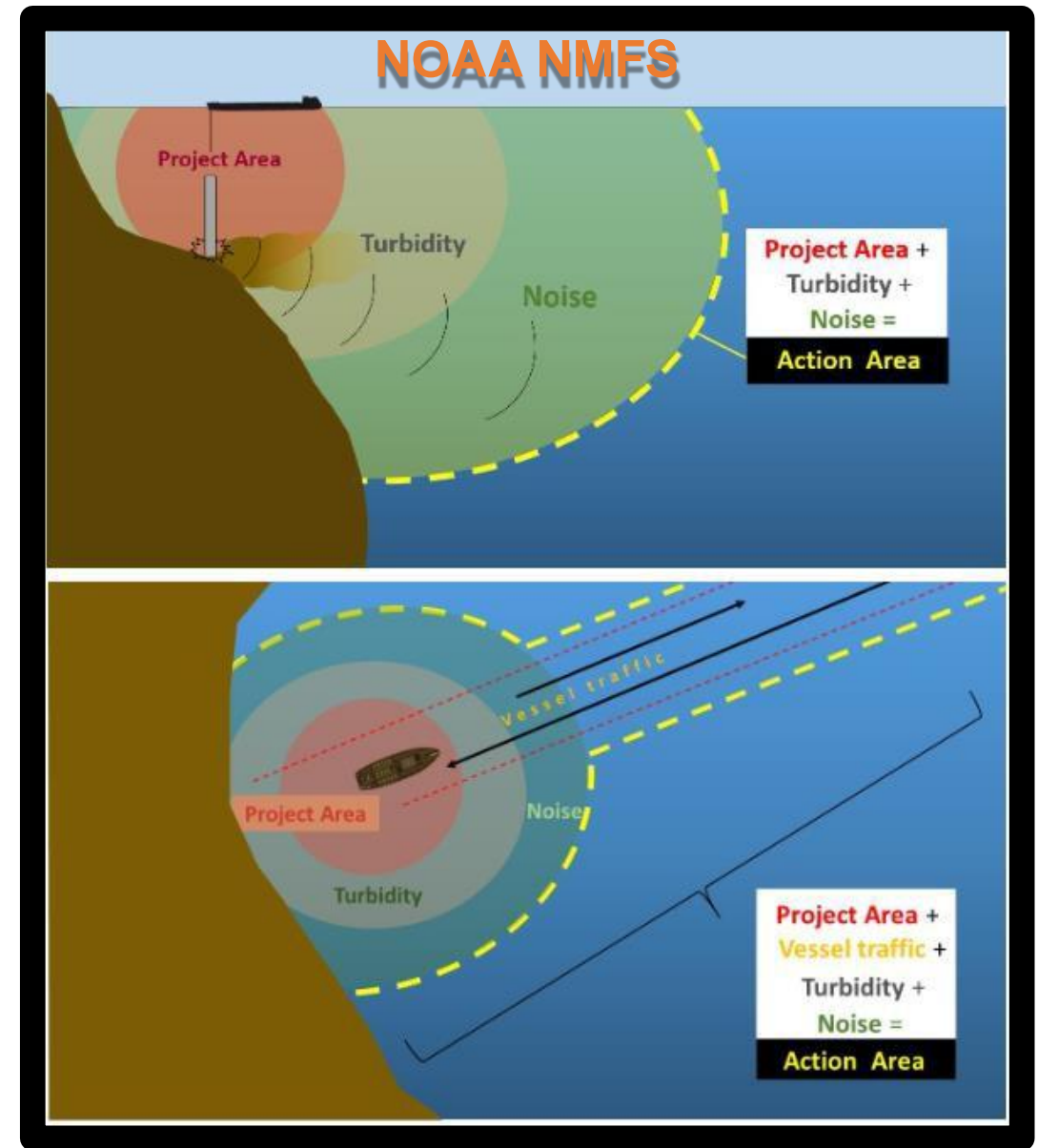
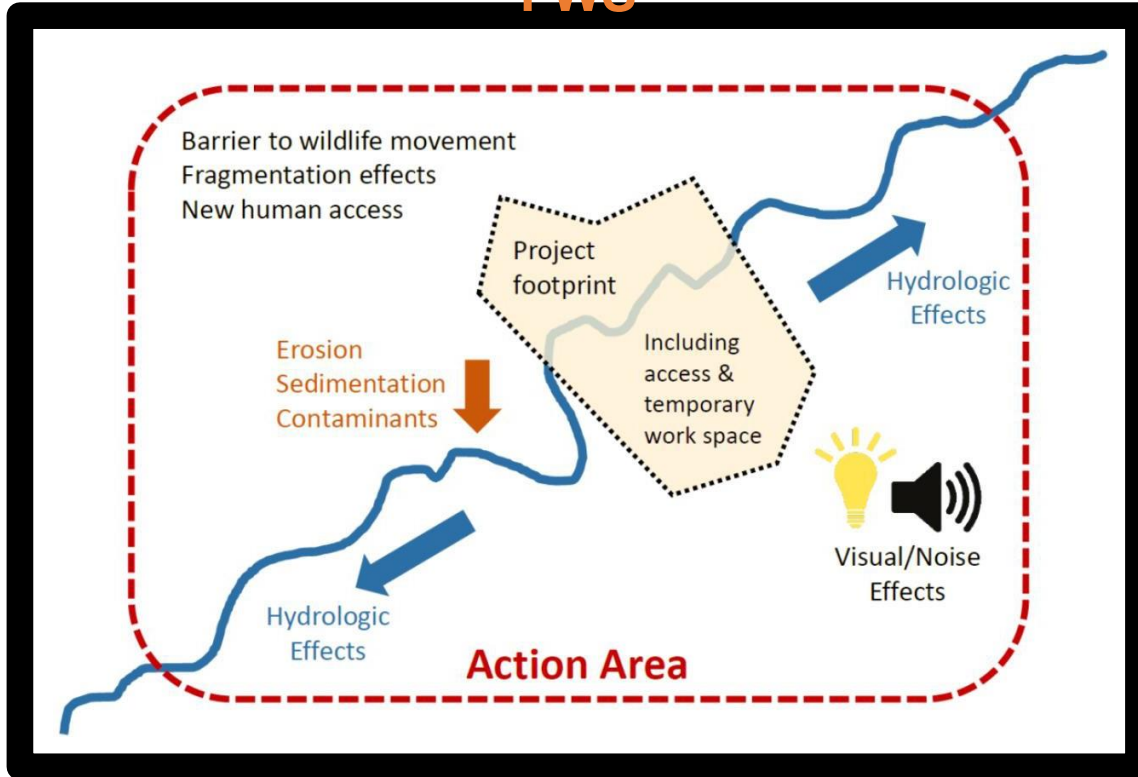
Federal Action Agency documentation must contain a description of the action area.



Define Action Area

Endangered Species Act

FWS
FWS



Identification of Species & Critical Habitat

Endangered Species Act

<https://ipac.ecosphere.fws.gov/>

The ESA Tools & Resources Table provides resources for **OFFSHORE** actions



FLOWERING PLANTS		STATUS
NAME		
Geocarpon minimum	No critical habitat has been designated for this species. Species profile: https://ecos.fws.gov/ecp/species/7699	Threatened
Neches River Rose-mallow <i>Hibiscus dasycalyx</i>	There is final critical habitat for this species. Your location does not overlap the critical habitat. Species profile: https://ecos.fws.gov/ecp/species/1441	Threatened

★ List only valid for **90 days**



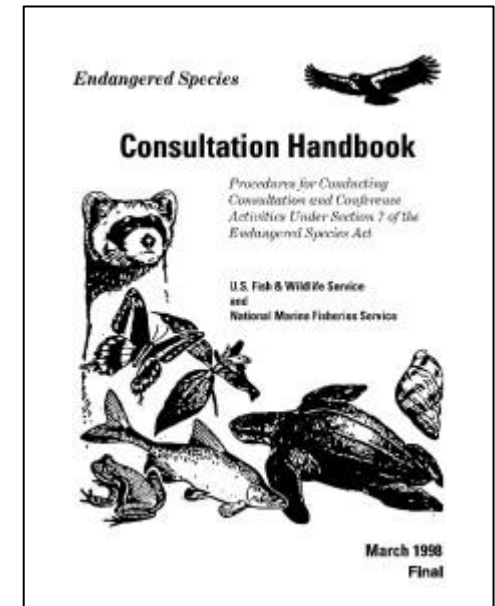
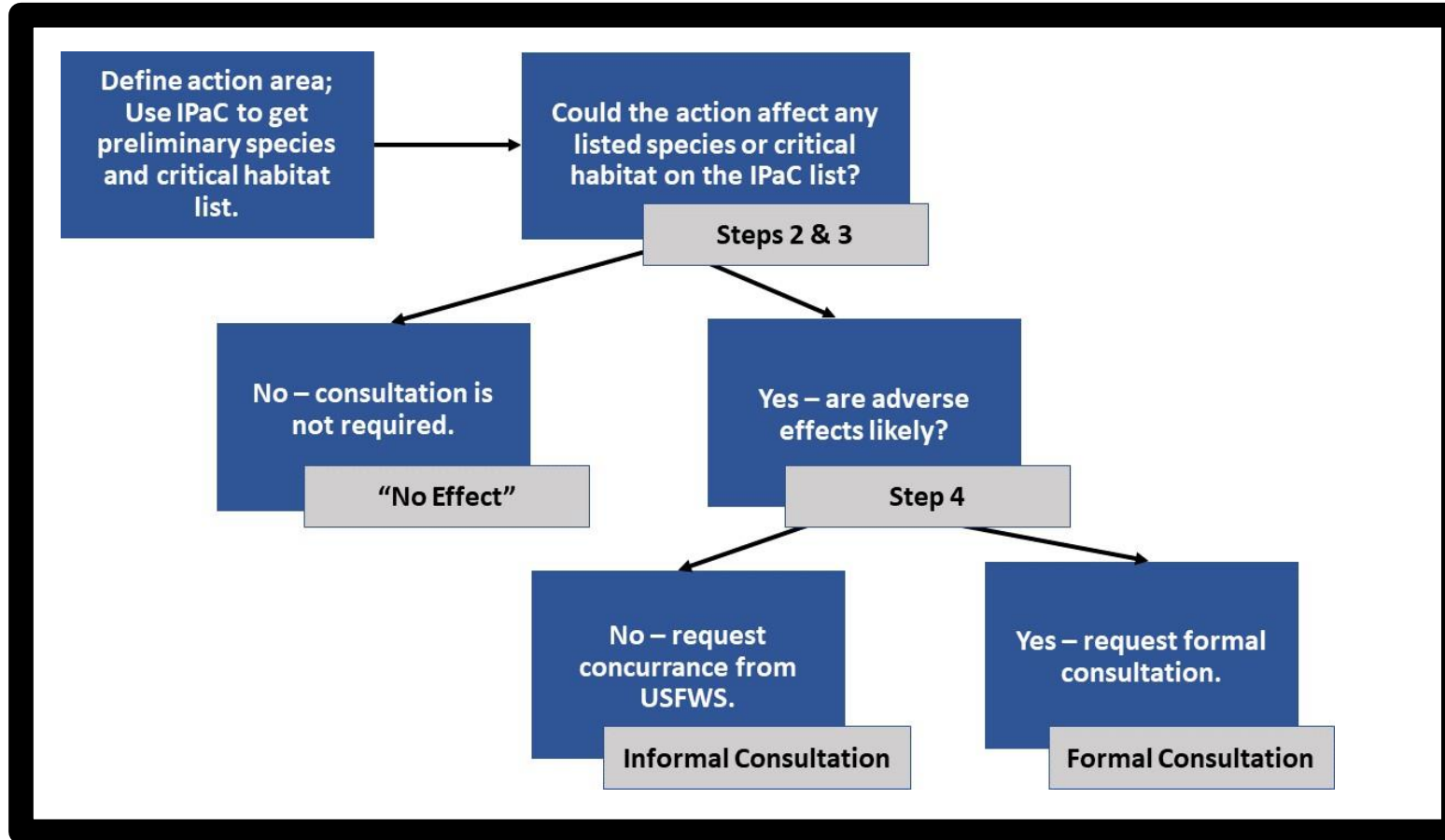
TC25: ESA Effects Determination Table

Effects Determination Table											
Identified Species and Critical Habitats with Potential to Occur within the Action Area											
Species Common & Scientific Names	Taxon	Status	Critical Habitat	Potential Occurrence	Season of Occurrence	Exclusion Rationale	Habitat Description & Determination - Discuss sp. life stage, potential occurrence, foraging, shelter, protection, & mates - Describe habitat quality and presence of essential physical biological features. - Substantiate rationale for exclusion to dismiss from further analysis. - Cite all references used (Author Year) and provide in bibliography	Conservation Measures	Effect Determination(s)		
									Species	Habitat	
		Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.			Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.			Choose an item.	Choose an item.	Choose an item.
		Choose an item.	Choose an item.	Choose an item.	Choose an item.	Choose an item.			Choose an item.	Choose an item.	Choose an item.

Key												
Status		Critical Habitat		Potential Occurrence	Exclusion Rationale		Effect Determination(s)					
							Species			Habitat		
C	Candidate	None	No critical habitat	Presence Likely	ELE	Outside of elevational range of species	NE	No Effect. Rationale fully supports exclusion from Biological Assessment.	NUE	NOT likely to jeopardize the continued existence	NDAM	Will NOT destroy or adversely modify
CS	Species under Conservation Agreement	OP	Proposed critical habitat; overlaps with action area	Presence Confirmed	HAB	No habitat (or critical habitat) present in action area	NLAA	May affect, NOT Likely to Adversely Affect.	LJE	LIKELY to jeopardize the continued existence	WDAM	WILL destroy or adversely modify
DL	Delisted	NOP	Proposed critical habitat; no overlap with action area	Unknown	ODR	Outside of known distributional range of the species.	LAA	May affect, LIKELY to Adversely Affect.	N/A	Not Applicable	N/A	Not Applicable
E	Endangered	OF	Final critical habitat; overlap with action area		PBF	No essential Physical Biological Features of critical habitat present in action area.	N/A	Not Applicable				
EP	Endangered, Proposed	NOF	Final critical habitat; no overlap with action area		SEA	Species not expected to occur during the season of use/impact						
EX	Experimental Population; Non-essential				Other	If other, exclusion rationale is used provide reasoning and justification in Habitat Description &						
T	Threatened				Retain	Retain for further consideration to identify conservation measures resulting in No Effect or in preparation of a Biological Assessment						
TP	Threatened, Proposed											



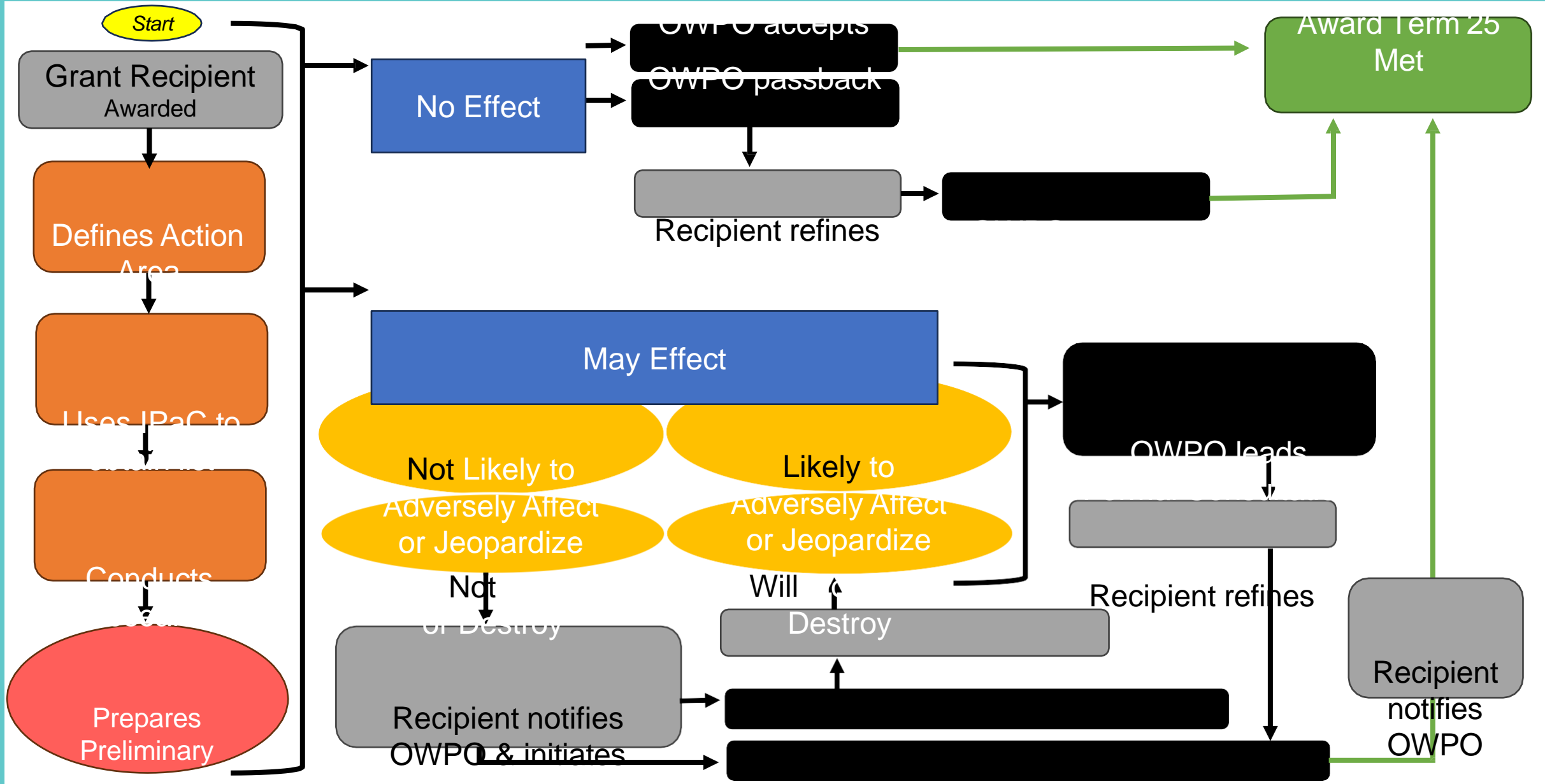
ESA§7 Consultation Flowchart



Provides detailed consultation flowcharts

ESA Tools & Resources Table





Informal Consultation

non-concurrence

concurrence



orkflow

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Orphaned Wells Program Office

Award Term 26

Historic Properties

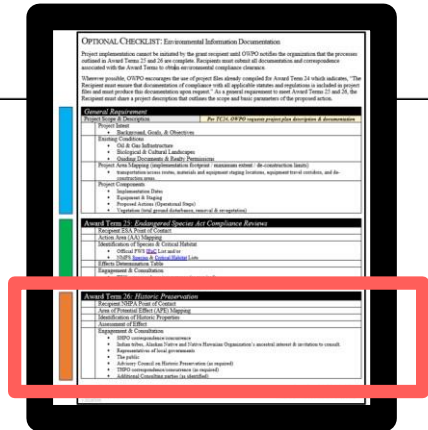


Award Term 26: *Historic Preservation*

	Recipient NHPA Point of Contact
	Area of Potential Effect (APE) Mapping
	Identification of Historic Properties
	Assessment of Effect
	Engagement & Consultation <ul style="list-style-type: none"> • SHPO correspondence/concurrence • Indian tribes, Alaskan Native and Native Hawaiian Organization’s ancestral interest & invitation to consult. • Representatives of local governments • The public • Advisory Council on Historic Preservation (as required) • THPO correspondence/concurrence (as required) • Additional Consulting parties (as identified)

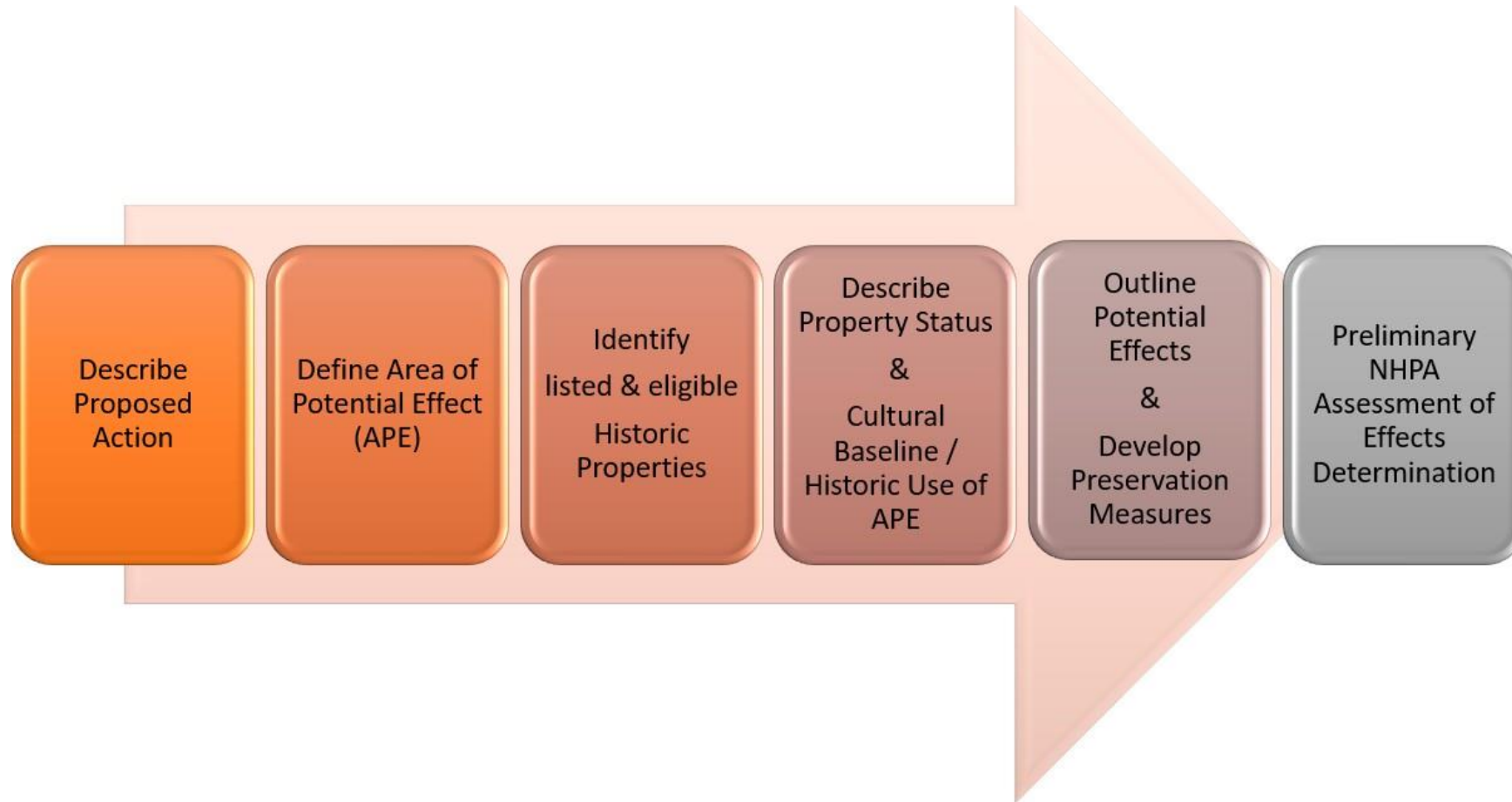


To get started, use guidance on “[how to prepare a consultation package](#)” from your State Historic Preservation Office (SHPO)



Developing a Preliminary “Assessment of Effects” Determination

National Historic Preservation Act



Definitions

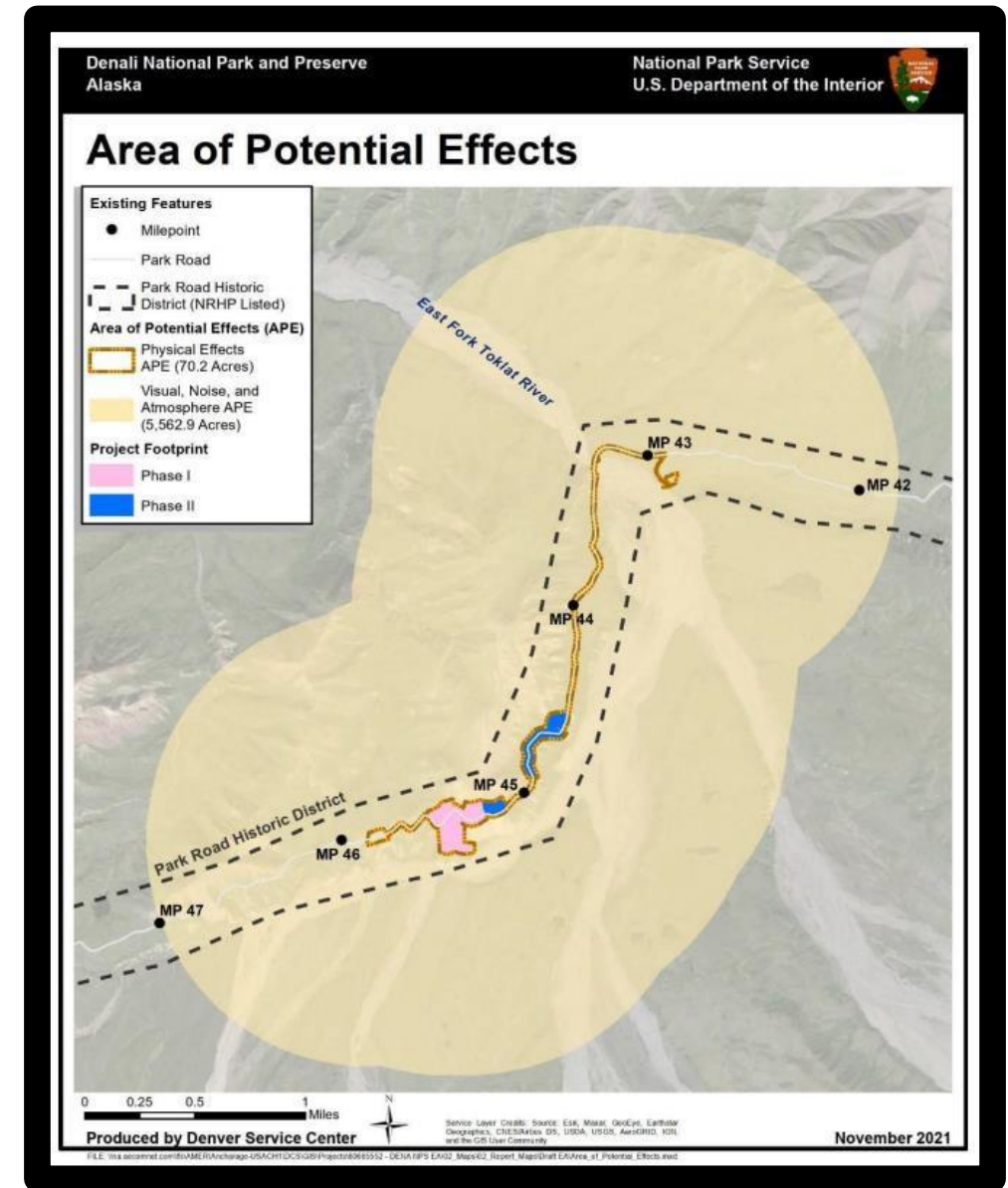
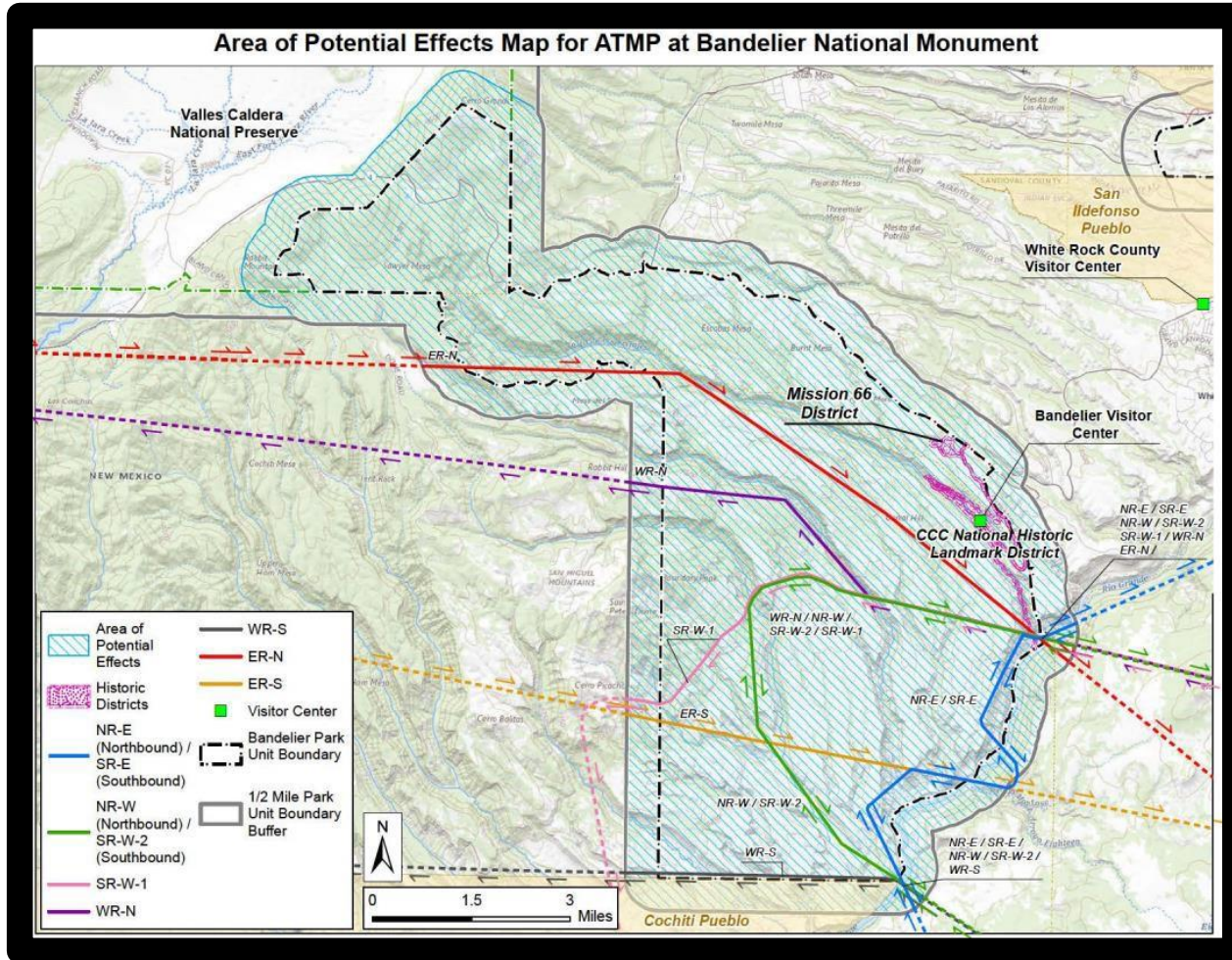
National Historic Preservation Act

NHPA Term	Definition
Area of Potential Effect	<p>The geographic area(s) within which an undertaking may directly or indirectly cause alterations in the character of use of historic properties, if any such properties exist.</p> <p>The APE is influenced by the scale and nature of an undertaking and may vary.</p>
Historic Property	<p>Any prehistoric or historic district, site, building, structure, or object included in, or <u>eligible for inclusion</u> in the National Register of Historic Places. This term includes artifacts, records, and remains that are related to and located within such properties. The term includes properties of traditional religious and cultural importance to an Indian tribe or Native Hawaiian organization and that meet the National Register criteria.</p>
Effect	<p>An alteration of the characteristic of a historic property qualifying for inclusion in or eligibility for the National Register of Historic Places.</p>




Area of Potential Effect

National Historic Preservation Act




Identification of Historic Properties

National Historic Preservation Act



National Park Service



National Register of Historic Places

**STATE
HISTORIC
PRESERVATION
OFFICE**

NC SHPO | The National Conference of State Historic Preservation Officers



NATIONAL ARCHIVES

RESEARCH OUR RECORDS | VETERANS' SERVICE RECORDS | EDUCATOR RESOURCES

Native American Heritage

Home > Research Our Records > American Indian and Alaska Native Records in the National Archives > American Indian Treaties > American Indian Treaties: Catalog Link

American Indian Records

- Main Page
- Research Individuals
- Bureau of Indian Affairs Records (BIA)
- Census Records
- Emigration Records

American Indian Treaties: Catalog Link

The series, "Ratified Indian Treaties, 1722-1869" (National Archives Identifier 299798), is made available online through the National Archives Catalog.

Digitized treaties can be explored by date or by tribe. For each treaty, click on the National Archives Identifier (NAID) number.

TRIBAL TREATIES DATABASE (PUBLIC BETA)

OKLAHOMA STATE UNIVERSITY LIBRARIES

TRIBAL TREATIES DATABASE



NATIONAL ASSOCIATION OF TRIBAL HISTORIC PRESERVATION OFFICERS




Advisory Council on Historic Preservation

U.S. Department of the Interior

Indian Affairs

Find a THPO >



Tribal Directory Assessment Tool (TDAT)



Orphaned Wells Program Office

“Reasonable & Good Faith Effort”

National Historic Preservation Act

- Take into account past planning, research and studies; the magnitude and nature of the undertaking and the degree of federal involvement; the nature and extent of potential effects on historic properties; and the likely nature and location of historic properties within the APE.
- The regulations note that a reasonable and good faith effort may consist of or include background research, consultation, oral history interviews, sample field investigation, and field survey.
- The regulations contain a post-review discovery provision since a reasonable and good faith effort to identify historic properties may not be exhaustive and, therefore, some properties might be identified as the project is implemented.

ACHP: Meeting the “Reasonable & Good Faith” Identification Standard in Section 106 Review

https://www.achp.gov/sites/default/files/guidance/2018-05/reasonable_good_faith_identification.pdf



Tribal Engagement & Consultation

National Historic Preservation Act

Example Methodology

1. Grant Recipient compiles contacts

- Obtain Tribal List from TDAT for Project Areas based on your strategized workplan
- Obtain Tribal list from State SHPO/THPO (if available) and inquire about any known ancestral interests
- Cross reference BIA Tribal Leaders Directory
- Cross reference BIA Indian Lands database for any intersection with your APE
- Cross reference Tribal Treaty Archives for any intersection with your APE

2. Grant Recipient drafts initial Tribal Engagement materials

- Prepare draft letter content to gauge Tribal interest and requests for any government-to-government consultations.
- Prepare draft Tribal response tacking sheet and plan to reengage following initial engagement.

3. Grant Recipient contacts OWPO for assistance with making initial contact to identified Tribes

- ❖ No timeline associated with Tribal response, 30-days for review and comment is customary.
- ❖ Tribes who attribute religious/cultural significance to a property often request additional time.
- ❖ OWPO will authorize the start of activities within a reasonable timeframe.

The NHPA Tools & Resources Table provides resources for **Tribal Consultation**



NHPA Tools and Resources	
The following tools and resources are available to assist states in understanding the consultation process and identifying historic properties from reported field project areas.	
NHPA	https://www.nps.gov/nhpapubs/2018/04/nhpapubs/
U.S. Code of Federal Regulations	https://www.ecfr.gov/current/title-36/chapter-VIII/part-800
CFR NHPA	https://www.ecfr.gov/current/title-36/chapter-VIII/part-800
ACHP	https://www.nps.gov/achp
ACHP 106	https://www.nps.gov/achp/106
106 Review Process Flowchart	https://www.nps.gov/achp/digital-library/section-106-landing/section-106-review-process-flowchart
106 Applicant Toolkit	https://www.nps.gov/achp/digital-library/section-106-landing/section-106-applicant-toolkit
Q&A NHPA 106	https://www.nps.gov/achp/digital-library/section-106-landing/section-106-regulations/section-106-q&a-questions-and-answers
Citizen's Guide to 106 Review	https://www.nps.gov/achp/digital-library/documents/2021/106-citizen-guide-2021-01-15-21.pdf
Reasonable & Good Faith Identification Standard 106	https://www.nps.gov/achp/digital-library/documents/2018/06-reasonable-good-faith-identification.pdf
NPS	https://www.nps.gov
Historic Preservation: NHPA	https://www.nps.gov/subjects/historic-preservation/national-historic-preservation-act.htm
National Register of Historic Places (NRHP)	https://www.nps.gov/subjects/nationalregister/index.htm
NHP Database	https://www.nps.gov/subjects/nationalregister/database-research.htm
SHPO/THPO	https://www.nps.gov/subjects/shpo
SHPO Directory	https://www.nps.gov/subjects/shpo
ACHP Role of THPO in 106 Process	https://www.nps.gov/achp/digital-library/section-106-landing/role-tribal-historic-preservation-office-section-106-process
National Association of THPOs	https://members.nahpo.org/napoexecutive/FindStateWithForm%20%2021
NPS Find a THPO	https://www.nps.gov/subjects/historic-preservation/land-tribal-historic-preservation-office-program.htm
Tribal Nations	https://www.bia.gov/tribal-nations
White House Memo Standards for Tribal Consultation	https://www.whitehouse.gov/briefing-room/presidential-actions/2021/11/30/memo-standards-for-tribal-consultation/
ACHP 106 Consultation w/ Tribes in the Review Process: The Handbook	https://www.nps.gov/achp/digital-library/2021/106-consultation-with-tribes-in-the-review-process-the-handbook-11-23-final-01.pdf
ACHP Limitations on Delegation of Authority by Federal Agencies to Initiate Tribal Consultation	https://www.nps.gov/achp/digital-library/guidance/2018/04-limitations-on-delegation-of-authority-by-federal-agencies-to-initiate-tribal-consultation-section-106-of-nhpact-106-nhpact-106-11-2011.pdf
BIA Tract Viewer	https://biamaps.gov/tractviewer
BIA Tribal Leaders Directory	https://www.bia.gov/service/tribal-leaders-directory
Tribal Directory Assessment Tool	https://tribal.dir.gov/directory
National Archives: Treaties	https://www.archives.gov/research/intro-american-treaties/canada-links
CR: Tribal Treaties Database	https://treaties.oh.state.gov





Section 106 Review Process

36 CFR § 800.3-7

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INITIATE the process

- Determine undertaking
- Coordinate with other reviews
- Identify SHPO/THPO, Indian tribes/NHOs, and other parties
- Plan to involve the public

Undertaking with potential to affect historic properties?

YES

NO



IDENTIFY historic properties

- Determine APE and scope of effort
- Make reasonable and good faith effort to identify
- Determine National Register eligibility
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

Historic properties present or affected?

YES

NO



ASSESS adverse effects

- Apply Criteria of Adverse Effects
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

Historic properties adversely affected?

YES

NO



RESOLVE adverse effects

- Develop and consider alternatives or modifications to avoid, minimize, or mitigate adverse effects
- Notify the ACHP
- Consult SHPO/THPO, Indian tribes/NHOs, and other parties
- Involve the public

AGREEMENT or Council Comment

PROCEED



Start
Grant Recipient
Awarded

Recipient
notifies OWPO

Recipient refines

No Historic
Properties
Affected

Recipient
notifies
OWPO
&
consultations
initiated*

concur

Recipient
notifies OWPO

No Adverse
Effect

dispute

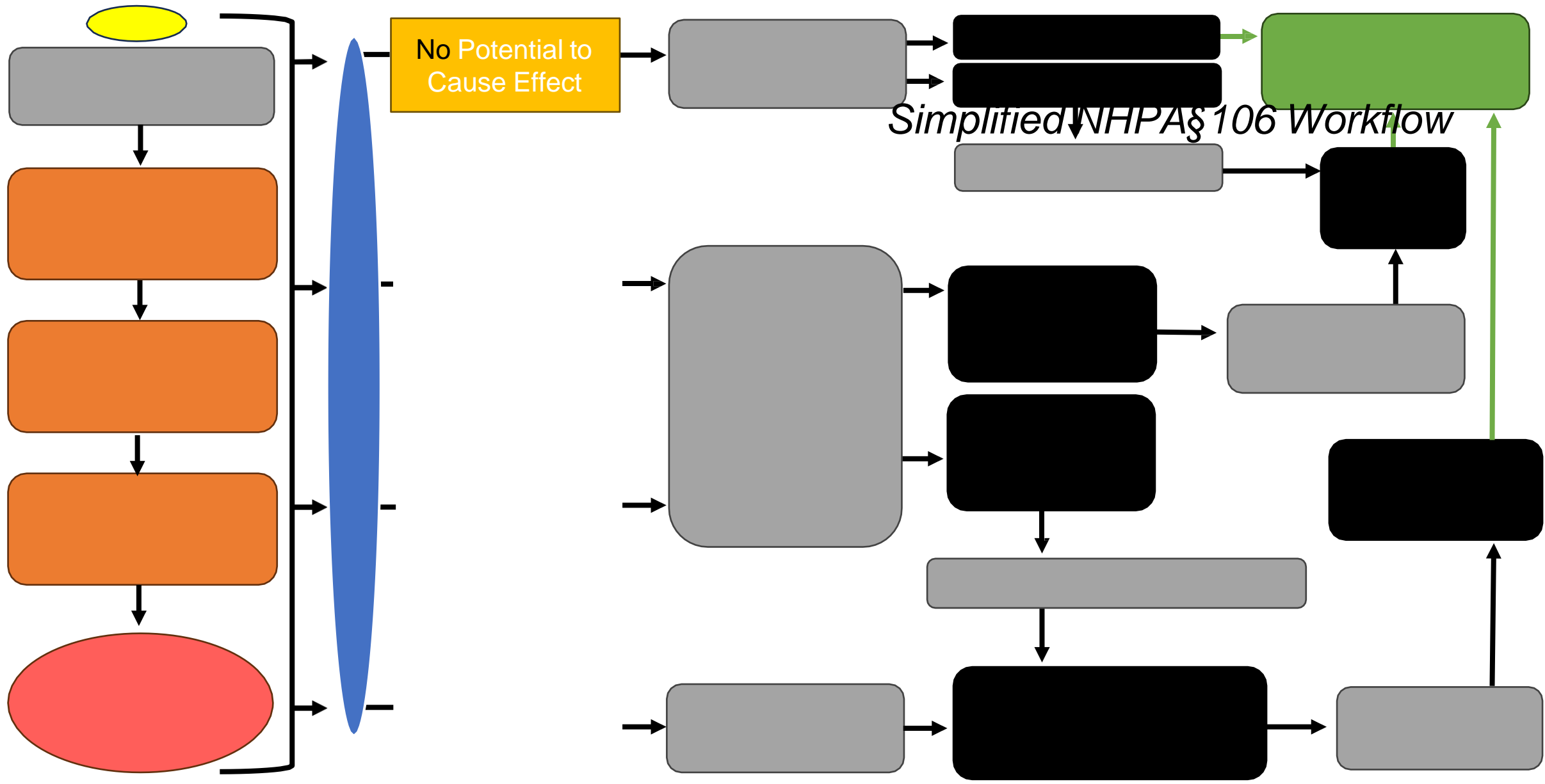
Recipient notifies OWPO

Adverse Effect

Recipient
notifies OWPO

Recipient
refines





5-minute BREAK

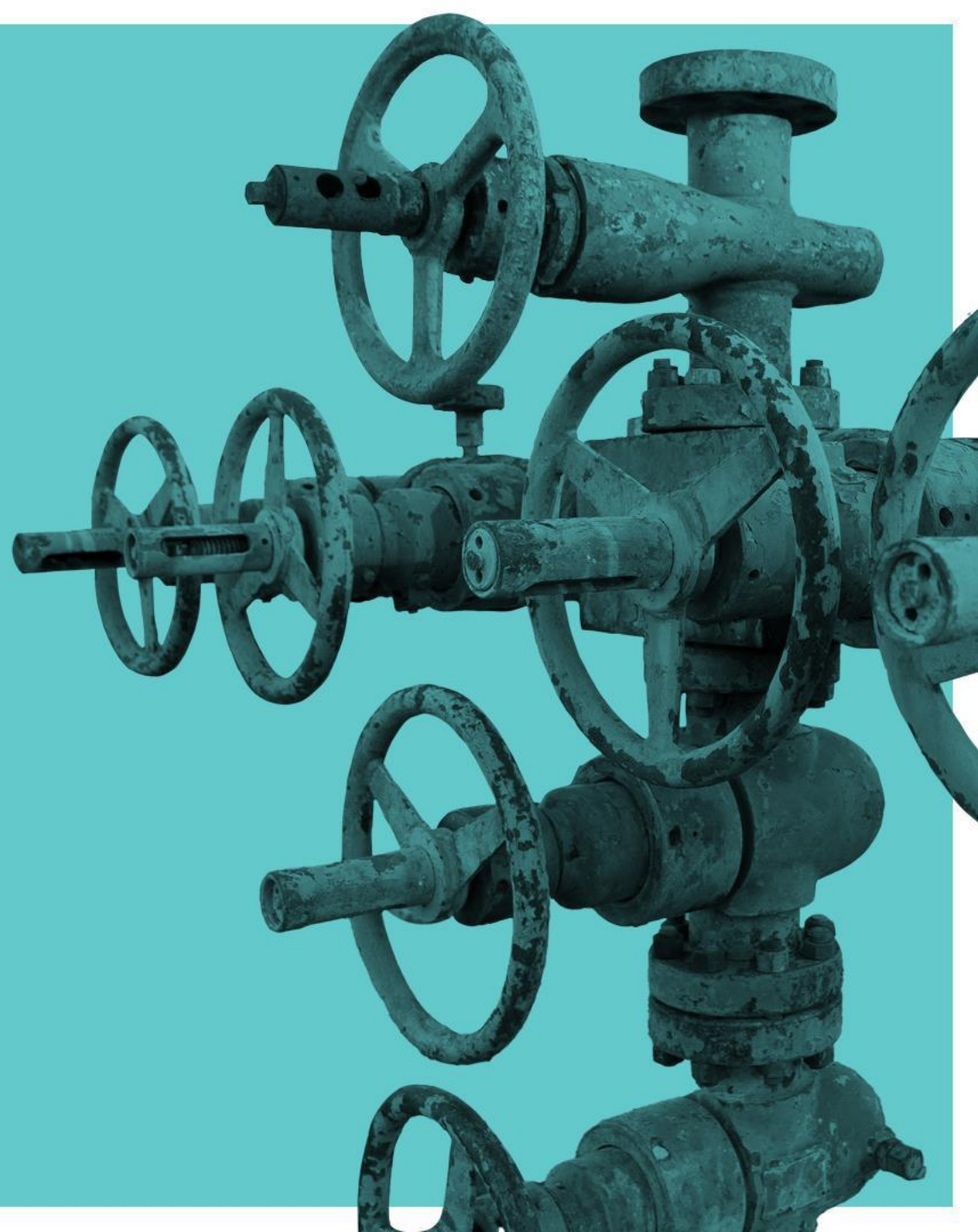
- Please take this opportunity to place all questions related to this section in the chat.
- We are all learning and encourage you to share. Your thoughts will spark thoughts and ideas in others.
- Contributions to the chat will be used in the development of future FAQs, webinars, and tools.

Return Time: 01:31



Wrapping Up

Tips & Takeaways



Tips and Takeaways

- 1 Engage OWPO to schedule an ESA / NHPA “kick-off” meeting post-award.
- 2 Integrate the use of tools, template, and guidance provided by OWPO.
- 3 Recommended qualifications: ESA (Biology Degree) and NHPA (DOI Secretary Professional Standards)
- 4 Coordinating early and often with sister agencies and integrating existing state resources is key.
- 5 Engage your State wildlife agencies and local FWS Ecological Services Office to better understand the range and occurrence of species and critical habitats.
- 6 A simple conservation measure used to reach a No Effect is to implement the project outside of the sensitive timeframe for the specific species.
- 7 Engage your SHPO/THPO to better understand historic properties and Tribal ancestral interests.
- 9 Use guidance on “[how to prepare a consultation package](#)” from your SHPO
- 10 Focus analyses and discussion on features and characteristics WITHIN the AA and APE.
- 11 When in doubt, reach out!!
- 12 Use of On-Site Monitors



On-Site Monitors

Biological & Cultural

1) Flexibility

- Reduces seasonal constraints.
- Maximizes project scheduling window.
- Protects multiple interests to reach project completion.
- Good government jobs in multiple fields.

2) Expertise

- Professional Subject Matter Expertise (SME).
- Holds qualifications to meet regulatory/permitting requirements.
- Implements protocols accepted by scientific community.
- Experienced with species-specific conservation measures.
- Trained to identify and process unknown or unanticipated discoveries (archaeological & historic).
- Prepares documentation to fulfill reporting requirements.

3) Documentation

- Prepares accurate technical reports.
- Produces required environmental documentation.
- Builds trust and reduces delays with jurisdictional authorities.

★ Final Note...



*Help transform a legacy of environmental pollution into
a legacy of environmental stewardship*



Orphaned Wells Program Office

Up Next: Question & Answer



Thank you!

Questions?

TO: Primary OWPO Contact / assigned EPS

CC: environmentalcompliance_orphanedwells@ios.doi.gov

Attachment H-2 – Grant Terms

U.S. Department of the Interior
Orphaned Wells Program Office

Assessing Methane Emissions from Orphaned Wells to Meet Reporting Requirements of the 2021 Infrastructure Investment and Jobs Act: Methane Measurement Guidelines

July 2023 Version

About these Guidelines

These Guidelines were developed to aid Federal, State, and Tribal government agencies in meeting the reporting requirements for methane emissions reductions as described in Section 40601 (Orphaned well site plugging, remediation, and restoration) of Title V (Methane Reduction Infrastructure) of the 2021 Infrastructure Investment and Jobs Act, also referred to as the [Bipartisan Infrastructure Law](#) (BIL; Public Law 117-58).

The Guidelines have five parts:

PART I. BACKGROUND INFORMATION. Including BIL reporting requirements; characteristics of methane emissions from orphaned wells; and the methods and challenges of measuring, modeling, and documenting methane emissions from orphaned wells.

PART II. FLOWCHART. For visualizing decision-making points for methane measurement.

PART III. OPTIONAL SCREENING PROTOCOL. Methodologies to assign wells to “non-detect”, “detect”, and “detect + may be high” categories to aid prioritization of wells for plugging.

PART IV. MAIN PROTOCOL: METHANE EMISSIONS RATE MEASUREMENT. Methodologies for estimating methane emissions reductions achieved by well plugging to meet BIL reporting requirements and support national inventory emissions modeling efforts.

PART V. REFERENCES. References cited and additional references detailing current best practices and protocols.

Rather than prescribe specific approaches for detecting and measuring methane, the Guidelines recommend data measurement objectives and quality assurance criteria that will meet federal program information needs for methane measurements and allow for aggregation.

Although certain technologies and methods are mentioned, they are for informational purposes only. No endorsement is made by the U.S. Government for any specific equipment, device, technology, or method, any private company, non-profit entity, or public organization. The U.S.

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Government is committed to contracting processes that follow all relevant laws, rules, and regulations.

Guidelines Preparation and Authorship

These guidelines were researched, discussed, and prepared by an interagency team that met from August 2021 through March 2022, and again from April 2023 through June 2023.

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In addition to reviews by the contributing authors, the 3/11/2022 version of these guidelines was reviewed by the following members of the interagency Orphaned Well Technical Working Group and others. Their comments are addressed in the 4/1/2022 version.

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The authors also gratefully acknowledge the many individuals from other agencies, industry, and non-profit organizations who gave their time to present information to and answer questions from the team, especially: Gordon Pierce (Colorado Department of Health and Environmental Protection), Cassandra Ely (Environmental Defense Fund/MethaneSAT), Eric Choi of GHGS at, Matt Harrison and Tecle Rufael (SLR International), Seth Lyman (Utah State University), and Greg Rieker (University of Colorado at Boulder and CTO/founder of LongPath Technologies).

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PART I. BACKGROUND INFORMATION

Synopsis: Information Provided and Purpose of Part I

Part I of the Guidelines provides background information by explaining the methane reporting requirements of the BIL Title V, Sect. 40601; the characteristics of methane emissions from orphaned wells; and the methods and challenges of measuring, modeling, and documenting methane emissions from orphaned wells.

Why Plug Orphaned Wells?

Orphaned wells, either unplugged or improperly plugged, can:

- Emit methane, a potent greenhouse gas, and other harmful gases into the atmosphere such as aromatic hydrocarbons (benzene, toluene, ethylbenzene, xylene (BTEX)), various volatile alkanes, and hydrogen sulfides,
- Leach contaminants, gas, and oil into surrounding soils and waters, and
- Create safety hazards that prevent lands from being used for recreation or other productive purposes.

Addressing the safety risks, climate forcing, and other environmental harms caused by orphaned wells requires the cooperation and collaboration of numerous agencies across the whole of government.

Current National Statistics: Well Count, Location, Emissions

There are an estimated 3.7 million abandoned oil and gas wells in the U.S. The abandoned wells category includes various types of plugged (42%) and unplugged (58%) inactive wells including orphaned wells; the inventory does not report on orphaned wells separately as data are unavailable. (1990-2021 Inventory of Greenhouse Gas Sources and Sinks; US EPA (2023)). IOGCC estimates that the orphaned well population is between 310,000 and 800,000.

U.S. abandoned wells are concentrated in Appalachia and the Midwest, the Gulf and Central states, the Rocky Mountains, and California, with the majority occurring in four states: TX, PA, KS, and WV (FIG. 1).

In 2021, fugitive U.S. methane emissions from abandoned wells were 295 kilotons—equivalent to 8.2million metric tons (MMT) of CO₂ with a 95% confidence interval of 1.4 to 25.1 MMT, the largest uncertainty range among the nation’s largest sources of methane (US EPA 2023).

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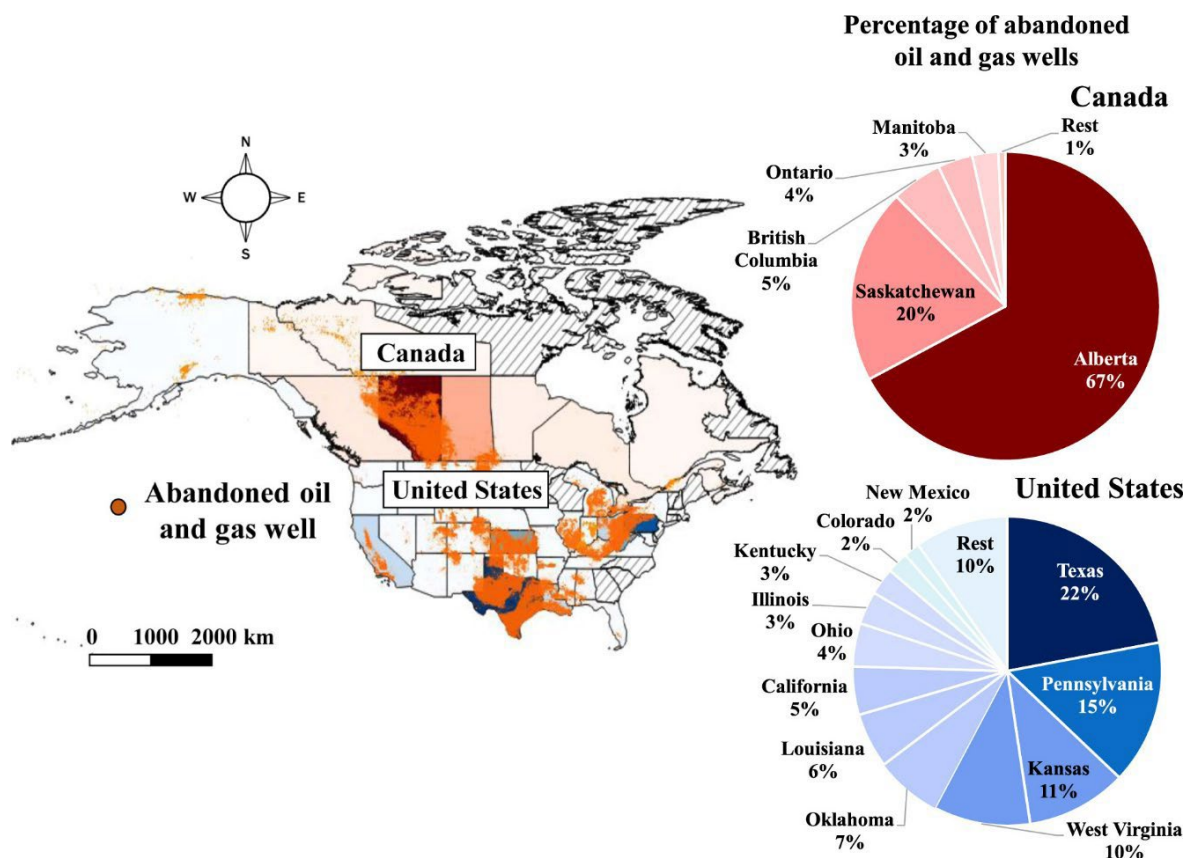


FIG. 1. MAP OF ALL ACTIVE AND ABANDONED OIL AND GAS ONSHORE WELL LOCATIONS (LEFT) GATHERED FROM PUBLICLY AVAILABLE DATABASES FOR THE US AND CANADA. PIE CHARTS(RIGHT) SHOW PERCENTAGES OF WELLS IN EACH STATE/PROVINCE/TERRITORY RELATIVE TO THOSE ACROSS THE COUNTRY. STATES/PROVINCES/TERRITORIES IN THE MAP AND THE PIE CHARTS ARE PRESENTED USING THE SAME COLOR SCHEME. FROM WILLIAMS ET AL. 2021. REPRINTED WITH PERMISSION FROM ENV. SCI. TECH. 55(1),563-570. COPYRIGHT 2021 AMERICAN CHEMICAL SOCIETY.

About the Bipartisan Infrastructure Law (BIL)

The BIL, a once-in-a-generation investment in our Nation’s infrastructure and competitiveness, was signed into law on November 15, 2021. Among its many goals are tackling the climate crisis, advancing environmental justice, and investing in communities that have too often been left behind. To help achieve these goals, the BIL established the Title VI, Section 40601, Orphaned Well Program which includes a federal program for addressing orphaned wells on federal land and a grant program for states and tribes to establish or enhance and manage their own orphaned well plugging, remediation, and restoration programs. The federal program requires annual reporting to Congress as follows:

(f) REPORT TO CONGRESS.—Not later than 1 year after the date of enactment of the Infrastructure Investment and Jobs Act, and not less frequently than annually thereafter, the Secretary shall submit to the Committees on Appropriations and Energy and Natural Resources of the Senate and the Committees on Appropriations and Natural Resources of the House of Representatives a report describing the program established and grants awarded under this section, including—

(1) an updated inventory of wells located on Federal land, Tribal land, and State and private land that are—

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- (A) orphaned wells; or
- (B) at risk of becoming orphaned wells;
- (2) an estimate of the quantities of—
 - (A) methane and other gasses [sic] emitted from orphaned wells; and
 - (B) emissions reduced as a result of plugging, remediating, and reclaiming orphaned wells

[Part IV](#) of this guidance document is designed to meet the reporting requirements for Section 40601 (f)(2)(B), “emissions reduced as a result of plugging, remediating, and reclaiming orphaned wells.” That is, Part IV explains how to measure methane emissions rates that can be aggregated for annual reporting. Data collected following these guidelines will also support Section 40601 (f)(2)(A) by adding to the national inventory of directly measured methane emissions rates and by helping to reduce uncertainties in national estimates of well counts and emissions factors.

Instrumentation Used to Measure Methane

Instrumentation used to measure fugitive methane from the oil and gas sector can be divided into three groups: satellite, aerial, and ground-based. The main difference between the groups is their sensitivity and this dictates their applications.

- **Satellite-mounted sensors**, such as “GHGSat” and “TROPOMI”, are typically focused on global and regional areas. High earth-orbit satellite-mounted sensors measure fugitive methane emissions in the *metric tons per hour* range, whereas low earth-orbit sensors can be slightly more sensitive (0.1-0.2 metric tons/hour).
- **Aerial technologies**, such as unmanned aerial vehicles (UAV) and airplanes coupled with various sensors, typically measure methane emissions in the *100 – 1,000 kilograms per hour range* and may be more appropriate for active oil and gas production sites with many potential leak sources. This sensitivity can be improved to detect emissions as low as 0.5 kg/hour when used in close proximity to a source. Both satellite and aerial approaches utilize spectrometry and meteorological data to estimate methane emissions.
- **Ground-based techniques**, such as hand-held natural gas detectors, high-flow samplers, and flux chambers, are direct-emission measurement techniques that require an individual to be present at the well site. These techniques are capable of detecting methane emissions at leak rates of *1 gram per hour or lower*, making them suitable for orphaned well sites.

Understanding Methane Concentration versus Rate

It is important to differentiate between detecting concentrations and quantifying emission rates. Some handheld devices, such as gas sniffers, are utilized to detect the presence and concentrations of gases and can be configured for combustible gases and/or other gases of interest. While inexpensive, the precision of these devices when using them to estimate emission rates is highly dependent on weather conditions and the number of leaks at a site. Further, these instruments provide gas concentrations, measured as parts per million or percent volume, which is distinctly different from an emissions rate. A rate requires both a concentration measurement and a flow measurement. A simple equation is shown below:

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$$V_{\text{methane}} = C_{\text{methane}} * V_{\text{total}}$$

where V_{methane} is the methane-specific flow rate from the orphaned well, C_{methane} is the measured concentration of methane from the orphaned well, and V_{total} is the total flow measured from the orphaned well.¹ Other handheld stand-off devices, such as optical gas imaging (OGI) cameras, are expensive and typically do not provide a concentration or flow rate, though algorithms are being refined to do so. OGI cameras are primarily designed for visualizing leaks from oil and gas infrastructure, limiting their use to detecting the presence or absence of gas. Recently, hand-held LIDARs are also being developed that would be useful in the future.

Emissions rates are measured using high volume samplers, static and dynamic chambers, and combinations of various techniques (See [Part V. References](#)). Due to the rapidly changing nature of technology and methods for measuring methane leaking from orphaned wells, the methane emissions rate protocol ([Part IV](#)) intentionally allows for novel approaches so long as they meet the requirements outlined therein.

“Other Gasses”

The BIL does not provide further specification regarding the “other gasses” mentioned in Section 40601(f)(2)(A) above. Differentiating and quantifying all the gases emitted from a well is expensive and time consuming. It is either conducted in a laboratory setting using grab samples or in the field using expensive and fragile portable spectrometers. Collecting grab samples in the field is challenging and requires separate training and equipment. One approach that may satisfy this requirement would be to measure total hydrocarbons in addition to measuring methane independently. This would provide a measurement of most of the other gases, although it would neither speciate nor quantify the individual gaseous organic compounds. Other gases can include alkanes such as ethane, propane, isobutane, n-butane, isopentane, and n-pentane and aromatic hydrocarbons like benzene, toluene, ethylbenzene, and xylene. Concentrations of these individual gases are generally much lower than methane.

Hydrogen sulfide (H₂S) is present in some oil and gas basins and not in others. Limited evidence from a study of 63 abandoned, marginal, and active wells in Ontario, Canada, suggests that H₂S emissions will most likely be detected among abandoned wells where methane emissions rates are > 1 gram/ hour ([EL HACHEM & KANG 2022](#)).

Concentrations (but not emission rates) of H₂S can be measured using hand-held equipment or wearable badges. Although H₂S could fall in the reporting category of “other gasses”, concentration measurements are typically conducted only for reasons of personnel safety. If H₂S is high enough to detect by smell, then high levels of caution are warranted, and the well should only be approached with adequate personal protective equipment (PPE) and other

¹ Such flow and methane concentration measurements are being done for orphan wells with intact ports where the sensors can be plugged in (e.g., Ventbuster and Well Done Foundation). Our ability to do these estimates in open air using methane concentration and wind measurements is being developed by DOE and could be useful for screening wells without access ports and/or multiple leaks in the future. (Dubey et al 2023)

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protective procedures in place. Olfactory fatigue can make odor detection by smell ineffective and this can be dangerous in locations with high concentrations of H₂S especially if safety precautions are not in place.

For now, the recommended method for estimating (not measuring) “other gasses” is to use geographically specific oil and gas profiles (emission factors) that provide an average fractional percentage of different gases in the gas stream for each specific basin. This method may need to account for differences between oil wells and natural gas wells that occur in the same geographical basin as the two types of wells can have different fractional proportions of gases. At this point it is unknown how many basins and wells will need to be measured to derive emissions factors that have acceptable ranges of uncertainty. The composition of other gases would also depend on the age of the wells and the density of the components and could vary within the basin. The emissions factors and the protocols recommended in these Guidelines can be improved as more data are gathered.

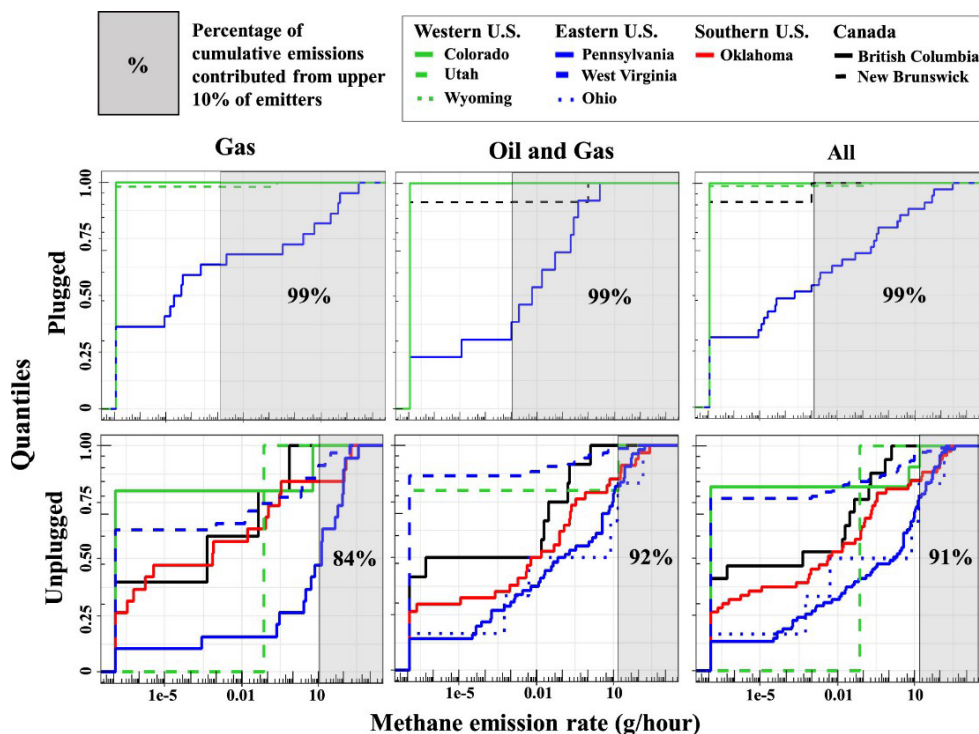


FIGURE 2. EMPIRICAL CUMULATIVE DISTRIBUTIONS OF MEASURED METHANE FLOW RATE FROM PLUGGED (TOP) AND UNPLUGGED (BOTTOM) ABANDONED OIL AND GAS WELLS IN THE US AND CANADA. EACH CURVE REPRESENTS A STATE/PROVINCE. BLUE AND GREEN CURVES REPRESENT EASTERN AND WESTERN STATES IN THE US. RED CURVES REPRESENT OKLAHOMA. BLACK CURVES REPRESENT CANADIAN PROVINCES. SHADED REGIONS IN EACH PLOT REPRESENT THE 90-100TH PERCENTILE OF METHANE EMISSIONS RATES FOR THAT GROUP, WITH THE ANNOTATION SHOWING THE PERCENTAGE OF CUMULATIVE EMISSIONS, THE TOP 10% OF ABANDONED OIL AND GAS WELLS. (REPRINTED WITH PERMISSION FROM WILLIAMS ET AL. 2021, ENV.SCI.TECH. 55(1) 563-570. COPYRIGHT AMERICAN CHEMICAL SOCIETY.

Anticipated Distribution of Methane Emissions among Orphaned Wells

Total emissions and emissions factors estimated to date for methane have been governed by high emitters (KANG ET AL. 2014, RIDDICK ET AL. 2019, WILLIAMS ET AL. 2021). In a study of 568

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abandoned wells in the US states of OH, WY, UT, CO, PA, and WV, and Canadian provinces of NB and BC, Williams et al (2021) reported methane emission rates ranging from 1.8×10^{-3} grams/hour to 48 grams/hour per well depending on the plugging status, well type, and region, with the overall average at 6.0 grams/hour. Abandoned wells in the top 10% of emissions rates (i.e., >10 grams/hour) emitted 91% of the emissions (FIG. 2). If these distributions are typical, it is anticipated that using the detection limit of 1 gram/hour recommended in these Guidelines (Parts III and IV), would allow the discovery and measurement of more than 90% of emissions.

Variability in Well Emissions Measurements

The study of emissions variability from orphaned and abandoned wells is an active area of research. The Guideline protocols (Parts III and IV) balance accuracy and precision for economy of scale. Sources of variability in methane emissions include:

Seasonal influences. The emission of methane and other hydrocarbons from orphaned wells may be seasonally influenced in some geographic locations or conditions. For example, shallow coal bed methane formations may not appear to have emissions when the groundwater level is higher, such as during spring recharge. Soil emissions rates can also vary due to soil moisture and the periodic build-up and release of emissions (FIG. 4). Wells that leak gas partially or fully into soil or an unsaturated zone likely have their emissions attenuated significantly by oxidation (SCHOUT ET AL. 2018). However, detectable soil emissions are anticipated at relatively few sites. See [Methane emissions from soils](#), below.

Weather conditions. Wind speed, wind direction, ambient temperature, the background temperature relative to the gas, soil moisture, humidity, and recent rainfall may or may not affect measurements. Measurements should not be made under high wind, or extreme temperature conditions, or during precipitation events. A qualified measurement specialist will know the appropriate range of weather conditions for measurements and how to obtain measurements under variable conditions.

24-hour variability. Recent work by Riddick et al. (2020) demonstrated five patterns of minute - to-minute variability across a 24-hour period of about 26-50%. The screening (Part III) and main methane rate measurement (Part IV) protocols set a precision data quality objective of 30%, which is within the same order of precision while avoiding more costly time series measurements.

Measurement system variation. The Part III and Part IV protocols of this Guidance call for a precision of 30%, but higher precision is possible with many measurement instruments.

The measurement specialist. If the appropriate methane measurement equipment has been selected for given well conditions and emissions rates and weather conditions are within operating specifications, the greatest source of variability, or error, in field measurements is anticipated to be the individual making the measurements. Hence the importance of assigning methane emissions rates measurements to a qualified measurement specialist.

Year to year variability. This is an area of active research, but from what is known, methane emissions from orphaned wells can be expected to continue for multiple years and possibly decades (KANG ET AL. 2016).

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Types of Methane Leaks from Orphaned Wells

The types of leaks that can occur at orphaned wells are illustrated in [Fig. 3](#) below. Methane leaks may occur at

1. **The open well hole only**
2. **The open well hole and soils around the well hole** due to subsurface fractures in the well bore,
3. **Multiple valves, connectors, or cracks** at the legacy well head or other infrastructure associated with the well.
- 4a. **The soil instead of the well opening,**
- 4b. **The well opening after a heavy rainfall event or after snowmelt** in spring when the groundwater forces methane that has permeated into the soil back into the well hole.

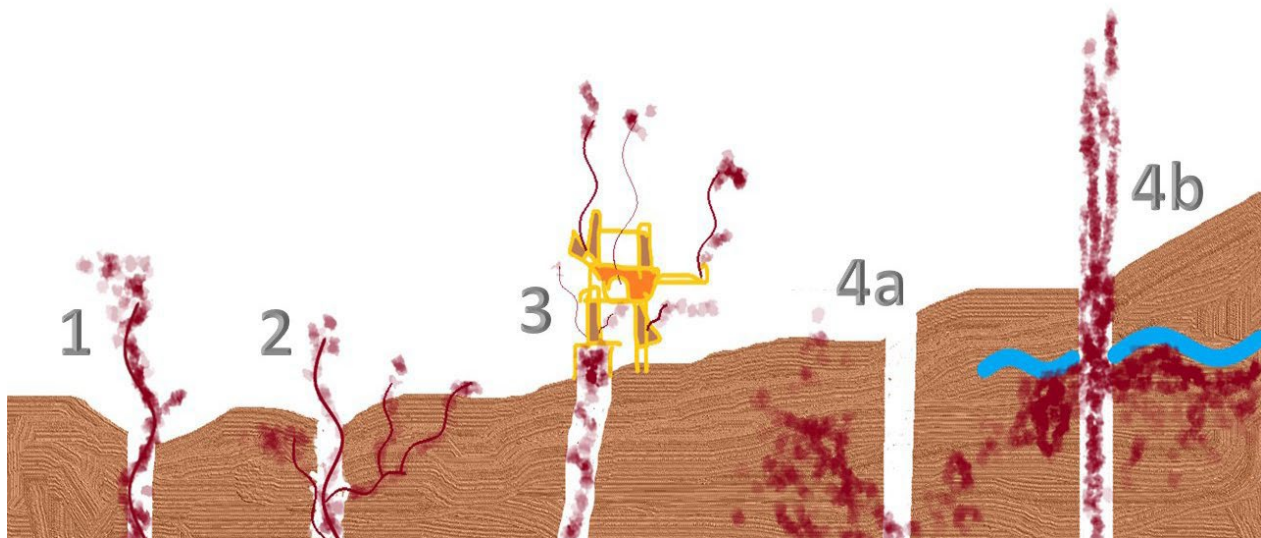


FIG. 5. TYPES OF METHANE LEAKS FROM AN OIL AND GAS WELL. SEE TEXT ABOVE FOR KEY TO TYPES. ILLUSTRATION BY JEFF SORKIN, USDA-FOREST SERVICE.

Methane Emissions from Soils

Emissions from well pad soils exceeding natural background can be caused by volatilization of liquid hydrocarbons spilled on the soil or, more frequently, failure of subsurface infrastructure ([LYMAN 2022](#)), including:

- (1) **Cement failure** resulting from age-related deterioration or inappropriate cement density, inadequately cleaned boreholes, premature gelation, cement fluid loss, high permeability, shrinkage, radial cracking because of pressure changes, or poor bonding with rock or casing,
- (2) **Casing failure** caused by leaking joints, casing collapse, or corrosion.

It is anticipated that methane emissions from soils will form a very low percentage of methane emissions from orphaned wells on federal lands. Lyman et al. ([2022](#)) calculated soils of inactive

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well pads in the Uinta Basin of Utah contributed only 0.0021% of the methane and 0.00029% of the other non-methane, alkane hydrocarbons (NMHCs) emissions from all oil and gas-related sources in the Uinta Basin. They reported a heavy tailed distribution of soil methane and non-methane alkane hydrocarbons (other gases) among wells. That is, a small number of wells were the source of most of the emissions. These researchers also noted a logarithmic decline in soil methane and NMHC emissions rates with distance from the well head. (Fig. 5)

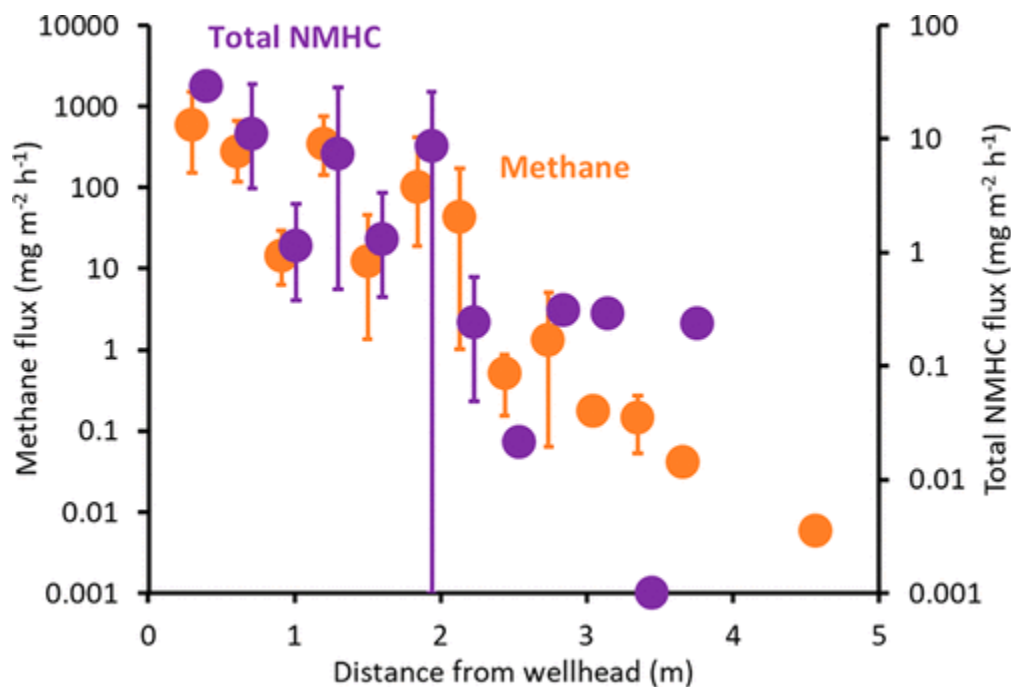


FIG. 5. AVERAGE SOIL METHANE AND TOTAL NON-METHANE, ALKANE HYDROCARBON (NMHC) EMISSIONS WITH DISTANCE FROM THE WELLHEAD AMONG 31 ACTIVE AND INACTIVE WELLS IN THE UINTA BASIN, UT. WHISKERS REPRESENT 90% CONFIDENCE LIMITS. Y AXES ARE IN LOG SCALE AND ARE DIFFERENT FOR METHANE AND NMHCs (FROM LYMAN 2022; 1000 MG M⁻² H⁻¹ = 1 GRAM/SQUARE METER/HOUR. REPRINTED WITH PERMISSION FROM ENVIRON. SCI. TECHNOL. 2017, 51, 20, 11625–11633. COPYRIGHT 2017 AMERICAN CHEMICAL SOCIETY.

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Modeling Methane Emissions

Until additional ground-verified data are collected, the total emissions estimate for the national inventory of orphaned wells for (f)(2)(A) will continue to rely on information from the Inventory of US Greenhouse Gas Emissions and Sinks estimate for abandoned wells. This inventory is submitted annually by the U.S. EPA to the United Nations (UN) to meet US commitments under the UN Framework Convention on Climate Change (e.g., US EPA 2023). The abandoned wells category includes various types of plugged and unplugged inactive wells, including orphaned wells; the inventory does not report on orphaned wells separately as data are unavailable. While methane emissions from abandoned wells are estimated to be among the top 10-12 largest sources of methane in the US, the total national estimate has a wider uncertainty range than any of the major methane sources inventoried by the EPA. This is caused by uncertainties in:

- **Well count:** The number of abandoned wells in the US is currently estimated at 3.7 million (US EPA 2023) by compiling several national level and historical state level datasets.
- **Methane emissions factors:** The emissions factors used for the most recent national inventory (US EPA 2023) are derived from rate data measured by Kang et al. (2016) and Townsend-Small (2016) at <200 wells. This corresponds to <0.005% of the estimated count of US wells.
- **Variability in methane emissions across geographic regions:** Emissions factors used in the most recent national inventory (US EPA 2023) are derived from wells in PA, OH, UT, CO, and WY and do not include emissions data from other areas with abandoned wells as they are unavailable.

To improve modeled estimates, it is recommended that field-based emissions measurements are conducted at a variety of representative oil and gas basins and well types. Using statistical estimation techniques and/or the development of geographically specific emissions models, these on-site measurement data would help to inform and evaluate emissions models that could better support future emissions reporting required by the BIL.

The use of models (i.e., gaussian plume) as a substitute for obtaining actual methane flow rate measurements is not recommended at this time and should only be used in the specific limited circumstances outlined in table 1, “Challenging Well Types”. The use of models for screening (detect / non-detect) is considered an approach currently under investigation and requires additional documentation of site-conditions, equipment, and process used.

In the future, emissions data could potentially be used in models to estimate reductions in methane from plugging orphaned wells, reducing or eliminating the need to quantify gases at

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each well. The complete emissions dataset could then be used along with the orphaned wells inventory to develop the annual report to Congress.

Rationale and Applications of the Screening Protocol

Background Information and Context

Some estimates suggest there could be tens of thousands of undocumented and un-located orphaned wells just on U.S. Forest Service-managed lands in the eastern U.S. Nationwide, most orphaned wells are not documented and will need to be located and screened for fugitive emissions and other variables in order to prioritize wells for plugging.

Current studies suggest that there will be a wide range of emissions among orphaned wells, with most emitting no measurable or very low quantities of gas (< 1 gram/hour). It is anticipated that the minority of wells emitting > 1 gram/hour will be the source of the great majority of emissions. Among these, the very highest emitters will have a disproportionately high percentage of the total emissions. These wells are referred to as “high emitters” in these guidelines. Pre-classification into one of three categories (emissions “not detected”, “detected”, or “detected + may be high”) can help decision-makers to prioritize wells for plugging based on anticipated relative methane emissions. This approach to well prioritization would occur during the well location and inventory stage and is not required.

Screening is not a substitute for flow rate measurement.

Screening is not required but may be useful in certain circumstances. The primary use of screening is in conjunction with ground-based surveying used to locate undocumented wells in old well fields where there are anticipated to be many wells, but locations are unknown. This screening occurs prior to wells being nominated for plugging and may provide information to help prioritize wells.

The Bipartisan Infrastructure Law directs that the amount of methane reduced by plugging orphaned wells is what shall be reported. This means that methane measurements, estimates, detect / non-detect information obtained for wells that are subsequently not plugged using BIL funds is not part of the reporting requirements. If a well has been selected for plugging, and plugging is funded using BIL money, screening can be used as a quick way to determine if there are any emissions coming from the well. If there are no emissions detected by appropriate and skilled use of approved screening equipment, then the rate can be reported as < 1 gram/ hour. However, if emissions are present, the methane quantification protocol should be used to obtain a measured flow rate. See table 1. for the few specific situations where measurement may not apply.

The future use of screening

As more data is gathered, from this program and other efforts, it may become possible to use a type of screening to determine if a well is a high emitter or not. The future goal is to focus

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methane flow rate measurements on the relatively few high emitting wells and provide estimates for the lower emitting wells, thereby greatly reducing the number of wells where rate measurement is needed. Currently, the data and techniques are not available to allow for this type of screening. Research and development is ongoing by multiple federal agencies to expedite design and approval of such techniques.

Instances when the screening protocol may not be valuable.

The screening protocol for methane emissions classification may not be helpful if it is already known that:

- Methane emissions from the well will not be a driving factor in prioritizing it for plugging and remediation. For example, plugging the well will be prioritized regardless of other factors because it poses an unacceptable safety hazard or liability to the agency. [Follow the main methane quantification protocol.]
- The uncertainty of the classification will be too high to differentiate detects from non-detects due to seasonal variability in methane leaks from the specific basin. For example, prior experience within a particular geographic area may have revealed that at certain times of year, a well in a given basin can be a “non-detect” while at other times it is believed to be a high emitter. [Follow the main methane quantification protocol at an appropriate time of year.]
- Classifying methane emissions during the well location and inventory phase of a plugging program provides no significant cost savings or no increase in emissions reductions over quantifying emissions rates prior to well plugging. For example, the agency plans to plug all the orphaned wells that it locates. [Follow the main methane quantification protocol.]
- The wells are already located or identified for plugging and remediation. [Follow the main methane quantification protocol.]

Definition of Qualified Measurement Specialist

A measurement specialist refers to the contractor, partner, or agency employee who will be conducting methane measurements at the site for methane (and “other gases” if required by the agency). A “qualified measurement specialist” will have training and field experience with the specific equipment and methods that have been proposed and approved by the agency for use at the targeted well sites. “Sufficient” means that the individual can make measurements that meet the data quality objectives of these protocols. At least one methane emission measurement by a qualified emissions measurement specialist will be needed prior to plugging and remediating a well. The measurement specialist should not only be proficient at using gas measurement instrumentation, but also able to recognize and avoid/mitigate safety hazards related to the oil and gas well, field conditions, weather variables, etc., to maintain personal

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safety. Ideally the measurement specialist will have 20+ hours of training and experience with the specific equipment type and/or methods used to quantify methane emissions. Measurement specialists should be aware of the key variables affecting emission measurements from orphaned wells. Emissions from orphaned wells are typically lower than those of producing wells and differ in other ways such as age, condition, and type of legacy infrastructure. Therefore, detection and measurement at orphaned wells requires specific knowledge and training. Measurement specialists should be familiar with the reference documents provided in these guidelines, particularly those relevant to the specific measurement instrumentation they are using. The specialist should understand how the above factors affect methane detection and measurement. For example, high wind speeds can quickly dilute methane concentrations; therefore, the qualified measurement specialist should be experienced with the performance of the measuring instrument used and the range of wind conditions over which it can provide repeatable data. The qualified measurement specialist should be prepared to submit data and results in a format that can be easily incorporated into the relevant agency database tool to assure consistent reporting.

Measurement Methods Documentation

The quantification methodologies and approaches employed by measurement specialists will be documented and submitted to the relevant agency to allow for adaptive management and to better define performance metrics. If the screening protocol is used by the qualified measurement specialist to classify wells into non detect, detect, or detect + may be high categories, this will also be documented and submitted to the relevant agency. The documentation needed is specified in the protocols ([Parts III](#) and [IV](#) of these guidelines).

Database and Database Interfaces

Agencies should develop a simple and easy to use database with a data input interface to aid the user or measurement specialist with recording data and information in a consistent format. The database should include a list of wells for conducting emissions detection and quantification assessments. It should also include an option for a specialist to enter data for newly discovered wells during field search efforts. The database input tool will prompt the person entering the data for the variables described in the “data collection requirement” sections below.

Adaptive Management

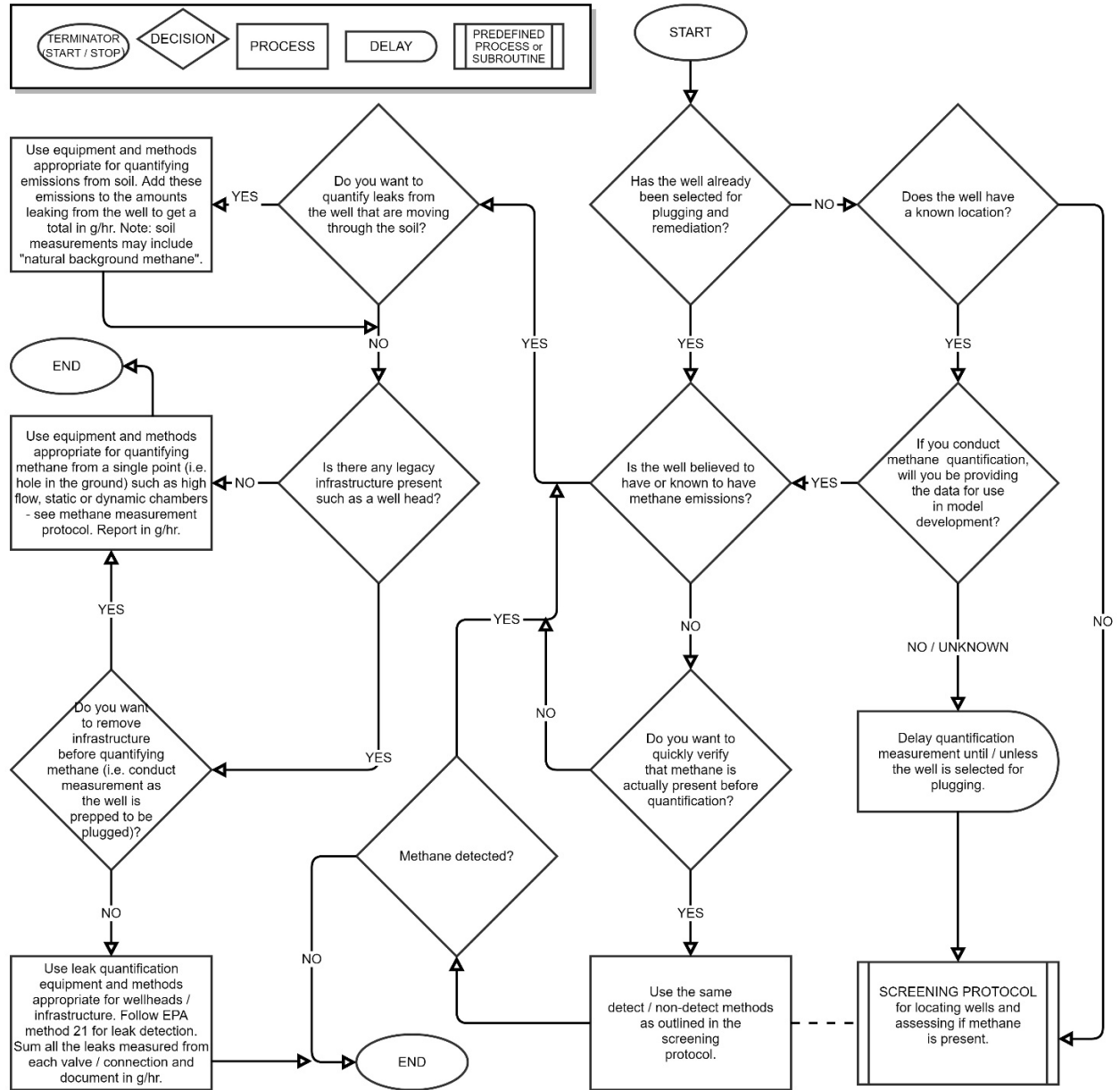
As more comprehensive information becomes available, this protocol will be improved and updated, including periodic:

- a. Re-assessment of the protocol and optimization of workflow;
- b. Review and inclusion of suggested modifications to protocols as submitted to the relevant agency by a measurement specialist; and
- c. Review of emissions datasets to determine whether an emissions model can be developed for wells where measurement data are unavailable. Models may need to be specific to a geographic area, formation, or basin and consider geology, well age, depth, and type.

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PART II. FLOWCHART. DECISION PROCESS FOR METHANE MEASUREMENT AT ORPHANED WELLS

Decision Process for Methane Measurement at Orphaned Wells



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PART III. OPTIONAL SCREENING PROTOCOL FOR DETECTING AND CLASSIFYING METHANE EMISSIONS

Synopsis: Information Provided by this Protocol

This protocol is designed to classify methane emissions from a well into one of three categories:

1. **Not detected.** Emissions are not higher than background levels.
2. **Detected.** Emissions are higher than background levels.
3. **Detected and may be high.** Emissions are higher than background levels and any one of five qualifying criteria are present that indicate emissions rates may be high.

Synopsis: Intended Applications of this Protocol

The information obtained from the protocol can facilitate the following processes.

1. **To acquire methane information inexpensively and efficiently while other inventory information is being collected to prioritize plugging of orphaned wells.** The protocol provides an efficient and economical means, suitable for most field sites (remote or easily accessible) of screening wells for prioritization purposes. These methods can be conducted by field personnel charged with finding and/or assessing orphaned wells. Several options exist for devices that are lightweight, fit in a backpack, and are hardy enough to endure field conditions. This includes long days of foot travel to explore remote, heavily vegetated sites during the well discovery process. Field personnel can be trained in their use prior to embarking on the screening process. This method may be particularly time- and cost-saving in areas where many dozens or hundreds of orphaned wells are believed to exist, and crews are already funded to find and assess them.
2. **To inform decision-making regarding prioritization of wells for plugging.** Agencies may wish to include the methane emissions category as one of the factors used to prioritize and select wells for plugging. For example, plugging wells that “may be high” would help to optimize methane emissions reductions; whereas plugging wells with no detectable emissions during screening is less likely to generate substantial emissions reductions. This protocol provides a fast, economical way to generate well classification information.
3. **To improve efficiency and reduce expenses during methane quantification for reporting purposes; wells with no detected methane would not require quantification.** The main protocol (Part IV) recommends using this screening technique as a time and money saving first step in methane quantification. If methane emissions *are not detected* using the screening protocol, then the rate would be recorded as < 1 gram/hour and no further effort need be expended. If emissions *are* detected, then the qualified measurement specialist would quantify them as described in the main protocol.

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Preparing for On-site Methane Detection and Classification

Field Personnel Requirement

At least one individual on each field search team should be qualified to conduct methane leak detection, ideally with 20+ hours of training and experience with the specific equipment type and/or methods.

Detection Equipment/Instrumentation

1. Plan to use one of the sensitive “non detect/detect” (binary) types of measurement instrumentation to classify methane or total hydrocarbon emissions.
2. Binary detection equipment should be of high quality. It should have few false positive readings and be capable of detecting small leaks. Equipment shall have a detection limit of 100 ppm or better for measurements made at the point of emissions.
3. For open path optical measurement, a limit of detection shall be equal or better than 100 ppm per meter at a distance of 1 meter.
4. For plume-based emissions screening, the combination of equipment, conditions, and methods must be capable of measuring a leak of 1 g/hour. This typically requires a measurement system that can work in the range of 1-100 ppm with resolution that is better than 1 ppm. In other words, the equipment and technique used should be able to detect relatively small leaks under the environmental conditions on-site at the time of measurement. At this time, plume modeling for screening is considered a technique under investigation and, if used for screening, requires clear documentation of the site conditions, weather and wind conditions, and a detailed description of how it is conducted.²
5. Equipment used for methane detection shall have a current calibration certificate.
 - a. Some high sensitivity binary instrumentation includes:
 - b. Solid state leak detector (pumped or unpumped) (for example Gas Rover, Sensit, or equivalent)
 - c. Nondispersive IR trace gas analyzer
 - d. Laser absorption spectrometers
6. Some less sensitive binary measurement instrumentations may be useful for rapidly visualizing the plume location at the well site (e.g., OGI camera). These can also be used to categorize a well as “detected” if gas emissions appear as higher than background levels near a well opening or near legacy infrastructure such as a well head. Because these instruments are less sensitive, if methane levels do not appear to be different than background levels, a high sensitivity instrument (see 1 above for examples) should then be used to verify that the well is a non-detect. This process can be an effective approach for finding and locating leaks that may be missed using other instruments, particularly when legacy infrastructure is present.
 - a. Optical Gas Imaging (OGI) Camera, plume detection.

² Plume modeling is not currently an approved approach under the main methane protocol, “Quantifying Methane Emission Rates”, except under rare, specific conditions outlined in table 1.

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- b. Tunable-Diode Laser Absorption Spectroscopy (TDLAS).

Pre-approval of planned measurement instrumentation and methodological approaches

The specific measurement equipment and methods proposed by the contractor or qualified measurement specialist should be submitted for approval to the relevant agency in advance of the field campaign. These additional criteria should also be met:

1. The weather/environmental conditions under which the method is effective should be documented.
2. Minimum detection limits for the selected screening equipment and approach should be documented.
3. Leak detection [EPA Method 21 - Determination of Volatile Organic Compound Leaks](#) is preferred when well heads or other infrastructure are present.
4. In the case where there are multiple leaks from a single well (i.e., a well head is present and is leaking from more than one valve), the number of leaks will be noted, and maximum emissions concentration recorded (ppm).
5. A QA/QC process is recommended where the agency or contractor makes a second set of measurements at ~5% of wells to verify effectiveness of the selected methodology.

On-Site Methane Detection and Classification

What to measure and observe

Using the pre-approved measurement equipment and methodologies, described in “Preparing for On-site Methane Detection and Classification” above, determine the emissions class for the well:

1. Determine the background concentration levels at the well site (if using a concentration meter). Background levels are ppm readings taken upwind and away from the well head vicinity.
2. Classify emissions as “Not Detected” if they do not exceed measured background levels using a sensitive binary measurement instrument (examples: gas rover, sniffer, trace gas analyzer). Emissions rates for wells assigned to the “Not Detected” class are assumed to be 1 gram/hour or lower, as this is the defined detection limit of “sensitive” binary measurement equipment.
3. Classify emissions as “Detected” if they exceed background levels using a binary technology (sensitive or other). In addition:
 - a. Note the place(s) where the leak is occurring
 - b. Record the highest concentration observed (ppm) or use a data logger to record ppm.
3. Classify emissions as “Detected + May be high” if the answer is affirmative to any of these questions:
 - a. Do you smell gas (VOCs, H₂S)? If a gas smell is detected at any time, leave the location at once and do not further investigate. (See safety precautions in primary documents.)
 - b. Can you hear gas leaving the well?

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- c. Is there detectable venting of gas causing movement of the air, nearby vegetation, or bubbling in nearby surface waters?
 - d. Are methane concentrations above 1000 ppm anywhere in the well vicinity?
4. Optional: if emissions appear to be high, consider revisiting with a different technique/equipment to quantify emissions and emission rate.

What to record

Using the database interface tool, record the following information for each well:

- Date and time of the measurement(s).
- Weather conditions.
- Latitude and longitude (decimal degrees, 5-7 decimal places, WGS84) of the well.
- API number (if found), or another unique identifier associated with the well.
- The well class (not detected, detected, or detected + may be high).
- The type of measurement equipment and methodology utilized.
- The type of measurement made (methane or total hydrocarbon).

If the well has been classified as “detected” or “detected + may be high” then also record:

- Record the background concentration, if measured, and the upwind location at which the background concentration was measured.
- The highest concentration of methane or total hydrocarbons observed (in ppm) or provide the data logger files.
- The place(s) where the well was leaking.
- Whether a gas smell was detected.
- Whether gas venting was audible.
- Whether gas venting was observed or felt as movement of the air or movement of nearby vegetation.
- Whether gas venting could be observed on nearby surface waters, e.g., as bubbling.
- Whether methane concentrations were ≥ 1000 ppm anywhere in the well vicinity.

PART IV. MAIN PROTOCOL: QUANTIFYING METHANE EMISSIONS RATES

Synopsis: Information Provided by this Protocol

This protocol is designed to provide quantitative estimates of methane emissions rates that meet program data quality objectives and can be aggregated to meet reporting requirements of the BIL Title VI, Section 40601(f)(2)(B) for methane emissions reduced by plugging and support the calculation of nation-wide inventory measures and emissions factors Section 40601(f)(2)(A). The approved (as of June 2023) [American Carbon Registry protocol](https://americancarbonregistry.org/carbon-accounting/standards-methodologies/plugging-orphaned-oil-and-gas-wells/acr-oog-v1-0.pdf) (Sections 4.1 and 4.2) for measuring methane from orphaned oil and gas wells is a suitable alternative protocol. Use of the ACR protocol must be clearly documented in appropriate locations on the data collection sheets and databases. It can be found here: (<https://americancarbonregistry.org/carbon-accounting/standards-methodologies/plugging-orphaned-oil-and-gas-wells/acr-oog-v1-0.pdf>).

Synopsis: Intended Applications of this Protocol

This protocol is intended for

- **Obtaining pre- and post- plugging methane emissions rate measurements** at orphaned wells where BIL funds will be used for permanent plugging and restoration. The timing of pre and post plugging measurements is not specifically prescribed in this protocol. To reduce travel costs and avoid delay in plugging, agencies and contractors are encouraged to coordinate methane measurement and other environmental services with the well plugging operations.
- **Estimating methane emissions rates for well assessments.** Quantified methane emission rates may be one factor used by Federal, State, or Tribal government agencies to prioritize which orphaned wells should be plugged or remediated. Methane rate measurement is not required during the location and inventory of orphaned wells, but may be useful in prioritization, especially when emissions appear to be high.

Preparing for On-site Methane Emissions Rate Quantification

Pre-approval of planned measurement instrumentation and methodological approaches. The specific methodological approach(es) and measurement equipment to be used by the qualified measurement specialist should be submitted for approval to the relevant agency in advance, with attention to documenting how the technician will collect the data and meet the data quality objectives described below.

Methods and Data Quality Objectives (DQOs):

Qualified measurement specialist. This protocol is designed for use by a qualified measurement specialist, trained in applying methane detection and quantification technologies in the field. The team quantifying methane prior to plugging and remediating wells must

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include at least one qualified measurement specialist who is proficient at using gas measurement instrumentation that will be employed at the target wells, and able to make measurements that meet the data quality objectives for the measurement data. The specialist and all other team members should be trained appropriately and prepared to work safely in remote oil and gas operation sites. Ideally, the qualified measurement specialist will have 20+ hours of training and experience with the specific methods and equipment used.

Operating conditions. Measurements should be made within the certified operating conditions of the measurement equipment employed. The different methods and technology selected must be appropriate for the landscape, conditions, and accessibility of the site (e.g., mountains, rural areas, under foliage, roadless or not).

Minimum Detection Limits. The measurement equipment and/or methods used will provide a minimum detection limit for plume emissions measurements of 1 gram/hour or lower.

Precision. The measurement equipment employed must have a documented precision throughout the quantification range of 30% or better. If gas is leaking into and through the soil and quantification of soil leaks is attempted, the measurement equipment employed must have a documented precision of 50% or better.

Accuracy. The measurement equipment employed must have a documented accuracy throughout the quantification range of 30% or better.

Supply documentation that the measurement is traceable. Traceability is demonstrated by a documentation trail that shows that the measurement method used was suitable for the target metric (i.e., methane emission rate), the equipment used to make the measurement was properly calibrated, and that an appropriate measurement protocol was followed.

Well known benchmarks are typically National Institute of Standards and Technology (NIST) or Institute of International Organization for Standardization (ISO) standards or reference materials. Other acceptable methods include:

- Standard Operating Procedures (SOP) derived from peer-reviewed papers,
- Example data from equipment showing the SOP results in measurements matching calibrated leaks within stated uncertainty needs, and
- The manufacturer calibration certificate of the methane gas sensor certifying it is stable over the period of the measurement campaign.

Other QA/QC data. Ideally, agencies will randomly select a subset of wells for blind quality assurance/quality control (QA/QC) checks. This means that a different qualified measurement specialist would measure the same site and that the results would be compared. The QA/QC results will be scrutinized after the first season of methane measurements for potential fine tuning in a future version of this document.

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On-site Methane Emissions Rate Quantification

What to measure and observe

Units of measurement. The measurement should be recorded in the database as grams per hour regardless of the method or technology used.

Reporting non-detects. A sensitive binary methane detection method may be used to determine if the well has no detectable emissions. See Part III, the Optional Screening Protocol, for details. Emissions rates measured to be under 1 gram/hour can be reported as “no detectable emissions” or as < 1 gram/hour. Similarly, if emissions are not detected, then the emissions rate can be reported as < 1 gram/hour and no further quantification is needed. If methane is detected, then proceed to quantify the methane emissions rate.

Preferred protocol when infrastructure is present. If there is a well head or other infrastructure present at the orphaned well, [EPA Method 21 - Determination of Volatile Organic Compound Leaks](#) is preferred. If a well head is present, assess if the wellhead is connected to production equipment or to a gathering line. If so, the gathering line could be allowing gas to leak away from the wellbore into the soil – determine if quantification of methane release via soil is desirable or possible. The measurement methods selected must be able to capture leaks from the specific target equipment (e.g., well head vs. production tank). Infrastructure includes piping, valves, fittings, well heads, and other physical components of an orphaned well that might be present at the site.

Recording multiple leaks. In the case where there are multiple leaks from a single well (e.g., a well head is leaking from more than one valve), record the rate at each leak site using a unique identifier in the field entry form, if possible, before summing emissions. The total sum of emissions from a well should be clearly identified in the database as a summed total rather than an individual or averaged measurement.

Selecting measurement equipment and methods. References regarding current equipment, technology, and methods used for quantification of leaking methane (flow rate + concentration) are provided in the final section of these guidelines and include high volume samplers, static and dynamic chambers, and combinations of various techniques. Due to the rapidly changing nature of technology and methods for measuring methane leaking from orphaned wells, this protocol intentionally allows for novel approaches so long as they meet the requirements outlined herein.

Data Collection. Data and information must meet the requirements for the relevant agency database.

QA/QC: Demonstrating precision. Duplicate measurements will be made at ~5% of randomly selected wells to assess precision. These can be made on the same day as the initial measurement or on different days.





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QA/QC: Demonstrating accuracy. The instrument should be calibrated against a reference gas. Use an emissions measurement method that has had its accuracy demonstrated against a controlled release of a known quantity of methane, such as a calibrated gas cylinder that releases a known emissions rate.

Exceptional Circumstances. There are a small number of situations where a well has been selected and funded for plugging, but flow rate measurements may be too difficult to obtain. These should be rare exceptions and the specific conditions encountered at the well site should be clearly documented both in writing and with photos. Documentation of site characteristics and the reason for protocol deviation should accompany the reported data.

Definitions:

- Type 1 well – a well that can be easily covered by a portable chamber.
- Type 2 well – a well that has legacy infrastructure attached and an aggregate flow rate measurement can be obtained using a high-flow device or similar at each leaking component.
- Type 3 well (exceptional circumstances) – a well that has legacy infrastructure attached and due to the complexity, height, or other factors, cannot have flow rate measurements conducted.
- Type 4 well (exceptional circumstances) – a well that cannot have flow rate measurements conducted and cannot have estimates conducted due to safety or inaccessibility.

			
<p>Type 1: Use a chamber or other method to obtain flow rate. Follow the main protocol.</p>	<p>Type 2: Use a "high flow" or similar device to obtain a total flow rate. Follow the main protocol.</p>	<p>Type 3: Flow rate measurement impractical.</p>	<p>Type 4: Flow rate measurement impractical.</p>

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Table 1, “Options for Challenging Wells”, provides methodological options for reporting methane reduction at specific kinds of Type 3 and Type 4 wells where dynamic chambers, high-flow or similar devices are not practical.

Table 1. **Options for Challenging Wells** (options are not in rank order)

	<i>Wells that are permanently under water (onshore).</i>	<i>Wells that are seasonally under water, especially if frozen in winter and may have seasonally variable emissions.</i>	<i>Wells that have a tall, unstable, or overly complex legacy infrastructure that would be dangerous to acquire measurements.</i>	<i>Wells that have high H2S emissions or are dangerous to approach.</i>	<i>Wells that are connected underground with other nearby wells—where capping one may result in an increase in emissions of nearby wells</i>
Option 1	Report as "unable to obtain data"	Measure at a time when the well is accessible.	Use a validated emission estimation approach. This type of well may be an appropriate case for using an emission model. (Note: a refined gaussian plume model approach is currently in development and will be made available soon.)	Report as "unable to obtain data"	Measure emission rates at all wells thought to be connected or that will be plugged sequentially and evenly divide the sum across the wells.
Option 2	Observe if there are bubbles or oil on water surface and report for further investigation if signals are there	Observe if there are bubbles or oil on water surface and report for further investigation if signals are there	Use in-situ methane sniffers by sample air with long/tall tubes downwind of infrastructure	Use an approach to protect worker safety including appropriate PPE like SCBA	Measure the methane flow rate at the well, and document in the notes that it may be connected to other nearby wells
Option 3			Use remote sensors (LIDAR/FLIR) to scan the structure for leaks		
Option 4			Use UAV with in-situ and/or remote sensors that can detect small leaks.		
Option 5			Report as "unable to obtain data"		

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What to record

Record the following:

1. The date and time of the measurement(s).
2. Location of the well. Using mapping datum WGS84, record latitude and longitude in decimal degrees (5-7 decimal places).
3. The administrative unit (e.g., national forest, park, or refuge, BLM public land, etc.) on which the well is located if under public land management or, if on private land, it should be designated as “Private Ownership.”
4. The name or number used by the agency to identify the well. Record any markings, if present, that may indicate:
 - a. Prior owners
 - b. Well serial number/information such as API or US Well ID.
5. The condition of the well by taking digital photos from 4 directions and looking down from above if possible.
6. Using on-site equipment or a credible weather report, record:
 - a. Air temperature
 - b. Most recent precipitation date and amount (inches). [Methane measurements should not be collected during precipitation events.]
 - c. Wind direction
 - d. Wind speed
 - e. Barometric pressure
7. For wells that have no detectable emissions (< 1 g/hour) as determined using an approved binary method (see Optional Screening Protocol), record:
 - a. The emissions rate as < 1 g/hour
 - b. The measurement equipment and method used (must have a minimum detection limit as outlined in the Optional Screening Protocol).
8. For quantitative methods: record the total methane emitted from the well over time. Units should be in grams/hour of methane or of total hydrocarbons. (Note: field forms will include unique identifier and leak rate for each leak, but this does not necessarily need to be carried forward to the database entry form.)
9. Number of leaks if multiple leaks are present from a single well due to the presence of legacy infrastructure and/or soil emissions.
10. Note any uncertainty in the measurement, e.g., by making multiple measurements at the site, including concerns related to site conditions.
11. Equipment and technique used.
12. Equipment calibration data.
13. Comments by qualified measurement specialist.

Field Report: Provide the relevant agency with a field report folder with

1. Photos (or upload them into the database).
2. Narrative description of the measurement methods used and supporting information.
3. Documentation of each method’s performance demonstrated with equipment used in the field.

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4. Documentation of calibrations and maintenance of equipment.
5. Documentation of training and experience of qualified measurement specialists (for example, 20+ hours of training including field experience with the specific equipment and methods).
6. Results of QA/QC replicate analysis of emissions measurements.

Audits: Agencies should implement an internal control review process or audit program to ensure best practices are used by qualified measurement specialists/contractors during the performance period. After one year, a follow-up is recommended to resurvey a subset of wells that have been plugged. In the absence of a description of a statistical analysis describing why another figure should be used, a minimum of 5% of these wells should be resurveyed.

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PART V. REFERENCES

This list includes references cited and supplementary references that describe currently available best practices and protocols. As such, they are tied to these guidelines and are intended to accompany the Part III and IV protocols with specific operational descriptions. The references should be reviewed in detail prior to selecting technology or methods. Qualified measurement specialists can apply novel solutions to screening and flow rate measurement so long as they meet the expressed requirements and needs documented in this protocol. Technology is developing quickly, and this protocol will be updated periodically to reflect new understanding and new equipment.

Although certain technologies and methods are mentioned, they are for informational purposes only. No endorsement is made by the U.S. Government for any specific equipment, device, technology, or method, any private company, non-profit entity, or public organization. The U.S. Government is committed to contracting processes that follow all relevant laws, rules, and regulations.

General

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Attachment H-3 – Grant Terms

UNITED STATES DEPARTMENT OF THE INTERIOR

ORPHANED WELLS PROGRAM OFFICE

BIPARTISAN INFRASTRUCTURE LAW SECTION 40601

PHASE 1 STATE FORMULA GRANT GUIDANCE – JULY 2023

I. INTRODUCTION

President Biden signed the Bipartisan Infrastructure Law (BIL; [Public Law 117-58](#)) on November 15, 2021, making a once-in-a-generation investment in the Nation’s infrastructure and economic competitiveness. This landmark investment will rebuild America’s critical infrastructure, tackle the climate crisis, address legacy polluted sites, advance environmental justice, and drive the creation of good-paying jobs that provide a free and fair chance to join a union. By addressing long overdue infrastructure and environmental improvements and strengthening our resilience to the changing climate, this investment in our communities across the country will grow the economy sustainably and equitably for decades to come.

Section 40601 of the BIL creates an orphaned well site plugging, remediation, and reclamation program within the Department of the Interior (DOI) to address orphaned wells and well sites on Federal lands.¹ Subsection (d) creates a grant program for Tribes, and subsection (c) creates three types of grants for states:

1. Initial grants (Section 40601(c)(3))
2. Formula grants (Section 40601(c)(4))
3. Performance grants (Section 40601(c)(5))

On January 10, 2023, Secretary Haaland issued Secretary’s Order 3409 to establish an Orphaned Wells Program Office (OWPO) to ensure effective, accountable, and efficient implementation of the BIL’s historic investment in orphaned well clean-up. The OWPO, in the Office of Policy, Management and Budget, will carry out the Secretary’s responsibilities under Section 40601 of the BIL, including issuing, administering, and overseeing State grants.

This document sets forth the application process for States to receive Phase 1 Formula grants and provides requirements for carrying out activities under the State Formula grants authorized by Sec. 40601(c)(4) of the BIL. Formula grant funding is based on the Notice of Intent data provided by the States in December 2021 and the formula established by the Secretary. Attachment B shows how much each State is eligible to

¹ Section 40601 amends Section 349 of the Energy Policy Act of 2005, but for simplicity all references to the amended Section 349 will be written as components of Section 40601 of the BIL in this document.

receive in total Formula grants and in Phase 1 grants. In Phase 1, States may apply for a grant of up to \$25 million *or* for a grant of up to 25% of the State’s total formula eligibility, whichever of the two is greater, and without exceeding the State’s total formula eligibility as shown in Attachment B. In Phase 1, States with a total formula eligibility of less than \$25 million may apply for the total formula grant amount identified in Attachment B. States eligible to receive more than \$25 million in total funds may submit additional Formula grant applications in future phases until the State has been awarded the entire amount it is eligible to receive.

For additional information on State Formula Grants, including phasing, please see the Frequently Asked Questions and Answers document released by the Orphaned Wells Program Office.²

This document indicates the information that is **required** to be included in an application for a Phase 1 Formula grant and for expenditure of the grant funding. States are required to apply these practices to meet the requirements of Sec. 40601(c)(4), to promote consistent standards for well plugging and reclamation activities and facilitate the proper tracking of the program’s benefits.

II. DEFINITIONS

“Administrative costs” identified in Sec. 40601(c)(2)(B)(i) and 40601(c)(4)(B)(ii)(V), limited to not more than 10 percent of the funds received, are those costs that cannot be directly attributed to activities listed under Sec. 40601(c)(2)(A), i through viii, but instead to general grants management or program administration. Administrative costs can be expended for personnel or non-personnel costs, and can be direct or indirect, but should represent the costs to the State for managing the overall grant-funded work rather than preparation for and execution of individual projects.³

“Award Date” is the date the award is signed by the Agreements Officer and may coincide with or precede the effective date of the grant (see “Date of receipt of the funds” below), based on project needs and discussions between the State and the Agreements Officer.

“Communities of color” are those communities with a higher than national average percent of individuals in a block group who list their racial status as a race other than white alone and/or list their ethnicity as Hispanic or Latino. That is, all people other than non-Hispanic white-alone individuals. The word "alone" in this case indicates that the

² State Formula Grant Guidance: Frequently Asked Questions and Answers. July 2023. The document is available at: <https://doi.gov/sites/doi.gov/files/faqs-formula-grants-07.07.2023.pdf>

³ The Interior Business Center plans to provide technical assistance tools to assist states with questions related to administrative costs.

person is of a single race, not multiracial. A block group is an area defined by the Census Bureau that usually has in the range of 600-3,000 people living in it.⁴

“Community” – either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers or Native Americans), where either type of group experiences common conditions.⁵

“Date of receipt of the funds”, as identified in Sec. 40601(c)(4)(D), is the effective date of the grant, which is the start of its period of performance, as determined by the DOI Agreement Officer in consultation with the receiving State. The effective date begins the 5-year period within which the State must obligate funds or return such unobligated funds to DOI.

“Documented Well” is a well for which the State or other regulatory agency has a drilling report, completion report, inspection report, or other record establishing the existence of the well, including its precise location. (i.e., latitude and longitude in decimal degrees) The term “undocumented” refers to a well that is entirely unknown to the agency or a well of which the agency has some evidence, but which requires further records research or field investigation for verification.⁶

“Equipment” as defined in [2 CFR § 200.313](#) is tangible personal property (including information technology systems) having a useful life of more than one (1) year and a per-unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-Federal entity for financial statement purposes, or \$5,000. See [2 CFR § 200.313](#) for the title, use, management, and disposition of equipment purchased with State Formula grant funds.

“Federal land” is defined in Sec. 40601(a)(1) as land administered by a land management agency within the Department of Agriculture or the Department of the Interior.

“Federal wells” – Orphaned wells and well sites on Federal land are considered “Federal wells” and are eligible for funding under the Sec. 40601(b) Federal Program. Orphaned wells—and well sites associated with such wells—that were drilled subject to a federal permit to drill may be considered Federal wells eligible for funding under the Sec. 40601(b) Federal Program, regardless of surface ownership. A State may use grant funds received under Sec. 40601 to plug and remediate Federal wells located on State or private land, with Federal subsurface, and may include those wells in its inventory of

⁴ This definition is adopted from USEPA’s EJSscreen definitions at: <https://www.epa.gov/ejscreen/overview-demographic-indicators-ejscreen#demoindex>

⁵ Definition from OMB and CEQ Interim Implementation Guidance for the Justice40 Initiative (M-21-28) dated July 20, 2021.

⁶ Idle and Orphan Oil and Gas Wells: State and Provincial Regulatory Strategies 2021. Interstate Oil and Gas Compact Commission, page 4. This report is available at: https://iogcc.ok.gov/sites/g/files/gmc836/f/documents/2022/iogcc_idle_and_orphan_wells_2021_final_web_0.pdf

documented orphaned wells on State or private land. Any plugging and reclamation activities on such split-estate orphaned wells would be subject to the Federal government's onshore plugging and reclamation standards and DOI approval prior to the start of operations.

"Low-income communities" are those communities that in the last 12 months had a median household income less than twice the poverty level.⁷

"Orphaned Well" – The term "orphaned well", with respect to Federal or Tribal land, means a well that is not used for an authorized purpose, such as production, injection, or monitoring, and for which no operator can be located, the operator of which is unable to plug the well and to remediate and reclaim the well site, or that is in the National Petroleum Reserve - Alaska. With respect to State or private land, the term:

- (1) has the meaning given the term by the applicable State; or
- (2) if that State uses different terminology, has the meaning given another term used by the State to describe a well eligible for plugging, remediation, and reclamation by the State.

"Pre-Award Costs" – The Federal Awarding Agency waives the prior written approval requirements for pre-award project costs that were incurred within 90 calendar days before the Federal award effective date. All costs incurred prior to the effective date are at the recipient's risk of non-reimbursement if the costs are not determined to be allowable, allocable, and reasonable. (2 CFR 200.407 & 2 CFR 200.308)

"Reclamation, restoration, or remediation" – These terms, with respect to State or private land, have the meaning given these or similar terms by the applicable State.

"Tribal and indigenous communities" are communities whose members make up a Federally recognized Indian Tribe, a State-recognized Indian Tribe, an Alaska Native community or organization, a Native Hawaiian organization, or any other community of indigenous people located in a State, including indigenous persons residing in urban communities.

"Unobligated amounts" - For purposes of determining the amount of reimbursement required under Sec. 40601(c)(4)(D), "unobligated amounts" covers any funding that is not subject to a definite commitment that creates a legal liability of the State for an immediate or future payment for goods or services ordered or received, including by contract or sub-contract award.⁸

⁷ This definition is similar to USEPA's EJSCREEN definition at <https://www.epa.gov/ejscreen/ejscreen-map-descriptions#category-demographics>

⁸ See Government Accountability Office definitions at: <https://www.gao.gov/assets/gao-05-734sp.pdf>

III. PERMISSIBLE USES OF FORMULA GRANT FUNDS AND RELATED ELEMENTS

- A. As provided under Section 40601(c)(2), a State may use funding for any of the following purposes:
- i. To plug, remediate, and reclaim orphaned wells located on State-owned or privately-owned land;
 - ii. To identify and characterize undocumented orphaned wells on State and private land;
 - iii. To rank orphaned wells based on factors including public health and safety, potential environmental harm, and other land use priorities;
 - iv. To make information regarding the use of funds received available on a public website;
 - v. To measure and track -
 - (a) emissions of methane and other gases associated with orphaned wells; and
 - (b) contamination of groundwater or surface water associated with orphaned wells;
 - vi. To remediate soil and restore native species habitat that has been degraded due to the presence of orphaned wells and associated pipelines, facilities, and infrastructure;
 - vii. To remediate land adjacent to orphaned wells and decommission or remove associated pipelines, facilities, and infrastructure;
 - viii. To identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on communities of color, low-income communities, and Tribal and indigenous communities; and
 - ix. To administer a program designed to carry out any activities described in i. through viii.
- B. Formula grants are available for such activities where the surface or subsurface estate is owned by the State or by a private party, including, potentially, individually owned Indian properties that are held in trust by the Secretary of the Interior but deemed by the State to be ‘orphaned wells’ on ‘private land,’ for purposes of compliance with this guidance. To the extent formula grant funds are used in the split estate context, the State must coordinate with the Orphaned Wells Program Office and the appropriate Federal agency, and/or Indian Tribe, as applicable.
- C. Section 40601(c)(4) allows States to apply for a Formula grant up to the State’s eligible amount as determined by DOI in accordance with Section 40601(C)(4)(A) and published by DOI in Attachment B.
- D. Section 40601(c)(4)(D) - Unobligated Funds: A State that receives funds under the Formula grant authority shall reimburse the Secretary in an amount equal to the

amount of funds that remain unobligated on the date that is **five years** after the “date of receipt of the funds”. In other words, all funds must be obligated within five years of the effective date of award, otherwise unobligated funds shall be reimbursed to the Secretary.

- E. States may use funds from their formula grants to display signage at orphaned well plugging and remediation sites during any or all of a project’s activity to increase the transparency of projects funded in whole or in part by the Bipartisan Infrastructure Law (P.L. 117-58) and to make visible to the public the effectiveness of Federal and State Government efforts to rebuild our Nation’s infrastructure, including tackling legacy pollution. Costs to procure, distribute, and install signage are considered administrative costs. If a State displays signs at orphaned well sites, they shall meet the specific design requirements of the Investing in America Signage Guidelines.⁹
- F. States must comply with all applicable Federal grant award requirements, including but not limited to, the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards ([2 CFR 200](#)).

IV. INSTRUCTIONS FOR FORMULA GRANT APPLICATIONS

A. Application Date

- i. States may apply for Phase 1 Formula grants in any amount up to but not exceeding each State’s Phase 1 eligible amount identified in Attachment B upon release of this guidance until December 31, 2023.
- ii. Applications must be submitted via GrantSolutions at the following link: <https://home.grantsolutions.gov/home/>

B. Eligibility

To be eligible for a Phase 1 Formula grant, in addition to the requirements in Attachment D, a State must have submitted a Notice of Intent to DOI by December 31, 2021. The list of eligible States appears in Attachment B.

C. Other Required Elements

To be complete, the application must include sufficient details as described below to provide assurances regarding the ability of the state to properly carry out and oversee the activities to be funded. All Required Elements are Standard Forms or approved forms under OMB Control No. 1093-0012.

⁹ Investing in America Signage Guidelines: <https://www.whitehouse.gov/wp-content/uploads/2023/02/Investing-in-America-Brand-Guide.pdf>

- i. Federal Forms: The following Federal forms with the latest versions are available at [Grants.gov](https://www.grants.gov) and must be submitted for a Formula grant request for funding (the application) to be complete. Digital signatures are acceptable:
 - (a) [SF-424v4](#) Application for Federal Assistance¹⁰
 - (b) [SF-424A](#) Budget Information for Non-Construction Programs
 1. An SF-424A is a standard form that provides an estimate of the work's major budget categories (e.g., personnel, fringe benefits, travel, equipment, supplies, contractual, constructions, other costs, direct, and indirect charges), where the sum total of the budget justification equals the overall Formula grant request. Within the form, establish a category for Administrative Costs and separate and track those from all other costs.
 - (c) [SF-LLL](#) Disclosure of Lobbying Activities (if applicable)
 1. The SF-LLL is required when the applicant uses non-federal funds to lobby in connection with the proposal AND the federal share of the proposal exceeds \$100,000. If the grant applicant does not engage in lobbying activities, it is sufficient to mark the SF-LLL form "N/A" for Not Applicable.
 - (d) [OMB 4040-0013](#) Certification Regarding Lobbying Form
 - (e) [OMB 4040-0010](#) Key Contacts Form
 - (f) OMB Control No. 1093-0012 (see subsection v. below)
- ii. Detailed Budget Proposal/Justification: The budget must include a detailed narrative description of the budget categories and a clear delineation between project costs and administrative costs. This information supports and identifies the estimated costs provided in the SF-424A and includes an itemized budget breakdown with unit costs for the period of the Formula grant funding and the costs of personnel salaries, fringe benefits, project staff travel, materials and supplies, equipment, and consultants and contracts, e.g., for well plugging, site remediation, and site reclamation. The budget must include planned obligations and drawdowns per FY.
- iii. Federal Approved Indirect Cost Rate Agreement: A federally approved Indirect Cost Rate Agreement or statement regarding the State's intention to negotiate or utilize the de minimis rate.
- iv. Project Abstract Summary (OMB 4040-0019): A project abstract of not more than one page will include the project purpose, activities to be performed,

¹⁰ Forms must be signed by the authorized official. Instructions on how to complete SF-424 can be found at Grants.gov: <https://www.grants.gov/web/grants/forms/sf-424-family.html>

expected deliverables or outcomes, intended beneficiaries, and subrecipient activities (if known).

- v. Work Plan/Proposal:¹¹ A State shall submit an application that includes the following:
- (a) a description of—
 1. the State program for orphaned well plugging, remediation, and restoration, including legal authorities, processes the State currently uses to identify and prioritize orphaned wells, procurement mechanisms, and other program elements demonstrating the readiness of the State to carry out proposed activities using the grant, including summary descriptions of:
 - a. the State’s plugging standards, including the witnessing requirements (qualifications of witnesses, documentation);
 - b. how salvaged material and equipment will be reused, recycled, or sold for scrap (with any resulting income reported to DOI and incorporated into the grant budget for eligible activities upon approval by DOI);¹²
 - c. the State’s authorities to enter private property, or a State’s procedures to obtain landowner consent to enter such property, and in the event that any wells to be plugged will be accessed from Federal or Tribal land, how the State will gain access;
 2. how the State will prioritize (i.e., rank for remediation activity) orphaned wells based on threats to public health and safety, environmental harm – particularly harms due to methane emissions – and other land use priorities, including the remediation of hazardous sites in overburdened and underserved communities.¹³
 3. the details of each activity to be carried out with the grant, including a preliminary work schedule covering the period of performance of the Formula grant and an identification of the estimated health, safety, habitat, and environmental benefits of plugging, remediating, or reclaiming orphaned wells. Each activity must include a schedule and resources needed for

¹¹ Particularly during the initial launch of state orphaned wells programs, DOI provides states with direct technical assistance on their workplans in advance of the dispersal of funds.

¹² Resulting salvage income will be additive to the grant and must be incorporated into the grant budget and approved by DOI.

¹³ Recommend using the [Climate and Economic Justice Screening Tool](https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5) to identify overburdened and underserved census tracts. Available at <https://screeningtool.geoplatform.gov/en/#3/33.47/-97.5>.

- getting the work completed, which must cover the entire project period;
4. proposed performance goals including a schedule of milestones for completing the activities of (3) above and to achieve the objectives of the workplan,
 5. the means by which the information regarding the activities of the State under this grant will be made available on a public website; and
 6. the process the state follows to identify and pursue all potentially responsible parties that may be legally liable for plugging, remediating, or restoring orphaned wells in the state.
- (b) an estimate that the Department acknowledges is a snapshot in time and subject to change as circumstances on the ground dictate, of—
1. the number of orphaned wells or sites, categorized by the region in the State that the State forecasts may be plugged, remediated, or reclaimed using Phase 1 formula grant funds;
 2. the projected cost, including the basis of estimates, of—
 - a. plugging, remediating, or reclaiming orphaned wells;
 - b. remediating or reclaiming adjacent land; and
 - c. decommissioning or removing associated pipelines, facilities, and infrastructure;
 3. the amount of that projected cost that will be offset by the forfeiture of financial assurance instruments, the estimated salvage of well site equipment, or other proceeds from the orphaned wells and adjacent land;
 4. the number of jobs that will be created or saved through the activities to be funded under this grant and the assumptions and methodology to develop the estimate; and
 5. to the extent possible, the miles and diameter(s) of associated pipelines and number and description of associated facilities and infrastructure assets that will be decommissioned or removed.
- (c) if practical, the latitude/longitude, type of well, the well ID (API number), surface ownership, and mineral ownership for those wells that are likely to be plugged, remediated, or reclaimed.
- (d) the definitions and processes used by the State to formally identify a well as—
- a. an orphaned well; or
 - b. if the State uses different terminology, otherwise eligible for plugging, remediation, and reclamation by the State.

- (e) Details of how the State will identify and prioritize the highest methane emitters and how the State will identify and prioritize well plugging and site reclamation that are intended to address disproportionate burdens of adverse human health or environmental impacts of orphaned wells on communities of color, low-income communities, and Tribal and indigenous communities. Consistent with Sec. 40601(c)(2)(A)(viii), States will identify and factor into their project prioritizations orphaned wells within 0.5 miles of communities of color, low-income communities, and Tribal and Indigenous communities. Identification of such communities will utilize established tools, such as CEJST. Decision points and underlying assumptions, such as the number and type of environmental indicators, must be described in the application;^{14,15}
- (f) The methodology, including field indicators, sampling, and modeling approaches, to be used by the State to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the State will assess the effectiveness of plugging activities in reducing or eliminating such contamination;
- (g) Methods to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure, including a description of how salvaged material and equipment will be reused, recycled, or sold for scrap (with any resulting income reported to DOI);
- (h) Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local governments and the public;
- (i) How the State will use funding to locate currently undocumented orphaned wells;
- (j) Plans the State has to engage third parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to;

¹⁴ See [Climate and Economic Justice Screening Tool](#). Addendum to the Interim Implementation Guidance for the Justice40 Initiative, M-21-28, on using the Climate and Economic Justice Screening Tool (CEJST) (M-23-09) dated January 27, 2023, provides supplemental guidance to Federal agencies on using the CEJST tool; version 1 was released on November 22, 2022.

¹⁵ Actions taken by states under paragraph (e), including attempting to prioritize the plugging of specific wells, may be considered program costs, and the state should work with the Department during the application window and its period of performance to guarantee this outcome.

- (k) Plans the State has to support opportunities for all workers and vendors, including workers underrepresented in well plugging or site remediation, workers in traditional energy communities impacted by changing markets and technology, and workers from underserved communities to be trained and placed in good-paying jobs directly related to the project, including through workforce development programs and incorporating workforce strategies into project development;
- (l) A description of:
 - 1. Training programs, including pre-apprenticeships, registered apprenticeships, local and economic hire agreements for workers, and engagement with relevant labor unions with which the State intends to conduct outreach, partner, or fund in well plugging or site remediation;
 - 2. Plans the State may or may not have to use procurement processes that incentivize contractors to hire current or former employees of the oil and gas industry;
 - 3. Whether the State plans to bundle and aggregate projects into larger state-wide or regional contracts as part of their procurement processes;
 - 4. Whether the State plans to support safe, equitable, and fair labor practices by adopting, requiring, or encouraging contractors to adopt collective bargaining agreements, local hiring provisions, project labor agreements, and community benefits agreements; and
 - 5. Whether, and if so, how, the State plans to use a program to help determine if a contractor is “responsible,” such as a responsible contractor ordinance, pre-qualification requirements or similar programs.
- (m) Procedures the State will use to coordinate with Federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, Federal, and Tribal land; and
- (n) A plan to monitor the reclaimed locations to ensure remediation and reclamation success. Such plan should include methodology and chronology of monitoring, data collection, and a plan for additional reclamation should the initial attempt be unsuccessful, and the activities outlined in the plan should be incorporated into the preliminary work schedule required in section IV.C.v.(a)3.

D. *Restrictions and instructions on funding*

- i. States may not use more than 10 percent of the funds received as authorized under Sec. 40601(c)(2)(B)(i) for administrative costs associated with activities listed in Section III. Administrative costs are defined in section II above.
- ii. In Phase 1, States may apply for no more than the eligible amount determined by the formula as published by DOI in Attachment B.
- iii. In accordance with the Buy America Preference provided in the BIL and Office of Management and Budget's (OMB) Memorandum [M-22-11 Initial Implementation Guidance on Application of Buy America Preference in Federal Financial Assistance Programs for Infrastructure](#) none of the Funds made available for this program may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. See Attachment C of this Guidance for additional information regarding the Buy America Preference and Waivers.¹⁶ Questions regarding the applicability to Buy America, such as the location of the orphaned well, should be addressed to each State's financial assistance officer for a fact-specific determination.
- iv. States may not use wells plugged with formula grant funds to monetize, generate, or collect carbon credits or otherwise use the plugging of wells funded with formula grants to generate income of any type by offsetting another party's greenhouse gas emissions.

E. *Certifications* (digital signatures are acceptable)

For Formula grant applications, a certification (see Attachment A) must be submitted to the Department with the application package certifying that:

- i. Any financial assurance instruments available to cover plugging, remediation, or reclamation costs will be used by the State; and
- ii. The State acknowledges the Davis-Bacon Act requirements for the award or project and confirms that all laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2,000 funded directly by or assisted in whole or in part by funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code. The state acknowledges that it must include a provision to comply with the provision of

¹⁶ [DOI Buy America general applicability waivers](#)

the Davis-Bacon Act in all its contracts, in accordance with 2 CFR Appendix II to Part 200(D).

V. STANDARDS FOR MEASUREMENT, PLUGGING, REMEDIATION, AND WORKFORCE

A. Pre- and Post-Plugging Measurement of Air and Water Pollution

- i. States will conduct an inspection of each orphaned well site being considered under this grant to screen for leaks of methane and other gases—and if identified to measure the rate of such leaks—and to identify potential surface water or groundwater contamination. Such inspections may be performed immediately prior to commencement of plugging and abandonment, as long as the requisite pre-plugging information is documented. State agencies also will conduct or supervise post-plugging inspections within 12 months of the plugging activity to verify the lack of gaseous emissions and water contamination from plugged wells and the achievement of vegetation performance standards appropriate to the site’s future land uses, if applicable. Or, alternatively, an arms-length entity the State ensures is qualified may also conduct post-plugging inspections. Such post-plugging inspections must be documented to create a verifiable record of activities performed under the grant. To the extent practical, each well should be physically or electronically tagged after it is plugged, with tags indicating the date the well was plugged and the contractor(s) responsible for the plugging.
- ii. States will follow, as the minimum standard, the DOI methane emission guidelines (and subsequent revisions), including all recommendations therein.¹⁷ The technology and approaches for methane detection, quantification, and monitoring are rapidly improving and evolving. As such, the DOI methane emission guidelines and requirements will also evolve over time in a manner intended to reduce the costs and burdens on states of detecting and quantifying methane emissions from orphaned wells, including the use of models and estimation tools while achieving the goals of Sec. 40601 of the BIL.
- iii. Pre- and post-plugging values of gaseous emissions (particularly methane), water contamination, and acres restored must be included, per well, in the quarterly and final performance reports described in Section VIII.D. below.

¹⁷ Assessing Methane Emissions from Orphaned Wells to Meet Reporting Requirements of the 2021 Infrastructure Investment and Jobs Act (BIL): Federal Program Guidelines. April 11, 2022. Available at: <https://www.doi.gov/sites/doi.gov/files/federal-orphaned-wells-methane-measurement-guidelines-final-for-posting-v2.pdf>

B. Well Plugging and Site Remediation Standards

- i. States with established and documented well plugging standards and regulations will require their contractors to meet those requirements. For a State that does not have established well plugging standards, the work must reflect, at a minimum: the plugging standards in the Bureau of Land Management's Onshore Oil and Gas Order No. 2 Section III.G for plugging wells, https://www.blm.gov/sites/blm.gov/files/energy_onshoreorder2.pdf; or, for offshore wells, the provisions of 30 CFR Part 250.
- ii. States will meet or exceed any well plug witnessing and documentation requirements pursuant to State law.
- iii. For States with established well abandonment standards (inclusive of those actions necessary to complete surface reclamation and revegetation), all well closures shall meet those requirements. If a State does not have well abandonment standards, a well site must reflect, at minimum, the Bureau of Land Management's Reclamation and Abandonment Standards. For additional details, see: <https://www.blm.gov/sites/blm.gov/files/Chapter%206%20-%20Reclamation%20and%20Abandonment.pdf>.
- iv. Remediation and reclamation of contaminants in soil, water, or other medium resulting from orphaned wells shall be conducted in accordance with applicable state or federal laws.

C. Workforce Standards

- i. For projects or aggregated projects in excess of \$1 million, States are encouraged to require contractors, consistent with State applicable law, to provide:
 - (a) a certification that the project uses a unionized project workforce;
 - (b) a certification that the project includes a project labor agreement; or a project workforce continuity plan detailing:
 1. How the contractor ensured the project had ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality work throughout the life of the project, including a description of any required professional certifications and/or in-house training programs, and partnerships with unions, community colleges, or community-based groups;
 2. How the contractor minimized risks of labor disputes and disruptions that would have jeopardize the timeliness and cost-effectiveness of the project;

3. How the contractor provided a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (e.g., OSHA 10, OSHA 30);
4. Whether workers on the project received wages and benefits that secured an appropriately skilled workforce in the context of the local or regional labor market;
5. Whether the project had a Community Benefit Agreement, with a description of any such agreement; and
6. Whether the project prioritized local hires.

VI. EQUIPMENT AND SUPPLIES

A. Equipment.

- i. In accordance with 2 CFR 200.439, “Equipment”, title to equipment (i.e., tangible nonexpendable personal property charged directly to the award having a useful life of more than one year and an acquisition cost of \$5,000 or more per unit, such as vehicles, computer equipment, etc.) acquired by a recipient with DOI funds shall vest in the recipient. The equipment may not be encumbered without the approval of the awarding agency. The equipment will be used for authorized purposes if it is needed whether the project or program continues to be supported by federal funds. When the recipient no longer needs the equipment, it may use it for other activities in accordance with agency procedures or dispose of it upon approval from the awarding agency. Equipment owned by the federal government shall be identified to indicate federal ownership. The recipient shall take a physical inventory of equipment and reconcile the results with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the cause of the difference.
- ii. Equipment records shall be maintained accurately and shall include the following information:
 - (a) A description of the equipment;
 - (b) Manufacturer’s serial number, model number, or other identification number;
 - (c) Source of the equipment including the award number;
 - (d) Whether title vests in the recipient or the federal government;
 - (e) Acquisition date (or date received, if the equipment was furnished by the federal government) and cost;

- (f) Information from which one can calculate the percentage of DOI's share in the cost of the equipment (not applicable to equipment furnished by the federal government);
 - (g) Location and condition of the equipment and the date the information was reported;
 - (h) Unit acquisition cost; and
 - (i) Ultimate disposition data including date of disposal and sale price or, when a recipient compensates the DOI awarding agency for its share, the method used to determine current fair market value.
- B. Intangible Property. As specified in 2 CFR 200.315, "Intangible Property, title to intangible property, as defined in 2 CFR 200.1 "Intangible property", purchased or otherwise acquired under an award or sub-award vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of the DOI awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with agency procedure.
- C. Supplies. In accordance with 2 CFR 200.314, "Supplies", title to tangible property, as defined in 2 CFR 200.1 "Supplies", purchased, or otherwise acquired under an award or sub-award vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of the DOI awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with agency procedure.

VII. FEDERAL AND TRIBAL COORDINATION

- A. Efficiency and cost-effectiveness in well plugging and site remediation will be maximized by ensuring proper coordination in these activities among States, Tribes, and the Federal government. As early as practical—preferably before State grant applications are submitted—States should provide a primary contact for coordination with the relevant offices of Tribal or Federal land management agencies to Orphanedwells@ios.doi.gov. States may reach out to DOI's Orphaned Wells Program Office for a list of appropriate contacts for the relevant offices of Tribal and Federal land management agencies.
- B. When undertaking work on Federal land under a cost-sharing, Good Neighbor, or other arrangement with the Federal government, States must collect the data required to be reported under the BIL for wells plugged and sites remediated on Federal land, unless all such data collection is otherwise captured in the terms of a lawful agreement between the State and the Federal land manager (e.g., cooperative agreement). Early coordination with Federal agencies is encouraged to ensure that

States are collecting the proper data in a format that can most easily be transferred to the Federal government.

- C. When undertaking work on private or State land adjacent to Tribal or Federal land, States are encouraged to communicate with Federal agencies and Tribal representatives to ensure appropriate and efficient collaboration on compliance issues (e.g., cultural resources, endangered species, sacred sites) and to minimize disruption of planned events, operations, or land management activities.
- D. Expenses associated with State, Tribal, and Federal coordination, such as Tribal cultural monitoring, may be charged to a formula grant as administrative costs or, when concerning a particular project, as project direct costs.

VIII. REPORTING REQUIREMENTS

- A. *Quarterly Reports:* Consistent with 2 C.F.R. § 200.328, States must submit quarterly financial and performance reports to the DOI within 30 days of the close of each Federal fiscal quarter. In Quarterly Reports, States will report on activities that occurred within the past Federal fiscal quarter.

Federal Financial Report (SF-425):

- i. Financial reports must be completed using the [SF-425](#) form.

Federal Technical Performance Report:

- i. The narrative technical report must contain the grant number, in accordance with 2 CFR 200.329, Monitoring and Reporting Program Performance.
- ii. The report must cover the period of performance and the period the report covers.
- iii. Must list and describe progress towards achieving all performance goals and milestones included in the approved workplan, and in the Notice of Award.
- iv. Must contain a comparison of actual accomplishments compared to the performance goals and milestones of the award as proposed in the workplan.
- v. Must contain a reason why the performance goals and milestones were not accomplished, if applicable.
- vi. Must include additional relevant information regarding the project, as appropriate. Instructions on where to submit the Technical Performance Reports will be located in the Notice of Award.
- vii. In addition, the data described in section VIII(E) Data Collection and Reporting must be submitted with these reports.

- B. *Personal Property report:* States are required to submit an annual Tangible Personal Property Report (using form SF-428) if grant funds are used to purchase equipment.

C. *Significant Developments* (2 CFR 200.329): Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, the State must inform DOI as soon as the following types of conditions become known:

- i. Problems, delays, or adverse conditions which will materially impair the ability to meet the objective of the Federal award. This disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- ii. Favorable developments which enable meeting time schedules and objectives sooner or at less cost than anticipated or producing more or different beneficial results than originally planned.
- iii. Consistent with 2 CFR 200.308 “Revisions of Budget and Program Plans”, changes in scope of effort, project leader, project partner must receive the prior written approval of the appropriate DOI official.

D. *Final Financial and Performance Reports*: Consistent with 2 C.F.R. § 200.329, States must submit final financial and performance reports to the DOI within 120 days of the period of performance end date.

- i. For Final Technical Performance Reports: The narrative Final Performance Report must provide a detailed summary of all project goals and accomplishments for the entire period of performance of the grant.
- ii. Reports must be submitted by the deadline listed on the notice of award.
- iii. Requests for extensions to submit reports must be received in writing at least five business days prior to the deadline. Must contain a comparison of actual accomplishments compared to the performance goals of the award.
- iv. Must include additional relevant information regarding the project, as appropriate. States are encouraged to include relevant best practices and lessons learned over the course of the period of performance of the grant in each report.
- v. Instructions on where to submit the Final Technical Performance Reports will be located in the Notice of Award.

E. *Data Collection and Reporting*

- i. In order to standardize reporting requirements and ensure that the Federal resources are well-spent and meet statutory objectives, States must track and report (pursuant to A and D of this section) the data outlined below for all actions taken using orphaned well grant funding. As appropriate, data tracking

may be accomplished through existing systems such as the Groundwater Protection Council's Risk Based Data Management System (RBDMS):

- (a) well location information (e.g., latitude/longitude);
- (b) well type (e.g., orphaned production or disposal well);
- (c) pre-plugging methane emission measurement (unless initial screening was non-detect);
- (d) If applicable, post-plugging methane emission measurement (or non-detect screening);
- (e) If applicable, surface water contamination identified;
- (f) If applicable, surface water contamination remediated;
- (g) If applicable, groundwater contamination identified;
- (h) If applicable, groundwater contamination remediated;
- (i) If applicable, revegetation performance standard monitoring start date;
- (j) If applicable, revegetation performance standard attainment date (project complete);
- (k) Actual total cost per well of plugging and surface reclamation, or an estimate of per-well costs if plugging services were procured at a multi-well project level; and
- (l) If applicable, identification of projects located in a community of color, low-income community, or Tribal and indigenous community.

This list highlights important parameters that DOI will report to Congress annually and is a subset of the larger data set the States must report as part of the performance reports (VIII.A and D.) and detailed in the Orphaned Wells [Data Reporting Template](#) available on the State Orphaned Wells Program [webpage](#). States must update the Data Reporting Template information in conjunction with the quarterly and final reporting required by VIII.A and D.

- ii. Corrections to any errors that are subsequently identified in data that has been submitted in conjunction with the quarterly reporting required by VIII.A shall be corrected and reported to DOI in conjunction with the first quarterly report that is submitted after the error is identified. If the correction relates to the final quarterly report submitted under the grant, the correction should be incorporated into the final reporting required by VIII.D.
 - iii. States that apply for a Formula grant should note that non-sensitive information regarding the activities under such grants are required to be posted on a public website under Sec. 40601(c)(4)(B)(i)(III).
- F. After providing the grantee an opportunity to redact personally identifiable or proprietary information, the Department of the Interior may post awarded grant applications on a publicly available website.

- G. The Department of the Interior may publish a summary of performance accomplishments on a publicly available web site, following submission by the States of the reports and data required in Section VIII. of this guidance.

IX. DAVIS-BACON ACT REQUIREMENTS

- A. All laborers and mechanics employed by the applicant, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work on an award or project in excess of \$2,000 funded directly by or assisted in whole or in part by funds made available under Formula grants shall be paid wages at rates not less than those prevailing on similar projects in the locality, as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code commonly referred to as the “Davis-Bacon Act” (DBA).
- B. Applicants shall provide written assurance acknowledging the DBA requirements for the award or project and confirming that all laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2,000 funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code (Davis-Bacon Act). Such acknowledgment is included in the accompanying Formula Grant Certification to serve as written assurance by the applicant.
- C. Recipients of funding will also be required to undergo DBA compliance training and to maintain competency in DBA compliance. The U.S. Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement, at <https://www.dol.gov/agencies/whd/government-contracts/construction/seminars/events>.
- D. For additional guidance on how to comply with DBA provisions and clauses, see [DOL: Davis-Bacon Act](#)

X. DOI STANDARD AWARD TERMS AND CONDITIONS

- A. DOI Standard Award Terms and Conditions will be included in all Formula grants, at the time of award. These standard terms and conditions can be found at: [Standard Award Terms and Conditions](#).
- B. Under 2 C.F.R. § 200.329, the Federal awarding agency may make site visits as warranted to ensure appropriate fiscal accountability and oversight. States shall provide Federal awarding agency access to relevant documentation in State

possession and facilitate, to the extent allowable under State law, Federal awarding agency access to project sites.

- C. The DOI Freedom of Information Act Office provides guidelines to requestors of grant applications around what information may be redacted from applications. This information includes patent rights, confidential financial information, personally identifiable information (PII), and detailed budget, consultant, and business assets information. 2 CFR § 200.338 places limitations on public access to award-related documents.
- D. Recipients of an award of Federal financial assistance from a program for infrastructure are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless: (1) all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States; (2) all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and (3) all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products.
- E. Unmanned Aircraft Systems (UAS) Drones: Pursuant to the [DOI Secretarial Order 3379](#), only specific models of unmanned aircraft that have capabilities that are considered trusted and secure by the Department of Defense are authorized for use of Federal funds under this award. A list of approved unmanned aircraft and technology packages may be found here: <https://www.diu.mil/blue-uas>. Any equipment purchases related to unmanned aircraft or technology-related items to support the use of unmanned aircraft, such as software, must be approved in advance and comport with Secretarial Order 3379. Further, employee or contractor time to fly unmanned aircraft that does not meet this requirement is not an allowable expense under this award.

Any grant funding for the purchase or use of Unmanned Aircraft Systems for operations must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds. The term "unmanned aircraft systems" encompasses unmanned aerial systems, drones, and similar technology, including component parts, that are remotely controlled and

subject to Federal Aviation Administration regulations. It covers activities conducted in furtherance of the Department's mission, using Department funds, or for purposes identified in a cooperative agreement, contract, grant, or other agreement between the Department and another party. Designated components of UAS include and are not limited to hardware and software components necessary for collecting, storing, and transmitting data or similar information.

ATTACHMENT A

State Certification
Orphaned Well Site Plugging, Remediation, And Restoration
Formula Grant

Consistent with Sections 40601(c)(4)(A)(iii) and 40601(c)(4)(B)(iii) of the Infrastructure Investment and Jobs Act (aka Bipartisan Infrastructure Law), the State or Commonwealth of _____ certifies that:

1. Any financial assurance instruments available to cover plugging, remediation, or reclamation costs will be used by the State;¹⁸ and
2. The State acknowledges the Davis-Bacon Act requirements for the award or project and confirms that all laborers and mechanics performing construction, alteration, or repair work on projects in excess of \$2,000 funded directly by or assisted in whole or in part by funding under the award are paid or will be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with Subchapter IV of Chapter 31 of Title 40, United States Code.

Certifying Official Name

Title

Certifying Official Signature

Date

¹⁸ Available financial assurance instruments are not required to be forfeit before the State performs the work, and financial assurance instruments collected by the State may be used to plug, remediate, or reclaim orphaned wells other than the well(s) for which the financial assurance instrument was originally intended.

ATTACHMENT B

Total and Phase 1 State Formula Grant Eligibility

	State	State Reported Projected Cost (12/31/21)	# Orphaned Wells Reported (12/31/21)	Job Loss	Total Formula Grant Eligibility	Phase One Eligibility
1	Alabama	\$4,230,000	91	(117)	\$1,681,430	\$1,681,430
2	Alaska	\$42,616,250	12	(3,300)	\$28,336,497	\$25,000,000
3	Arizona	\$12,969,230	245	(344)	\$4,871,791	\$4,871,791
4	Arkansas	\$6,375,000	425	(388)	\$5,589,721	\$5,589,721
5	California	\$974,949,035	5,356	(4,750)	\$140,870,510	\$35,217,628
6	Colorado	\$47,343,791	625	(6,251)	\$54,064,506	\$25,000,000
7	Illinois	\$163,355,000	4,415	(189)	\$36,875,485	\$25,000,000
8	Indiana	\$77,688,521	1,459	(62)	\$14,076,668	\$14,076,668
9	Kansas	\$35,765,917	5,477	(401)	\$33,666,697	\$25,000,000
10	Kentucky	\$235,034,398	11,728	(93)	\$78,980,737	\$25,000,000
11	Louisiana	\$401,704,649	4,605	(4,112)	\$86,449,520	\$25,000,000
12	Michigan	\$31,861,500	439	(146)	\$5,873,295	\$5,873,295
13	Mississippi	\$1,120,000	14	(885)	\$6,830,345	\$6,830,345
14	Missouri	\$29,094,000	4,849	-	\$26,925,384	\$25,000,000
15	Montana	\$14,254,250	279	(343)	\$5,139,423	\$5,139,423
16	Nebraska	\$19,311,000	471	(29)	\$4,151,076	\$4,151,076
17	New Mexico	\$290,611,502	1,741	(5,335)	\$72,260,163	\$25,000,000
18	New York	\$248,062,500	4,897	(1)	\$44,672,162	\$25,000,000
19	North Dakota	\$38,758,000	186	(6,797)	\$55,266,234	\$25,000,000
20	Ohio	\$1,548,851,635	19,662	(998)	\$231,028,206	\$57,757,052
21	Oklahoma	\$501,876,011	17,865	(9,884)	\$205,226,972	\$51,306,743
22	Pennsylvania	\$1,831,573,744	26,908	(3,021)	\$305,625,896	\$76,406,474
23	Texas	\$481,800,000	7,396	(32,200)	\$318,695,029	\$79,673,757
24	Utah	\$1,534,852	41	(650)	\$5,229,389	\$5,229,389
25	West Virginia	\$991,000,000	6,309	(762)	\$116,932,226	\$29,233,057
26	Wyoming	\$19,927,595	1,311	(4,304)	\$40,680,639	\$25,000,000
	Total	\$8,051,668,380	126,806	(85,362)	\$1,930,000,000	\$658,037,849

ATTACHMENT C

Buy America Preference for DOI Grants

I. Buy America Domestic Procurement Preference.

As required by [Section 70914 of the BIL](#), on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

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

1. All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
3. All construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

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

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

II. Waivers

When necessary, recipients may apply for, and the Department of the Interior (DOI) may grant, a waiver from these requirements, subject to review by the Made in America Office. The DOI may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing DOI general applicability waiver as described at www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers.

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to www.doi.gov/grants/buyamerica and are subject to public comment periods of no less than fifteen (15) days. Waiver requests will also be reviewed by the OMB Made in America Office.

1. Type of waiver requested (non-availability, unreasonable cost, or public interest).
2. Requesting entity and Unique Entity Identifier (UEI) submitting the request.
3. Department of Interior Bureau or Office who issued the award.
4. Federal financial assistance listing name and number (reference block 2 on DOI Notice of Award)
5. Financial assistance title of project (reference block 8 on DOI Notice of Award).
6. Federal Award Identification Number (FAIN).
7. Federal funding amount (reference block 11.m. on DOI Notice of Award).
8. Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
9. Infrastructure project description(s) and location(s) (to the extent known).

10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted at www.doi.gov/grants/BuyAmerica/ApprovedWaivers; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer. Questions pertaining to waivers should be directed to the financial assistance awarding officer.

III. Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of:

- non-ferrous metals;
- plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- glass (including optic glass);
- lumber; or
- drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

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

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States

ATTACHMENT D

Annex to the Phase 1 Formula grant guidance - This Annex provides instructions and awareness on standard grants management requirements that are part of applying for a Federal award.

1. Unique Entity Identifier and System for Award Management (SAM)
2. Conflict of Interest Disclosure
3. Single Audit Reporting Statement
4. Certification Regarding Lobbying and Disclosure Requirements
5. Data Availability
6. Agency Review Process
7. Additional Reporting Requirements
 - (a) Conflict of Interest Disclosures
 - (b) Other Mandatory Disclosures
 - (c) Reporting Matters Related to Recipient Integrity and Performance
8. Payments

1. Unique Entity Identifier and System for Award Management (SAM)

Before submitting an application, applicants must be registered in SAM.gov and have a Unique Entity Identifier (UEI) which replaces the Data Universal Numbering System (DUNS) number from Dun & Bradstreet in April 2022. Registration is through the SAM.gov website, which has user guides and other information to assist you with registration under the “Help” tab if you are not already registered. The Grants.gov “Register with SAM” page also provides detailed instructions, and applicants can contact the supporting Federal Service Desk for help as needed. A Federal award may not be made to an applicant that has not completed the SAM.gov registration. Federal award recipients must renew and validate their SAM registration at least once every 12 months to maintain an active SAM.gov registration with current information through the life of their Federal award(s).

Applicants that are registered with SAM just need to login to get their UEI, SAM generates it automatically.

2. Conflict of Interest Disclosure

Per the Financial Assistance Interior Regulation (FAIR), 2 CFR §1402.112, applicants must state in their application if any actual or potential conflict-of-interest exists at the time of submission.

(a) Applicability.

- (1) This section intends to ensure that non-Federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to Federal financial assistance agreements.

(2) In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict-of-interest provisions in 2 CFR 200.318 apply.

(b) Notification.

(1) Non-Federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to the DOI awarding agency or pass-through entity in accordance with 2 CFR 200.112.

(2) Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or eliminate identified conflicts of interest. The recipient is responsible for notifying the Grants Officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

(c) Restrictions on lobbying. Non-Federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 CFR part 18 and 31 U.S.C. 1352.

(d) Review procedures. The Grants Officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.

(e) Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 CFR 200.339, Remedies for Noncompliance, including suspension or debarment (see also 2 CFR part 180).

3. Single Audit Reporting Statement

All non-Federal entities expending \$750,000 USD or more in Federal award funds in the applicant's fiscal year must submit a Single Audit report for that year through the Federal Audit Clearinghouse's Internet Data Entry System. U.S. States must state if your organization was or was not required to submit a Single Audit report for the most recently closed fiscal year in your application. If your organization was required to submit a Single Audit report for the most recently closed fiscal year, provide the EIN (Tax ID) associated with that report and state if it is available through the Federal Audit Clearinghouse website.

4. Certification Regarding Lobbying and Disclosure Requirements

Applicants requesting more than \$100,000 in Federal funding must certify to the statements in 43 CFR Part 18, Appendix A-Certification Regarding Lobbying. If this application requests more than \$100,000 in Federal funds, the Authorized Official's signature on the appropriate SF-424, Application for Federal Assistance form also represents the entity's certification of the statements in 43 CFR Part 18, Appendix A.

Applicants and recipients must not use any federally appropriated funds (annually appropriated or continuing appropriations) or matching funds under a Federal award to pay any person for lobbying in connection with the award. Lobbying is influencing or attempting to influence an officer or employee of any U.S. agency, a Member of the U.S. Congress, an officer or employee of the U.S. Congress, or an employee of a Member of the U.S. Congress in connection with the award. Applicants and recipients must complete and submit the SF-LLL, "Disclosure of Lobbying Activities" form if the Federal share of the proposal or award is more than \$100,000 and the applicant or recipient has made or has agreed to make any payment using non-appropriated funds for lobbying in connection with the application or award. The SF-LLL form is available with this Funding Opportunity on Grants.gov. See 43 CFR, Subpart 18.100 for more information on when additional submission of this form is required.

5. Data Availability

Per the Financial Assistance Interior Regulation (FAIR): 2 CFR §1402.315

- (a) All data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, valuation products or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual, resulting from a financial assistance agreement is available for use by the DOI, including being available in a manner that is sufficient for independent verification.
- (b) The Federal Government has the right to:
 - (1) Obtain, reproduce, publish, or otherwise use the data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, produced under a Federal award; and
 - (2) Authorize others to receive, reproduce, publish, or otherwise use such data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, for Federal purposes, including to allow for meaningful third-party evaluation.

6. Agency Review Process

The awarding agency conducts a review of the SAM.gov Exclusions database for all applicant entities and their key project personnel prior to award. The awarding agency cannot award funds to entities or their key project personnel identified in the SAM.gov Exclusions database as ineligible, prohibited/restricted or otherwise excluded from receiving Federal contracts, certain subcontracts, and certain Federal assistance and benefits, as their ineligibility condition applies to this Federal program.

Prior to award, the awarding agency will evaluate the risk posed by applicants as required in 2 CFR 200.205. The awarding agency documents applicant risk evaluations using DOI's "Financial Assistance Recipient Risk Assessment" form. Prior to approving awards for Federal funding in excess of the simplified acquisition threshold (currently \$250,000), the awarding agency is required to review and consider any information about or from the applicant found in the Federal Awardee Performance and Integrity Information System. The awarding agency will consider this information when completing the risk review. The awarding agency uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more of the specific award conditions in 2 CFR 200.207 should be applied to the award.

7. Additional Reporting Requirements

- (a) Conflict-of-Interest Disclosures. Recipients must notify the program immediately in writing of any conflict of interest that arises during the life of their Federal award, including those reported to them by any subrecipient under the award. Recipients must notify the program in writing if any employees, including subrecipient and contractor personnel, are related to, married to, or have a close personal relationship with any Federal employee in the Federal funding program or who otherwise may have been involved in the review and selection of the award. The term employee means any individual engaged in the performance of work pursuant to the Federal award. Recipients may not have a former Federal employee as a key project official, or in any other substantial role related to their award, whose participation put them out of compliance with the legal authorities addressing post-Government employment restrictions. See the U.S. Office of Government Ethics website for more information on these restrictions. The awarding agency will examine each conflict-of-interest disclosure based on its particular facts and the nature of the project and will determine if a significant potential conflict exists. If it does, the awarding agency will work with the recipient to determine an appropriate resolution. Failure to disclose and resolve conflicts of interest in a manner that satisfies the awarding agency may result in any of the remedies described in 2 CFR 200.339 Remedies for Noncompliance, including termination of the award.

- (b) Other Mandatory Disclosures. Applicants must disclose, in a timely manner, in writing to the Federal awarding agency or pass-through entity all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Non-Federal entities that receive a Federal award including the terms and conditions outlined in 2 CFR 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in any of the remedies described in 2 CFR 200.339 Remedies for Noncompliance, including suspension or debarment.

- (c) Reporting Matters Related to Recipient Integrity and Performance. If the total value of your currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds \$10,000,000 for any period of time during the period of performance of this Federal award, then you as the recipient during that period of time must maintain the currency of information reported to the System for Award Management (SAM) that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information System (FAPIIS)) about civil, criminal, or administrative proceedings in accordance with Appendix XII to 2 CFR 200.

8. Payments

Domestic recipients are required to register in and receive payment through the U.S. Treasury's Automated Standard Application for Payments (ASAP), unless approved for a waiver by the awarding agency program. The recipient will be notified of the ASAP enrollment process, or if already enrolled, the process to link their ASAP account to the Agency.

Attachment H-4 – Grant Terms



United States Department of the Interior
OFFICE OF THE SECRETARY
Washington, DC 20240

Orphaned Wells Program Office State Matching Grants Guidance

May 2024

I. INTRODUCTION

President Biden signed the Infrastructure Investment and Jobs Act, also known as the Bipartisan Infrastructure Law (BIL; Public Law 117-58), on November 15, 2021, making a once-in-a-generation investment in the Nation’s infrastructure and economic competitiveness. This landmark investment will rebuild America’s critical infrastructure, tackle the climate crisis, address legacy polluted sites, advance environmental justice, and drive the creation of good-paying jobs that provide a free and fair chance to join a union. By addressing long overdue infrastructure and environmental improvements and strengthening our resilience to the changing climate, this investment in our communities across the country will grow the economy sustainably and equitably for decades to come.

Subsection (b) of Section 40601 of the BIL creates an orphaned well site plugging, remediation, and reclamation program within the Department of the Interior (DOI) to address orphaned wells and well sites on federal lands. Subsection (d) authorizes a grant program for Tribes, and subsection (c) authorizes three types of grants for States:

1. Initial grants (Section 40601(c)(3))
2. Formula grants (Section 40601(c)(4))
3. Performance grants (Section 40601(c)(5))

On January 10, 2023, Secretary Haaland issued Secretary’s Order No. 3409 to establish the Orphaned Wells Program Office (OWPO) to ensure effective, accountable, and efficient implementation of the BIL’s historic investment in orphaned well clean-up. The OWPO, in the Office of Policy, Management and Budget, carries out the Secretary’s responsibilities under Section 40601 of the BIL, including issuing, administering, and overseeing State grants.

This document sets forth the application process for States to receive Matching Grants. It also contains requirements for carrying out activities under the Matching Grants authorized by Section 40601(c)(5)(F) of the BIL.¹

II. DEFINITIONS RELEVANT TO MATCHING GRANTS

This section contains a list of definitions relevant to Matching Grants. The definitions supplement the BIL and other federal law and authorities, *e.g.*, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. part 200.

¹ OWPO anticipates it will issue separate guidance concerning another type of State Performance Grant, which the BIL refers to as Regulatory Improvement Grants, *see* Section 40601(c)(5)(E).

“Adjacent land” means land that adjoins or is in close proximity to a documented orphaned well and for which reclamation or remediation is necessary to address the negative health, safety, habitat, and environmental impacts of the orphaned well.

“Administrative costs” identified in Section 40601(c)(2)(B)(i), limited to not more than 10 percent of the funds received, are those costs that cannot be directly attributed to activities listed under Section 40601(c)(2)(A)(i)-(viii), but instead to general grants management or program administration. Administrative costs can be expended for personnel or non-personnel costs, and can be direct or indirect, but should represent the costs to the State for managing the overall grant-funded work rather than preparation for and execution of the plugging of an individual well or set of wells, or the associated remediation, reclamation, decommissioning, and removal activities.

The terms “associated pipelines,” “facilities,” and “infrastructure” collectively include structures, appurtenances, and improvements located on land associated with exploring, producing, transporting, or processing from an orphaned well.

“Award Date” means the date a financial assistance officer issues a Matching Grant award. A grant’s award date may or may not be the same date as the grant’s effective date. The effective date of a Matching Grant is the date of receipt of the funds.

“Certified Amount” is the total amount of the State’s non-federally originated money that the State certifies it will expend in a particular State fiscal year to: 1) plug, remediate, and reclaim orphaned wells; 2) remediate or reclaim land adjacent to an orphaned well; and 3) decommission or remove pipelines, facilities, and infrastructure associated with an orphaned well.

“Community” means either a group of individuals living in geographic proximity to one another, or a geographically dispersed set of individuals (such as migrant workers), where either type of group experiences common conditions.

“Date of receipt of the funds” means the effective date of a Matching Grant award, and may or may not be the same date as the award date. A Matching Grant’s effective date is determined by a financial assistance officer, in consultation with the receiving State. The effective date is the date the Matching Grant’s period of performance begins.

The terms “decommission” and “remove” collectively include activities undertaken to permanently plug pipelines associated with a documented orphaned well, and other activities that remove pipelines, facilities, and infrastructure associated with a documented orphaned well, such that the same is permanently relocated or dismantled and the surrounding area returned to its natural condition, or a condition appropriate for its intended future land use.

“Disadvantaged communities” means the census tracts identified as disadvantaged by the Climate and Economic Screening Tool (CEJST), issued by the White House Council on Environmental Quality, along with all Federally Recognized Tribal entities.²

² <https://screeningtool.geoplatform.gov>. For additional information, see M-23-09, *Addendum to the Interim*

“Documented well” means a well for which a State, including its agencies, or a non-State agency, has a drilling, completion, or inspection report, or any other record establishing the existence of the well, including its precise latitude and longitude in decimal degrees.

“Economic conditions” includes a state of macroeconomic variables and trends, in an area, at a point in time, such as per capita income and unemployment rate.

Consistent with 2 C.F.R. § 200.1, “equipment” means tangible personal property, including information technology systems, that has a useful life of more than one year and a per unit acquisition cost which equals or exceeds the lesser of the capitalization level established by the non-federal entity for financial statement purposes, or \$5,000. *See* 2 C.F.R. § 200.313 for the title, use, management, and disposition of equipment purchased with Matching Grant funds.³

“Federal land” is defined in Section 40601(a)(1) as land administered by a land management agency within the Department of Agriculture or the Department of the Interior.

“Federal wells” – Orphaned wells and well sites on Federal land are considered “Federal wells” and are eligible for funding under the Section 40601(b) Federal Program. Orphaned wells—and well sites associated with such wells—that were drilled subject to a federal permit to drill may be considered Federal wells eligible for funding under the Section 40601(b) Federal Program, regardless of surface ownership. As the funding under the Federal Program is not expected to be sufficient to remediate all eligible Federal wells, a State may use grant funds received under Section 40601 to plug and remediate Federal wells located on State or private land and may include those wells in its inventory of documented orphaned wells on State or private land. Any plugging and reclamation activities on such split-estate orphaned wells would be subject to the Federal government’s onshore plugging and reclamation standards and DOI approval prior to the start of operations.

“Fiscal year” means the State fiscal year of the State applying for the Matching Grant, unless otherwise specified (*e.g.*, from July 1 of a calendar year to June 30 of the following year).

“Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

Both “low-income communities” and “economically distressed areas” are either: 1) Those communities that in the last 12 months had a median household income less than twice the poverty level; or 2) Communities identified as disadvantaged pursuant to the CEJST.

Implementation Guidance for the Justice40 Initiative, M-21-28, on using the Climate and Economic Justice Screening Tool (CEJST) at https://www.whitehouse.gov/wp-content/uploads/2023/01/M-23-09_Signed_CEQ_CPO.pdf and CEQ Instructions to Federal Agencies on Using the Climate and Economic Justice Screening Tool (Jan. 2023), <https://static-data-screeningtool.geoplatform.gov/data-versions/1.0/data/score/downloadable/CEQ-CEJST-Instructions.pdf>.

³ This guidance refers to the statutes and other authorities in effect when it was issued.

“Obligated amount” means any Matching Grant funds that are subject to a definite commitment that creates a legal liability for the State for an immediate or future payment for goods or services ordered or received, including by contract or subcontract award.

“Orphaned well” has the meaning given to the term by the applicable State. If a State uses different terminology, however, for the purposes of a Matching Grant, an orphaned well means a well that is eligible for plugging, remediation, and reclamation by the State applying for the Matching Grant.

“Pre-Award Costs” - DOI waives the prior written approval requirements for pre-award project costs that were incurred within 90 calendar days before the federal award effective date. All costs incurred prior to the effective date are at the recipient's risk of non-reimbursement if the costs are not determined to be allowable, allocable, and reasonable (2 C.F.R. §§ 200.308, 407).

The terms “remediate” and “reclaim” collectively may include eliminating, limiting, correcting, counteracting, mitigating or removing any contaminant or the adverse effects on the environment or human health of any contaminant, including but not limited to: preliminary site investigations; detailed site investigations; analysis and interpretation, including tests, sampling, surveys, data evaluation, risk assessment and environmental impact assessment; evaluation of alternative methods of remediation; preparation of a remediation plan, including a plan for any consequential or associated removal of soil or soil relocation from the site; implementation of a remediation plan; monitoring, verification and confirmation of whether the remediation complies with the remediation plan, applicable standards and requirements imposed by a director; and other activities prescribed by applicable State or federal law and authorities. Each term may also have the respective meaning given to it under the applicable State’s law and authorities.

“Tribal land” means land or interest in land owned by an Indian Tribe, the title to which is held in trust by the United States or subject to a restriction against alienation under federal law.

“Undocumented well” means either: 1) A well that is entirely unknown to a State or other non-State regulatory agency; or 2) A well for which a State or non-State regulatory agency has some evidence, but the State or non-State regulatory agency requires verification, including the well’s precise latitude and longitude in decimal degrees.

“Unobligated amount” means the amount of awarded Matching Grant funds the State has not obligated. The amount is computed by subtracting the cumulative amount of the State’s unliquidated financial obligations and expenditures of funds under the Matching Grant award from the cumulative amount of the funds that the federal awarding agency or pass-through entity authorized the State to obligate.

III. PERMISSIBLE USES OF AWARDED MATCHING GRANT FUNDS

Under Section 40601(c)(5)(F)(i), a State may apply for and receive a Matching Grant equal to “the amount that the State certifies to the Secretary the State will expend, during the fiscal year in which the State will receive the grant” (Certified Amount) *less* “the average annual amount expended by the State during the period of fiscal years 2010 through 2019” (Average 2010-2019 Amount). Under Section 40601(c)(2)(A), a State may use awarded Matching Grant funds for any of the following purposes:

1. To plug, remediate, and reclaim orphaned wells located on State-owned or private land;
2. To identify and characterize undocumented orphaned wells on State and private land;
3. To rank orphaned wells based on factors including: public health and safety; potential environmental harm; and other land use priorities;
4. To make information regarding the use of Matching Grant funds received available on a public website;
5. To measure and track: emissions of methane and other gases associated with orphaned wells; and contamination of groundwater or surface water associated with orphaned wells;
6. To remediate soil and restore native species habitat that has been degraded due to the presence of orphaned wells and associated pipelines, facilities, and infrastructure;
7. To remediate land adjacent to orphaned wells and decommission or remove associated pipelines, facilities, and infrastructure;
8. To identify and address any disproportionate burden of adverse human health or environmental effects of orphaned wells on disadvantaged communities, including but not limited to low-income communities, and Tribal or similar communities; and
9. To administer a program to carry out any activities that fall under Numbers 1-8. These costs are referred to as administrative costs. *No more than 10 percent of a particular Matching Grant's funds may be used for administrative costs.*

Matching Grants are available for such activities where the surface or subsurface estate is owned by the State or by a private party, including, potentially, individually owned Indian properties that are held in trust by the Secretary of the Interior, but deemed by the State to be “orphaned wells” on “private land.” To the extent Matching Grant funds are used in the split estate context, the State must coordinate in advance with the Orphaned Wells Program Office and the appropriate Federal agency, and/or Indian Tribe, as applicable.

Only States that receive initial grants, under Section 40601(c)(3), are eligible to receive Matching Grants. Each eligible State may be awarded multiple Matching Grants—one grant per State fiscal year. While there is no maximum amount for a particular fiscal year’s Matching Grant, a State may not be awarded, obligate, and spend more than a total of \$30 million in Matching Grant funds. Matching Grants may not be awarded after September 30, 2030.

Matching Grant funds may be spent on, and grant-receiving States are encouraged to, display signage at orphaned well and well site plugging, remediation, and restoration sites to increase the transparency of activities funded in whole or in part by the BIL. Costs to procure, distribute, and

install signage are considered administrative costs. Such signage must comply with the Investing in America Signage Guidelines.⁴

A State has no more than 5 years from the effective date of a Matching Grant to obligate the awarded federal funds. Matching Grant funds that are not timely obligated must be returned to DOI. Unobligated and unspent funds returned to DOI do not count against the State's \$30 million Matching Grant limit stated in Section 40601(c)(5)(F)(ii)(II).

In applying for Matching Grants, and obligating and spending awarded Matching Grant funds, States must comply with all applicable federal grant award statutes, regulations, and other requirements, including but not limited to the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. part 200. A State that accepts an award is also subject to and must comply with the terms and conditions of the grant it is awarded, and the certifications that the State submits as part of its grant application.

IV. INSTRUCTIONS FOR MATCHING GRANT APPLICATIONS

A State's Matching Grant application must be timely submitted and contain sufficient information for DOI to determine whether: 1) the proposed grant amount is consistent with the BIL; and 2) the State's proposed activities can realistically be achieved and are consistent with the BIL, other federal law and authorities, and the grant's anticipated terms and conditions.

A. Timely submitting a Matching Grant application

For a State fiscal year in which a State applies for a Matching Grant, the State must submit its application, in GrantSolutions.gov, by the last day of the first quarter of that State's fiscal year.

For example, if a State fiscal year begins on July 1, 2025, that State may apply for a Matching Grant for that State fiscal year up to and including September 30, 2025, based on the amount of non-federally originated funds that the State has spent or will spend on its orphaned well program or on orphaned well activities (*i.e.*, Certified Amount) from July 1, 2025, through June 30, 2026. In this example, some of the State's Certified Amount may be the actual amount the State spent on its orphaned well program or on orphaned well activities in the relevant State fiscal year (*i.e.*, from July 1, 2025 through September 30, 2025). And, the rest of the Certified Amount would be the estimated expenses for the remaining portion of the State's fiscal year (*i.e.*, October 1, 2025, through June 30, 2026).

Only for the State fiscal year that the Matching Grant application window first opens, a State may apply for a grant for that State fiscal year after the last day of the first quarter of that State fiscal year. Under Section 40601(c)(5)(F)(i), however, a Matching Grant may not be awarded for a State fiscal year (*i.e.*, the State fiscal year that is the subject of the Certified Amount) after that State fiscal year has ended. So, if a State's application is not submitted early enough to afford DOI sufficient time to review the State's application and determine whether it is complete, and a grant is not awarded before the end of that

⁴ <https://www.whitehouse.gov/wp-content/uploads/2023/02/Investing-in-America-Brand-Guide.pdf>.

State fiscal year, then DOI cannot award a Matching Grant pursuant to that State's application (*e.g.*, if a State fiscal year began on October 1, 2023, that State may apply for a Matching Grant for that State fiscal year *after* December 31, 2023. However, DOI may not award a grant for that State fiscal year after September 30, 2024).

A State may apply for a Matching Grant for a particular State fiscal year before that fiscal year begins. A State, however, may only be awarded the Matching Grant it applies for during the State fiscal that is the subject of the Certified Amount (*e.g.*, for the State in the above example, the State may submit a Matching Grant application for State fiscal year 2025 *before* October 1, 2024. However, a Matching Grant may not be awarded to that State for State fiscal year 2025 until October 1, 2024).

B. Calculating the Average 2010-2019 and Certified Amounts

1. A State's Average 2010-2019 Amount

The Average 2010-2019 Amount is calculated by dividing by 10 the total amount spent by the State during State fiscal years 2010 through 2019 to: 1) plug, remediate, and reclaim orphaned wells; and 2) decommission or remove pipelines, facilities, and infrastructure associated with an orphaned well.

In its Average 2010-2019 Amount, a State must include all applicable direct orphaned well-related expenditures that the State spent. This includes money spent on plugging, reclamation, and restoration, from the first day of State fiscal year 2010 up to and through the last day of State fiscal year 2019. A State may also include its indirect expenditures if it chooses to do so. A State must explain its accounting basis. *See, e.g.*, State Technical and Financial Reporting Requirements Section below.

A State must maintain all records to support the Average 2010-2019 Amount stated in the State's grant application. The Average 2010-2019 Amount in a State's application is subject to DOI review, verification, and/or audit, and a State may be required to submit all records to support its Average 2010-2019 Amount.

2. A Matching Grant Application's Certified Amount

The Certified Amount is the total amount of the State's non-federally originated money that the State certifies it *will expend* in a particular State fiscal year to: 1) plug, remediate, and reclaim orphaned wells; 2) remediate or reclaim land adjacent to an orphaned well; and 3) decommission or remove pipelines, facilities, and infrastructure associated with an orphaned well.

A State's Certified Amount in its Matching Grant application must be calculated using the same accounting basis that the State used to calculate its Average 2010-2019 Amount. A State may only include indirect costs in its Certified Amount if it included the costs in its Average 2010-2019 Amount.

A State must maintain all records to support the Certified Amount stated in its grant application. The Certified Amount in a State’s application is subject to DOI review, verification, and/or audit, and a State may be required to submit all records to support its Certified Amount.

If the total actual State expenditures in the State fiscal year that is the subject of a Certified Amount (CA Year) is less than the Certified Amount in a State’s Matching Grant application, the State is required to inform DOI and pay back the associated funds within 90 days of end of the CA Year. However, for grants less than \$1,000,000, a State is not required to pay back the funds if the difference is less than \$100,000. And, for grants greater than or equal to \$1,000,000, a State is not required to pay back the funds if the difference is less than 10 percent of the Certified Amount. Funds returned to DOI do not count against the State’s \$30 million Matching Grant limit.

3. *Costs that may be included in its two amounts.*

As stated above, a State must utilize the same basis (cash or accrual) to calculate both its Average 2010-2019 Amount and its Certified Amount. A State will provide its accounting basis to DOI in the SF-425s that it submits in its reporting.

Consistent with 2 C.F.R. § 200.1, a State that utilizes a cash basis may include in its Average 2010-2019 Amount and Certified Amount:

- Cash disbursements for direct charges for property and services;
- The amount of indirect expense charged;
- The value of third-party in-kind contributions applied; and
- The amount of cash advance payments and payments made to subrecipients.

A State that utilizes an accrual basis may include the following:

- Cash disbursements for direct charges for property and services;
- The amount of indirect expense incurred;
- The value of third-party in-kind contributions applied; and
- The net increase or decrease in the amounts owed by the non-federal entity for: Goods and other property received; services performed by employees, contractors, subrecipients, and other payees; and programs for which no current services or performance are required such as annuities, insurance claims, or other benefit payments.

C. A Matching Grant application must show and support a State’s Average 2010-2019 and Certified Amounts and contain the amount and proposed use for the federal Matching Grant funds that the State is applying for.

A Matching Grant application must include all of the items described below.⁵

1. **Application for Federal Assistance (Form SF-424).** A State should contact DOI’s Interior Business Center (IBC) if it has any questions as to how to complete this form.
2. **Project Abstract Summary.** This includes: a high-level summary of the grant’s purpose for the general public; activities to be performed under the grant; expected deliverables or outcomes; intended beneficiaries; and any known subrecipient activities.
3. **Key Contacts Form.** This includes the applying States’s point of contact (POC), for the purposes of its application. The POC is the individual DOI will contact to resolve any questions or concerns that it may have.
4. **The Matching Grant Amount (Form SF-424A).** This contains the total amount of federal Matching Grant funds the State is applying for. This amount will be supported by the documents listed in No. 5, immediately below, and is subject to DOI review, verification, and/or audit. DOI anticipates a SF-424A form will be provided in GrantSolutions.gov.
5. **Documents that support a State’s SF-424A.**
 - a. **Budget Detail for State’s Average 2010-2019 Amount.** This template contains all of the costs the applicant State includes in its Average 2010-2019 Amount. This amount is subject to DOI review, verification, and/or audit. States are encouraged to use a DOI-approved template, which DOI anticipates will be provided in GrantSolutions.gov.
 - b. **Budget Detail for State’s Certified Amount.** This template contains all of the costs the applicant State includes in its Certified Amount. This amount is subject to DOI review, verification, and/or audit. States are encouraged to use a DOI-approved template, which DOI anticipates will be provided in GrantSolutions.gov.
 - c. **Budget Detail for federal Matching Grant Funds.** This template itemizes and describes how the State proposes to use the Matching Grant funds it applies for. The costs in this budget detail must be consistent with the amount listed in the State’s SF-424A. A State must use the same basis in this budget detail as it uses for its

⁵ OWPO and IBC may require additional items.

Average 2010-2019 and Certified Amounts. States are encouraged to use a DOI-approved template, which DOI anticipates will be provided in GrantSolutions.gov.

- d. **Work Plan/Proposal for federal Matching Grant Funds (Work Plan).** A Work Plan: 1) explains the applicant State’s Matching Grant-funded activities in detail, including outcomes and data collection methods; 2) provides a basis for the State’s technical approach; 3) details the State’s goals and objectives; 4) describes the public benefit and statement of need; 5) describes how success will be measured or evaluated by the State; 6) may include maps of affected areas and a list of wells; 7) includes the timeline for completion and milestones; and 8) contains the State’s monitoring plan for subrecipients or contractors. States are encouraged to use a DOI-approved template. *A State may request a grant amount less than it is entitled to. If a State elects to do so, a State must indicate as such in its Work Plan/Proposal for Matching Grant Funds.*

The costs contained in the activities included in a State’s Work Plan, as well as any other uses of awarded federal BIL funds, are subject to DOI review, verification, and/or audit, and the State must maintain all records to support the amounts stated in its application, including those generated by contractors.

Similar to a Work Plan for Phase 1 State Formula Grants (<https://www.doi.gov/sites/doi.gov/files/state-formula-grant-guidance-07.07.2023.pdf>), a Matching Grants Work Plan includes:

- i. A description of:
- aa. The State’s program for orphaned well plugging, remediation, and restoration, including legal authorities, processes the State currently uses to identify and prioritize orphaned wells, procurement mechanisms, and other program elements demonstrating the readiness of the State to carry out proposed activities using the grant, including summary descriptions of:
 - l. The State’s plugging standards, including the witnessing requirements (*e.g.*, qualifications of witnesses, documentation).
 - ll. How salvaged material and equipment will be reused, recycled, or sold for scrap, with any resulting income reported to DOI and

incorporated into the grant budget for eligible activities upon approval by DOI.

- lll. The State's authorities to enter private property, or the State's procedures to obtain landowner consent to enter such property, and in the event that any wells to be plugged will be accessed from federal or Tribal land, how the State will gain access.
- bb. How the State will prioritize (*i.e.*, rank for remediation activity) orphaned wells based on: addressing environmental injustices, threats to public health and safety, environmental harm - particularly harms due to methane emissions, and other land use priorities, including the remediation of hazardous sites in disadvantaged communities.
- cc. How the State will place a higher priority on the use of the federal funds to lower unemployment in the State, including workforce development activities related to orphaned well plugging, remediation, and reclamation.
- dd. How the State will place a higher priority on the use of the federal funds to improve economic conditions in economically distressed areas of the State, provided the use of the funds is related to orphaned well plugging, remediation, and reclamation.
- ee. The details of each activity to be carried out with the grant, including a preliminary work schedule covering the period of performance of the Matching Grant and an identification of the estimated health, safety, habitat, and environmental benefits of plugging, remediating, or reclaiming orphaned wells. Each activity must include a schedule and resources needed for getting the work completed, which must cover the entire relevant period.
- ff. Proposed performance goals including a schedule of milestones for completing the activities of (ee), above, and to achieve the objectives of the workplan.

- gg. The means by which the information regarding the activities of the State under this grant will be made available on a public website.
 - hh. The process the State follows to identify and pursue all potentially responsible parties that may be legally liable for plugging, remediating, or restoring orphaned wells in the State.
- ii. An estimate, which DOI acknowledges is a snapshot in time and subject to change as circumstances on the ground dictate, of:
- aa. The number of orphaned wells or sites, categorized by the region in the State that the State forecasts may be plugged, remediated, or reclaimed using Matching Grant funds.
 - bb. The projected cost, including the basis of estimates, of:
 - I. Plugging, remediating, or reclaiming orphaned wells.
 - II. Remediating or reclaiming adjacent land.
 - III. Decommissioning or removing associated pipelines, facilities, and infrastructure.
 - cc. The amount of projected cost that will be offset by the forfeiture of financial assurance instruments, the estimated salvage of well site equipment, or other proceeds from the orphaned wells and adjacent land.
 - dd. The number of jobs that will be created or saved through the activities to be funded under this grant and the assumptions and methodology to develop the estimate.
 - ee. To the extent possible, the miles and diameters of associated pipelines and number and description of associated facilities and infrastructure assets that will be decommissioned or removed.
- iii. If practical, the latitude/longitude, type of well, the well ID (API or US well number), surface ownership, and mineral

ownership for those wells that are likely to be plugged, remediated, or reclaimed.

- iv. The definitions and processes used by the State to formally identify a well as:
 - aa. An orphaned well; or
 - bb. If the State uses different terminology, otherwise eligible for plugging, remediation, and reclamation by the State.
- v. Details of how the State will identify and prioritize the highest methane emitters.
- vi. Details of how the State will identify and prioritize well plugging and site reclamation that are intended to reduce health or environmental burdens for disadvantaged communities (including Federally Recognized Tribes and communities identified as disadvantaged using the CEJST), such as through plugging wells and remediating sites that are within 0.5 miles of a disadvantaged community.⁶ The State may also identify and address how it will address any disproportionate burden of adverse human health or environmental impacts of orphaned wells on local communities with environmental justice concerns and other disadvantaged communities, including but not limited to low-income communities, and Tribal or other similar communities, consistent with all applicable legal requirements. Decision points and underlying assumptions, such as the number and type of environmental indicators, must be described in the application.
- vii. The methodology, including field indicators, sampling, and modeling approaches, to be used by the State to measure and track contamination of groundwater and surface water associated with orphaned wells, including how the State will assess the effectiveness of plugging activities in reducing or eliminating such contamination.
- viii. Methods to be used to decommission or remove associated pipelines, facilities, and infrastructure and to remediate soil and restore habitat that has been degraded due to the presence of orphaned wells and associated infrastructure, including a description of how salvaged material and

⁶ <https://screeningtool.geoplatform.gov/>.

equipment will be reused, recycled, or sold for scrap (with any resulting income reported to DOI).

- ix. Methods the State will use to solicit recommendations from local officials and the public regarding the prioritization of well plugging and site remediation activities, and any other processes the State will use to solicit feedback on the program from local governments and the public.
- x. How the State will use funding to locate currently undocumented orphaned wells.
- xi. Plans the State has to engage third parties in partnerships around well plugging and site remediation, or any existing similar partnerships the State currently belongs to.
- xii. Plans the State has to support opportunities for all workers and vendors, including workers underrepresented in well plugging or site remediation, workers in traditional energy communities impacted by changing markets and technology, and workers from disadvantaged and underserved communities, to be trained and placed in good-paying jobs directly related to activities funded by the grant, including through workforce development programs.
- xiii. A description of:
 - aa. Training programs, including pre-apprenticeships, registered apprenticeships, local and economic hire agreements for workers, and engagement with relevant labor unions with which the State intends to conduct outreach, partner, or fund in well plugging or site remediation.
 - bb. Plans the State may or may not have to use procurement processes that incentivize contractors to hire current or former employees of the oil and gas industry.
 - cc. Whether the State plans to bundle and aggregate activities into larger State-wide or regional contracts as part of their procurement processes.
 - dd. Whether the State plans to support safe, equitable, and fair labor practices by adopting, requiring, or encouraging contractors to adopt collective bargaining agreements, local hiring provisions,

labor agreements, and community benefits agreements.

- ee. Whether, and if so, how, the State plans to use a program to help determine if a contractor is “responsible,” such as a responsible contractor ordinance, pre-qualification requirements or similar programs.
 - xiv. Procedures the State will use to coordinate with federal or Tribal agencies to determine whether efficiencies may exist by combining field survey, plugging, or surface remediation work across private, State, federal, and Tribal land.
 - xv. A plan to monitor the reclaimed locations to ensure remediation and reclamation success. Such plan should include methodology and chronology of monitoring, data collection, and a plan for additional reclamation should the initial attempt be unsuccessful, and the activities outlined in the plan should be incorporated into the work schedule.
6. **Federal Approved Indirect Cost Rate Agreement.** A federally approved Indirect Cost Rate Agreement or similar statement that requires the United States to pay a de minimis rate to the State for indirect or incurred costs that are reasonable, allocable, and allowable.
 7. **Certifications.** A State must submit the certification in Appendix A as part of its Matching Grant application.
 8. **Disclosure of Lobbying Activities (Form SF-LLL).** A State uses this form to disclose when: it uses non-federal funds to lobby in connection with the grant application; and the federal share of the grant exceeds \$100 thousand. If the two criteria are not met by the applicant State, it should mark “N/A” in the SF-LLL it submits as part of its Matching Grant application.
 9. **Certification Regarding Lobbying.** See Appendix C, Certification Regarding Lobbying and Disclosure Requirements. A State may contact IBC if it has any questions as to how to complete this form.

V. DISTRIBUTION OF GRANT FUNDS FOR APPROVED APPLICATIONS

States are required to register in and receive payment through the Department of the Treasury’s Automated Standard Application for Payments (ASAP), unless approved for a waiver. A State will be notified of the ASAP enrollment process, or if already enrolled, the process to link its ASAP account to receive the funds.

VI. STATE REPORTING REQUIREMENTS AND POST-AWARD OBLIGATIONS

A. State Technical and Financial Reporting Requirements

1. Periodic status reporting is a condition of a Matching Grant award. **As such, periodic reporting to DOI will be required, the frequency of which will be based on DOI's determination.** Financial Reporting requires the use of an Office of Management and Budget (OMB) approved SF-425. A State must also submit a Technical Performance Report within the same timeframe as its SF-425 that:
 - a. Contains the grant number, in accordance with 2 C.F.R. § 200.329, Monitoring and reporting program performance.
 - b. Covers the period of performance and the period the report covers.
 - c. Lists and describes progress towards achieving all performance goals and milestones included in the approved workplan, and in the notice of award.
 - d. Contains a comparison of actual accomplishments compared to the performance goals and milestones of the grant work plan, which includes the use of the federal Matching Grant funds to lower unemployment and improve economic conditions in economically distressed areas in the State, including those areas with environmental justice concerns.
 - e. States reasons performance goals and milestones were not achieved.
 - f. Includes additional relevant information regarding the work, as appropriate.

Instructions on where and how to submit Technical Performance Reports will be included in the notice of award. The data described in Data Collection and Reporting must be submitted with these reports.

2. A State is required to annually submit a Tangible Personal Property Report, Form SF-428, if grant funds are used to purchase equipment.
3. Significant Developments, under 2 C.F.R. § 200.329(e): Events may occur between the scheduled performance reporting dates that have significant impact upon the supported activity. In such cases, a State must inform DOI as soon as the following become known:
 - a. Problems, delays, or adverse conditions that will materially impair the State's ability to meet the objective of the federal award. This

- disclosure must include a statement of the action taken, or contemplated, and any assistance needed to resolve the situation.
- b. Favorable developments that either: 1) Enable quicker achievement of milestones or objectives; or at less cost than anticipated; or 2) Producing more or different beneficial results than originally anticipated.
 - c. Under 2 C.F.R. § 200.308, any revisions of budget and program plans, changes in scope of effort, or work leaders or partners must receive the prior written approval of the appropriate DOI official.
4. Under 2 C.F.R. § 200.329(c)(1), a State must submit its final financial and performance reports within 120 calendar days of the period of performance or the deadline listed on the notice of award.
- a. The narrative for final technical performance reports must provide a detailed summary of all goals and accomplishments for the grant's period of performance.
 - b. Requests for extensions to submit reports must be received in writing at least five business days prior to the deadline.
 - c. Must contain a comparison of actual accomplishments compared to the performance goals of the award.
 - d. Must include additional relevant information regarding the activities funded by the grant, as appropriate. States are encouraged to include relevant best practices and lessons learned over the course of the period of performance of the grant in each report.
 - e. Instructions on submitting the final technical performance reports will be included in the notice of award.
5. Data Collection and Reporting - To standardize reporting requirements and ensure federal resources are used consistent with federal law and authorities, and the terms and conditions of the grant, each State must track and submit the applicable and required information to OWPO using the Data Reporting Template.

States must submit to DOI a Data Reporting Template, with their respective updated information, quarterly. States are required to use the approved Data Reporting Template, consistent with OMB Control No: 1093-0012.

OWPO updated the Data Reporting Template in October 2023, following engagement between DOI and the Interstate Oil and Gas Compact

Commission/Groundwater Protection Council Orphan Well Data Management Workgroup (Workgroup). OWPO incorporated the feedback and recommendations of the Workgroup. The OWPO will continue to engage with the Workgroup and, as appropriate, adjust this Template.

States applying for a Matching Grant should note that non-sensitive information regarding the activities performed under such a grant are required to be posted on a public website.

6. After providing the grantee an opportunity to redact personally identifiable or proprietary information, DOI may post awarded-grant applications on a publicly available website.
7. DOI may publish a summary of performance accomplishments on a publicly available web site.

B. Standards for measurement, plugging, remediation, and workforce

1. Pre- and Post-Plugging Measurement of Air and Water Pollution

- a. A State must inspect each orphaned well site being considered under a grant: 1) To screen for leaks of methane and other gases, and if identified, to measure the rate of such leaks; and 2) To identify potential surface water or groundwater contamination. Inspections may be performed immediately prior to commencement of plugging and abandonment, provided the requisite pre-plugging information is documented.

A State will conduct or supervise post-plugging inspections within 12 months of the plugging activity to verify: 1) The lack of gaseous emissions and water contamination from plugged wells; and 2) The achievement of vegetation performance standards that are appropriate to the site's future land uses, if applicable.

A State-approved qualified arms-length entity may also conduct post-plugging inspections. Post-plugging inspections must be documented to create a verifiable record. To the extent practical, each well should be physically or electronically tagged after it is plugged, with tags indicating the date the well was plugged and the State entity or contractors responsible for the plugging.

- b. States will follow, as the minimum standard, the DOI methane emission guidelines (and subsequent revisions), including all recommendations therein.⁷ The technology and approaches for

⁷ Assessing Methane Emissions from Orphaned Wells to Meet Reporting Requirements of the 2021 Infrastructure Investment and Jobs Act: Methane Measurement Guidelines, July 2023 Version. <https://doi.gov/sites/doi.gov/files/orphaned-wells-methane-measurement-guidelines-july-2023-version.pdf>.

methane detection, quantification, and monitoring are rapidly improving and evolving. As such, the DOI methane emission guidelines and requirements will also evolve over time in a manner intended to reduce the costs and burdens on states of detecting and quantifying methane emissions from orphaned wells, including the use of models and estimation tools while achieving the goals of Section 40601.

- c. Pre- and post-plugging values of gaseous emissions (particularly methane), water contamination, and acres restored must be included, per well, in the State's quarterly Data Reporting Template and in its periodic performance reports.

2. Well Plugging and Site Remediation Standards

- a. A State with established and documented well plugging standards and regulations will require their contractors to meet those requirements. For a State that does not have established well plugging standards, the work must meet or exceed the plugging standards in either 43 C.F.R. § 3172.12, formerly a portion of Bureau of Land Management Onshore Oil and Gas Order No. 2, for onshore wells, or, 30 C.F.R. part 250, for offshore wells.
- b. States will meet or exceed any well plug witnessing and documentation requirements pursuant to State law and authorities.
- c. For States with established well abandonment standards (inclusive of those actions necessary to complete surface reclamation and revegetation), all well closures shall meet those requirements. If a State does not have well abandonment standards, a well site must reflect, at minimum, the Bureau of Land Management's Reclamation and Abandonment Standards. For additional details, see: <https://www.blm.gov/sites/blm.gov/files/Chapter%206%20-%20Reclamation%20and%20Abandonment.pdf>.
- d. Remediation and reclamation of contaminants in soil, water, or other medium resulting from orphaned wells shall be conducted in accordance with applicable State or federal law and authorities.

3. Workforce Standards

- a. For activities or aggregated activities in excess of \$1 million, a State is encouraged to require contractors, consistent with State applicable law, to:
 - i. Certify a unionized workforce was used.

- ii. Certify a labor agreement or workforce continuity plan was used that details all of the following:
 - aa. How the contractor ensured it had ready access to a sufficient supply of appropriately skilled and unskilled labor to ensure high-quality work throughout the life of the contractor's work, including a description of any required professional certifications and/or in-house training programs, and partnerships with unions, community colleges, or community-based groups.
 - bb. How the contractor minimized risks of labor disputes and disruptions that would have jeopardize the timeliness and cost-effectiveness of the work.
 - cc. How the contractor provided a safe and healthy workplace that avoids delays and costs associated with workplace illnesses, injuries, and fatalities, including descriptions of safety training, certification, and/or licensure requirements for all relevant workers (*e.g.*, OSHA 10, OSHA 30).
 - dd. Whether workers received wages and benefits that secured an appropriately skilled workforce in the context of the local or regional labor market.
 - ee. Whether the work had a community benefit agreement, with a description of any agreement.
 - ff. Whether local hires were prioritized.

C. Restrictions on the use of federal Matching Grant funds

- 1. Matching Grant funds are subject to the Build America, Buy America Act. Under the Build America, Buy America Act, Part I—Buy America Sourcing Requirements, Section 70914 of the BIL, Matching Grant funds may not be obligated or spent by a State, or its subrecipients or contractors, unless all iron, steel, manufactured products, and construction materials used by the State, or its subrecipients or contractors, are produced in the United States, unless a State obtains a waiver from DOI. Questions regarding the Build America, Buy America Act, should be

addressed to the financial assistance officer that is assigned to the relevant State, or his or her representative.⁸

2. Prohibition on Generating Carbon Credits with Matching Grant funds. States may not directly or indirectly use the reduced emissions from wells plugged with Matching Grant funds, in whole or in part, to monetize, generate, or collect carbon credits, or otherwise use the plugging of wells funded with Matching Grants to generate income of any type by offsetting another party’s greenhouse gas emissions. The required methane screening and quantification efforts that must take place before and after well plugging are necessary for measuring the impact on methane emissions, not for carbon credit generation.
3. Activities funded by Matching Grants are subject to the Endangered Species Act (ESA). Under Section 7(a)(2) of the ESA, DOI is required to ensure that activities funded by Matching Grants, in whole or in part, are not likely to: jeopardize species listed on the Federal List of Endangered and Threatened Wildlife and Plants, or result in the destruction or adverse modification of critical habitat designated for Federal Endangered and Threatened Wildlife and Plants. Under an ESA Section 7 implementing regulation, 50 C.F.R. § 402.08, federal agencies may designate non-federal representatives (NFR) for ESA Section 7 compliance purposes. As a condition of an award, a recipient (and, if any, the recipient’s designee(s) assisting with environmental compliance with respect to the award) agrees to serve as an NFR.
4. “Undertakings” funded by Matching Grants are subject to Section 106 of the National Historic Preservation Act, 54 U.S.C. § 306108 (NHPA). With limited exceptions, activities funded by a Matching Grant, in whole or in part, are “undertakings” that are subject to review under the NHPA, and its implementing regulations, 36 C.F.R. part 800. This is because the activities have the potential to affect historic properties. As a condition for receipt of a grant, the recipient must conduct the initial steps of the Section 106 process, which includes identifying and evaluating historic properties within the area of potential effects associated with specific projects and assessing effects, 36 C.F.R. §§ 800.4-.5.

D. Requirements with respect to equipment, intangible property, and supplies

1. Equipment. Equipment records shall be maintained accurately and shall include all of the following information:
 - a. A description of the equipment.

⁸ <https://www.whitehouse.gov/wp-content/uploads/2023/10/M-24-02-Buy-America-Implementation-Guidance-Update.pdf>.

- b. Manufacturer’s serial number, model number, or other identification number.
 - c. Source of the equipment including the award number.
 - d. Whether title vests in the recipient or the federal government.
 - e. Acquisition date (or date received, if the equipment was furnished by the federal government) and cost.
 - f. Information from which one can calculate the percentage of DOI’s share in the cost of the equipment (not applicable to equipment furnished by the federal government).
 - g. Location and condition of the equipment and the date the information was reported.
 - h. Unit acquisition cost.
 - i. Ultimate disposition data including date of disposal and sale price or, when a recipient compensates DOI awarding agency for its share, the method used to determine current fair market value.
2. Intangible Property. Title to intangible property, as defined in 2 C.F.R. § 200.1, purchased or otherwise acquired under an award or sub-award vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of DOI awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with agency procedure.
3. Supplies. Under 2 C.F.R. § 200.314, title to tangible property, as defined in 2 C.F.R. § 200.1, purchased, or otherwise acquired under an award or sub-award vests upon acquisition in the recipient. The recipient shall use that property for the originally authorized purpose, and the recipient shall not encumber the property without approval of DOI awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with agency procedure.

E. State coordination with federal agencies and Indian tribes, when necessary

- 1. Efficiency and cost-effectiveness in well plugging and site remediation will be maximized by ensuring proper coordination in these activities among States, tribes, and the federal government. As early as practical—preferably before State grant applications are submitted—States should provide a primary contact for coordination with the Indian tribal or federal land management agencies using GrantSolutions.gov. A State may reach

out to OWPO for a list of appropriate contacts for the relevant offices of Indian tribal and federal land management agencies.

2. When undertaking work on federal land under a cost sharing, good neighbor, or other arrangement with the federal government, a State must collect the data required to be reported, under the BIL, for wells plugged and sites remediated on federal land, unless all such data collection is otherwise captured in the terms of a lawful agreement between the State and the federal land manager (*e.g.*, cooperative agreement). Early coordination with federal agencies is encouraged to ensure each State collects the proper data in a format most easily transferred to the federal government.
3. When undertaking work on private or State land adjoining Indian tribal or federal land, a State is encouraged to communicate with federal agencies and Indian tribal representatives to ensure appropriate and efficient collaboration on compliance issues (*e.g.*, cultural resources, endangered species, sacred sites) and to minimize disruption of planned events, operations, or land management activities.
4. Expenses associated with State, Indian tribal, and federal coordination, such as Indian tribal cultural monitoring, may be charged to administrative costs, or, when concerning particular activities, directly to those activities.

F. Work funded by Matching Grants may be subject to the Davis-Bacon Act

1. Laborers and mechanics employed by the applicant State, subrecipients, contractors or subcontractors in the performance of construction, alteration, or repair work in excess of \$2 thousand funded directly by or assisted in whole or in part by funds made available under Matching Grants shall be paid wages at rates not less than those prevailing on similar activities in the locality, as determined by the Secretary of Labor in accordance with 40 U.S.C. § 3141 *et seq.*, which is commonly referred to as the Davis-Bacon Act (DBA).
2. Each State shall provide written assurance acknowledging the DBA requirements and confirming that all laborers and mechanics performing construction, alteration, or repair work in excess of \$2 thousand funded directly by or assisted in whole or in part by and through funding under the award are paid or will be paid wages at rates not less than those prevailing on activities of a character similar in the locality as determined by the Secretary of Labor in accordance with the DBA. Such acknowledgment is included in the accompanying Matching Grant Certification to serve as written assurance by the State applicant.
3. Recipients of grant funding are required to undergo DBA compliance training, and to maintain competency in DBA compliance. The

Department of Labor offers free Prevailing Wage Seminars several times a year that meet this requirement.

G. State responsibilities regarding subrecipients and contractors

State grant recipients passing federal funds through to subrecipients and contractors are responsible for ensuring their subrecipients and contractors are aware of and comply with applicable award statutes, regulations, and agency requirements. Recipients must review their official award document for additional administrative and programmatic requirements. Recipient and subrecipient failure to comply with the general terms and conditions outlined below and those directly reflected on the official financial assistance award document can result in the DOI taking one or more of “Remedies for Noncompliance,” described in 2 C.F.R. §§ 200.339-343.

H. Terms and conditions of Matching Grants

1. DOI Standard Award Terms and Conditions will be included in all awarded Matching Grants. These standard terms and conditions can be found at: Standard Award Terms and Conditions. Each State’s grant, and the activities performed thereunder, are subject to DOI Standard Award Terms and Conditions.
2. Under 2 C.F.R. § 200.329(f), the federal awarding agency may make site visits as warranted to ensure appropriate fiscal accountability, surveillance, and monitoring. A State shall provide the federal awarding agency access to relevant documentation, facilities, and work sites in, to the extent allowable under State law and authorities.
3. DOI’s Freedom of Information Act Office provides guidelines to requestors of grant applications around what information may be redacted from applications. This information includes patent rights, confidential financial information, personally identifiable information, and detailed budget, consultant, and business assets information. 2 C.F.R. § 200.338 places limitations on public access to award-related documents.
4. Unmanned Aircraft Systems Drones: Pursuant to the Secretary of the Interior Order No. 3379, only specific models of unmanned aircraft that have capabilities that are considered trusted and secure by the Department of Defense are authorized for use of federal funds under this award. A list of approved unmanned aircraft and technology packages may be found at <https://www.diu.mil/blue-uas>. Any equipment purchases related to unmanned aircraft or technology-related items to support the use of unmanned aircraft, such as software, must be approved in advance and comport with Order No. 3379. Further, employee or contractor time to fly unmanned aircraft that does not meet this requirement is not an allowable expense under this award.

5. Any grant funding for the purchase or use of UAS for operations must have in place policies and procedures to safeguard individuals' privacy, civil rights, and civil liberties prior to expending such funds. The term "unmanned aircraft systems" encompasses unmanned aerial systems, drones, and similar technology, including component parts, remotely controlled and subject to Federal Aviation Administration regulations. It covers activities conducted in furtherance of DOI's mission, using DOI funds, or for purposes identified in a cooperative agreement, contract, grant, or other agreement between the Department of Defense and another party. Designated components of UAS include and are not limited to hardware and software components necessary for collecting, storing, and transmitting data or similar information.

Appendix A

The following certifications must be included, verbatim, in a State's Matching Grant application.

As part of this Matching Grant application, the State or Commonwealth of _____(State) certifies:

1. Any financial assurance or surety instruments available to the State to cover plugging, remediation, or reclamation costs will be used by the State for plugging, remediation, or reclamation.⁹
2. The grant funds the State applies for are subject to the Davis-Bacon Act, 40 U.S.C. § 3141 *et seq.* The State confirms all laborers and mechanics performing construction, alteration, or repair work in excess of \$2 thousand, funded directly by or assisted in whole or in part, by funding under the award, are paid or will be paid wages at rates not less than those prevailing on activities of a character similar in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act.
3. On its own accord and without a request from the United States, the State shall pay back to the United States a positive dollar amount equal to the difference between: 1) The Matching Grant amount the State was awarded, pursuant to this grant application, adjusted for true up; and 2) The amount the State did not timely obligate.

Generally, if the total actual State expenditures in the State fiscal year that is the subject of the Certified Amount (CA Year) is less than the Certified Amount in a State's Matching Grant application, the State will inform DOI and pay back the associated Matching Grant funds within 90 days of end of the CA Year. However, the State is not required to pay back funds if the difference is the less than the greater of either: 1) \$100,000; or 2) 10 percent of the application's Certified Amount.

If the United States determines a State obligated and spent awarded Matching Grant funds in violation of the Infrastructure Investment and Jobs Act, other federal law and authorities, or the grant's terms and conditions, the State must pay back to the United States the corresponding amount.

The State acknowledges DOI, at its sole discretion, may use a federal or non-federal third party to audit, review, or investigate records associated with any Matching Grant that the State is awarded.

4. It is the State's duty, not that of the United States, to substantiate all representations the State made in this grant application. This includes all expenditures included in the Work Plan/Proposal for Matching Grant Funds, Average 2010-2019 Amount, and Certified Amount.

⁹ Available financial assurance instruments are not required to be forfeit before the State performs the work, and financial assurance instruments collected by the State may be used to plug, remediate, or reclaim orphaned wells other than the wells for which the financial assurance instrument was originally intended.

The State shall establish and maintain records as may be required to demonstrate compliance with Section 40601, other federal law and authorities, and the terms and conditions of the grant. This includes but is not limited to obtaining and maintaining records originated by the State's subcontractors or grant award subrecipients.

Records related to or associated with the Matching Grant a State applies for here shall be maintained in a manner consistent with federal authorities, such as 2 C.F.R. §§ 200.334-338.

At the request of any federal officer or employee, the State shall make available to DOI, or its agents, for inspection and duplication, all records associated with the Matching Grant.

5. Nothing in this certification shall be construed to reduce a State's responsibilities, under the 2 C.F.R. part 200, as amended, other federal law and authorities and policies, and the terms and conditions of the grant.

Grant Applicant's Signature	Individual's Name and Title	Date
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United States's Signature	Individual's Name and Title	Date
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Appendix B

Buy America Preference for Department of the Interior Grants

I. Buy America Domestic Procurement Preference

Under Section 70914 of the BIL, none of the funds under a federal award that are part of federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

- All iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and
- All construction materials are manufactured in the United States. This means all manufacturing processes for construction material occurred in the United States.

The Buy America Preference applies to articles, materials, and supplies consumed in, incorporated into, or affixed to an infrastructure project. It does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. It also does not apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

See <https://www.doi.gov/grants/BuyAmerica> for further information. Additional information can also be found at <https://www.whitehouse.gov/omb/management/made-in-america/>.

II. Waivers

A State may apply for a waiver from the Buy America Preference requirements. DOI may waive the requirements in the following circumstances:

- Non-availability Waiver: The types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
- Unreasonable Cost Waiver: The inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
- Public Interest Waiver: Applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where a State qualifies, in whole or in part, for an existing DOI general applicability waiver (<https://www.doi.gov/grants/BuyAmerica/GeneralApplicabilityWaivers>).

If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes one of the above circumstances applies, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to <https://www.doi.gov/grants/buyamerica> and are subject to public comment periods of no less than fifteen (15) days. Waiver requests will also be reviewed by the OMB Made in America Office.

- Type of waiver requested (non-availability, unreasonable cost, or public interest).
- Requesting entity and Unique Entity Identifier (UEI) submitting the request.
- Department of Interior Bureau or Office who issued the award.
- Federal financial assistance listing name and no. (reference block 2 on DOI Notice of Award)
- Financial assistance title of project (reference block 8 on DOI Notice of Award).
- Federal Award Identification No. (FAIN).
- Federal funding amount (reference block 11.m on DOI Notice of Award).
- Total cost of Infrastructure expenditures (includes federal and non-federal funds to the extent known).
- Infrastructure project description(s) and location(s) (to the extent known).

- List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America requirements. Include the name, cost, countries of origin (if known), and relevant PSC or NAICS code for each.
- A certification the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
- A statement of waiver justification, including a description of efforts made (*e.g.*, market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
- Anticipated impact if no waiver is issued.

Approved waivers will be posted at <https://www.doi.gov/grants/BuyAmerica/ApprovedWaivers>. Recipients requesting a waiver will be notified of their waiver request determination by a financial assistance officer. Questions pertaining to waivers should be directed to the financial assistance officer.

III. Definitions

“Construction materials” includes an article, material, or supply that is or consists primarily of: non-ferrous metals; plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables); glass (including optic glass); lumber; or drywall.

“Construction Materials” does not include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

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

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States, for the purposes of this Exhibit.

Appendix C

This Appendix is intended to provide awareness of standard grants management requirements that are generally part of applying for a federal award.

- **Unique Entity Identifier and System for Award Management (SAM)**

Before submitting an application, a State must be registered in SAM.gov and have a Unique Entity Identifier (UEI), which replaced the Data Universal Numbering System No. (DUNS) from Dun & Bradstreet. Registration is through the SAM.gov website, which has user guides and other information to assist each State with registration under the “Help” tab if it is not already registered. The Grants.gov “Register with SAM” page also provides detailed instructions, and a State may contact the supporting Federal Service Desk for help as needed. A federal award may not be made to a State that has not completed the SAM.gov registration. Federal award recipients must renew and validate their SAM registration at least once every 12 months to maintain an active SAM.gov registration with current information through the life of their federal award(s).

A State registered with SAM needs to login to get their UEI. SAM generates it automatically.

- **Conflict of Interest Disclosure**

Under Financial Assistance Interior Regulation (FAIR), 2 C.F.R. § 1402.112, a State in its application must state any actual or potential conflict-of-interests existing at the time of submission.

- Applicability

- This section intends to ensure non-federal entities and their employees take appropriate steps to avoid conflicts of interest in their responsibilities under or with respect to federal financial assistance agreements.
- In the procurement of supplies, equipment, construction, and services by recipients and by subrecipients, the conflict-of-interest provisions in 2 C.F.R. § 200.318 apply.

- Notification

- Non-federal entities, including applicants for financial assistance awards, must disclose in writing any conflict of interest to DOI awarding agency or pass-through entity in accordance with 2 C.F.R. § 200.112.
- Recipients must establish internal controls that include, at a minimum, procedures to identify, disclose, and mitigate or

eliminate identified conflicts of interest. The recipient is responsible for notifying the financial assistance officer in writing of any conflicts of interest that may arise during the life of the award, including those that have been reported by subrecipients.

- Restrictions on lobbying. Non-federal entities are strictly prohibited from using funds under a grant or cooperative agreement for lobbying activities and must provide the required certifications and disclosures pursuant to 43 C.F.R. part 18 and 31 U.S.C. § 1352.
- Review procedures. The financial assistance officer will examine each conflict-of-interest disclosure on the basis of its particular facts and the nature of the proposed grant or cooperative agreement and will determine whether a significant potential conflict exists and, if it does, develop an appropriate means for resolving it.
- Enforcement. Failure to resolve conflicts of interest in a manner that satisfies the government may be cause for termination of the award. Failure to make required disclosures may result in any of the remedies described in 2 C.F.R. § 200.339, Remedies for Noncompliance, including suspension or debarment (*see also* 2 C.F.R. part 180).

- **Single Audit Reporting Statement**

All non-federal entities expending \$750 thousand or more in federal award funds in the applicant's fiscal year must submit a Single Audit report for that year through the Federal Audit Clearinghouse's Internet Data Entry System. States must state if your organization was or was not required to submit a Single Audit report for the most recently closed fiscal year in your application. If your organization was required to submit a Single Audit report for the most recently closed fiscal year, provide the EIN (Tax ID) associated with that report and state if it is available through the Federal Audit Clearinghouse website.

- **Certification Regarding Lobbying and Disclosure Requirements**

Applicants requesting more than \$100 thousand in federal funding must certify to the statements in 43 C.F.R. part 18, Appendix A-Certification Regarding Lobbying. If this application requests more than \$100 thousand in federal funds, the Authorized Official's signature on the appropriate SF-424, Application for Federal Assistance Form also represents the entity's certification of the statements in 43 C.F.R. part 18, Appendix A.

Applicants and recipients must not use any federally appropriated funds (annually appropriated or continuing appropriations) or matching funds under a federal award to pay any person for lobbying in connection with the award. Lobbying is influencing or attempting to influence an officer or employee of a federal agency, a Member of Congress, an officer or employee of the Congress, or an employee of

a Member of the Congress in connection with the award. Applicants and recipients must complete and submit the SF-LLL, “Disclosure of Lobbying Activities” form, and the accompanying “Certification Regarding Lobbying” form, if the federal share of the proposal or award is more than \$100 thousand and the applicant or recipient has made or has agreed to make any payment using non-appropriated funds for lobbying in connection with the application or award. The SF-LLL is available with this Funding Opportunity on Grants.gov. *See* 43 C.F.R. subpart 18.100 for more information on when additional submission of this form is required.

- **Data Availability**

Per FAIR: 2 C.F.R. § 1402.315

- All data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, valuation products or other scientific assessments in any medium or form, including textual, numerical, graphic, cartographic, narrative, or audiovisual, resulting from a financial assistance agreement is available for use by DOI, including being available in a manner that is sufficient for independent verification.
- The federal Government has the right to:
 - Obtain, reproduce, publish, or otherwise use the data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other scientific assessments, produced under a federal award; and
 - Authorize others to receive, reproduce, publish, or otherwise use data, methodology, factual inputs, models, analyses, technical information, reports, conclusions, or other assessments, for federal purposes, including to allow for meaningful third-party evaluation.

- **Agency Review Process**

The awarding agency conducts a review of the SAM.gov Exclusions Database for all applicant entities and their key personnel prior to award. The awarding agency cannot award funds to entities, or their key personnel identified in the SAM.gov, Exclusions Database that are ineligible, prohibited/restricted, or otherwise excluded from receiving federal contracts, certain subcontracts, and certain federal assistance and benefits, as their ineligibility condition applies to this federal program.

Prior to award, the awarding agency will evaluate the risk posed by applicants as required in 2 C.F.R. § 200.205. The awarding agency documents applicant risk evaluations using DOI’s “Financial Assistance Recipient Risk Assessment” form. Prior to approving awards for federal funding in excess of the simplified acquisition threshold (currently \$250 thousand), the awarding agency is required

to review and consider any information about or from the applicant found in the federal Awardee Performance and Integrity Information System. The awarding agency will consider this information when completing the risk review. The awarding agency uses the results of the risk evaluation to establish monitoring plans, recipient reporting frequency requirements, and to determine if one or more specific award conditions in 2 C.F.R. § 200.207 should be applied to the award.

- **Additional Reporting Requirements**
 - **Conflict-of-Interest Disclosures.** Recipients must notify the program immediately in writing of any conflict of interest that arises during the life of their federal award, including those reported to them by any subrecipient under the award. Recipients must notify the program in writing if any employees, including subrecipient and contractor personnel, are related to, married to, or have a close personal relationship with any federal employee in the federal funding program or who otherwise may have been involved in the review and selection of the award. The term employee means any individual engaged in the performance of work pursuant to the federal award. Recipients may not have a former federal employee as a key official, or in any other substantial role related to their award, whose participation put them out of compliance with the legal authorities addressing post-Government employment restrictions. *See* the Office of Government Ethics website for more information on these restrictions. The awarding agency will examine each conflict-of-interest disclosure based on its particular facts and the nature of the activities and will determine if a significant potential conflict exists. If it does, the awarding agency will work with the recipient to determine an appropriate resolution. Failure to disclose and resolve conflicts of interest in a manner that satisfies the awarding agency may result in any of the remedies described in 2 C.F.R. § 200.339 Remedies for Noncompliance, including termination of the award.
 - **Other Mandatory Disclosures.** Applicants must disclose, in a timely manner, in writing, to the federal awarding agency or pass-through entity, all violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting a federal award. Non-federal entities that receive a federal award including the terms and conditions outlined in 2 C.F.R. § 200, Appendix XII—Award Term and Condition for Recipient Integrity and Performance Matters are required to report certain civil, criminal, or administrative proceedings to SAM. Failure to make required disclosures can result in remedies described in 2 C.F.R. § 200.339 Remedies for Noncompliance, including suspension or debarment.
 - **Reporting Matters Related to Recipient Integrity and Performance.** If the total value of a State’s currently active grants, cooperative agreements, and procurement contracts from all federal awarding agencies exceeds \$10 million for any period of time during the period of performance of this

federal award, then it, as the recipient during that period of time, must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently the Federal Awardee Performance and Integrity Information FAPIIS System ()) about civil, criminal, or administrative proceedings in accordance with Appendix XII to 2 C.F.R. part 200.