


**ORDER: APPROVE MEMORANDUM OF AGREEMENT FOR DIGITAL ORTHO  
PHOTOGRAPHY AND SURVEY SERVICES WITH MDEQ**


Motion was made by Chad McLarty, duly seconded by Kevin Frye, to approve Memorandum of Agreement for Digital Ortho Photography and Survey Services with MDEQ.

The vote on the motion was as follows:

Supervisor Kevin Frye, voted yes  
Supervisor Jeff Busby, voted yes  
Supervisor David Rikard, voted yes  
Supervisor Chad McLarty, voted yes  
Supervisor Mike Roberts, voted yes

After the vote, President Roberts declared the motion carried, this the 2<sup>nd</sup> day of December, 2019.

  
\_\_\_\_\_  
**Mike Roberts, President  
Board of Supervisors**

  
\_\_\_\_\_  
**Sherry Wall, Chancery Clerk**

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY

STATE OF MISSISSIPPI  
COUNTY OF HINDS

MDEQ MOA NO. 20-00006

MEMORANDUM OF AGREEMENT  
FOR  
DIGITAL ORTHO PHOTOGRAPHY AND SURVEY SERVICES

This document reflects a Memorandum of Agreement ("MOA") between the Mississippi Department of Environmental Quality (herein referred to as "MDEQ"), and Lafayette County Board of Supervisors, DUNS Number 009223025 (herein referred to as the "SUB-GRANTEE", and together with MDEQ, the "Parties", and each, a "Party"), to provide services, materials, facilities, and personnel, as specified in paragraph 3, Statement of Work.

1. Purpose

The purpose of this Memorandum of Agreement is to provide for an agreement whereby MDEQ will reimburse the SUB-GRANTEE for certain portions of the costs of the ortho photography and survey services, procured under the Mississippi Ortho 2019 Aerial Photography Update Initiative 2018-2019 (MS Ortho 2019) Interlocal Agreement, attached hereto and expressly incorporated as a part of this MOA as Attachment "A".

2. Source of Funds

This project is partially funded through a U.S. Department of Agriculture ("USDA") Natural Resources Conservation Service ("NRCS") Grant #68-4423-18-007, CFDA #10.912, Coordinated Ortho Imagery Project, awarded on March 15, 2018, and amended on September 17, 2018. This Federal Award and its amendment are attached hereto and expressly incorporated as a part of this MOA as Attachment "B".

3. Statement of Work

A. Services:

For the consideration referred to in paragraph 6, Consideration and Payment, the SUB-GRANTEE shall provide MDEQ with services, facilities, personnel and materials as specified below:

B. Tasks:

SUB-GRANTEE shall provide the following tasks, in accordance with the National Geospatial-Intelligence Agency ("NGA") /Urban Orthorectified Imagery Specifications which is attached hereto and expressly incorporated as a part of this MOA as Attachment "C". The SUB-GRANTEE shall put forth its best effort to provide the tasks within the given timetable:

1. Join in the solicitation for proposals for aerial ortho photography services pursuant to the Interlocal Cooperation Agreement approved by each County, as described in Attachment "A";

2. Concur with the selection of the successful services vendor under applicable rules, regulations, and statutory and case law of the State of Mississippi, and to enter into a contract with that vendor to provide the services and create the product(s) described herein;
3. Provide to MDEQ, upon MDEQ's request, a copy of the proposed aerial ortho photography services contract prior to execution and a copy of the final executed contract;
4. Pay the services vendor as required by the aerial ortho photography services contract;
5. After expending funds for the services contemplated herein, provide MDEQ, in a form satisfactory to MDEQ, evidence of the amount expended along with a request for a reimbursement amount pursuant to this MOA;
6. Provide to MDEQ, at no cost to MDEQ other than those provided for herein, a copy of all data, imagery, and aerial photography and ortho photography information obtained from the selected services vendor, in a form that conforms to and meets all United States Geological Survey ("USGS") requirements, as described in Attachment "C"; and
7. Grant, and the SUB-GRANTEE does hereby grant, to MDEQ a royalty-free, perpetual license to access and use all such data, imagery, and aerial photography and ortho photography information in any form necessary for MDEQ's purposes of planning, mapping, and surveying and for other purposes that may become necessary. The SUB-GRANTEE shall further obtain for MDEQ any and all perpetual license(s) for such access and use, at no cost to MDEQ, that may be necessary to be obtained from other parties.

4. Contract Terms and Conditions

This MOA and the SUB-GRANTEE are subject to the terms and conditions of the USDA, NRCS General Terms and Conditions, included in Attachment "B", all applicable terms and conditions in 2 C.F.R. Part 200 of the Office of Management and Budget ("OMB") Uniform Guidance for Grants and Cooperative Agreements, including Appendix II to Part 200, and all other OMB circulars, executive orders or other federal laws or regulations applicable to the services provided under this MOA. All of these terms and conditions apply to the SUB-GRANTEE and its Contractors.

5. Period of Performance

The period of performance for this MOA shall commence upon execution by the Executive Director of MDEQ and end no later than **March 31, 2020**. The SUB-GRANTEE agrees to complete all tasks included in the Statement of Work within this Period of Performance, unless otherwise directed by MDEQ.

6. Consideration and Payment

A. Consideration:

As consideration for the performance of this of the tasks included in this MOA, MDEQ agrees to reimburse the SUB-GRANTEE a maximum total not to exceed **\$8,000.00** for expenses paid to the selected services vendor or Contractor. SUB-GRANTEE may not charge any of their own administration costs or other expenses against these funds.

B. Invoices:

- i. SUB-GRANTEE shall submit invoices no more frequent than monthly supported by documentation of costs, type or percentage of work performed as required by MDEQ. The invoices shall include breakdowns of personnel, position, dates worked, tasks performed, hourly rate, and totals for each personnel, as well as other supporting documentation of costs incurred.
- ii. All invoices for time periods ending June 30 of any year through the course of this MOA shall be submitted separately and no later than July 31 of that same year. Final invoice(s) shall be submitted to MDEQ no later than thirty (30) days after the end date of this MOA.
- iii. Invoices should be emailed to [invoices@mdeq.ms.gov](mailto:invoices@mdeq.ms.gov) or mailed to:

MDEQ  
Attention: Invoices  
P.O. Box 2369  
Jackson, MS 39225-2369

C. Payment:

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

- i. Request for Payment SUB-GRANTEE shall request payment of funds on a reimbursement basis (such requests, "Reimbursement Requests"), unless otherwise directed by MDEQ. SUB-GRANTEE shall make Reimbursement Requests in accordance with the following procedures and subject to the following terms and conditions:
  1. The SUB-GRANTEE shall submit invoices no more frequent than monthly supported by documentation of the type work performed.

Invoices shall clearly state the payment requested. Payment will be made within 45 days upon receipt of an approved invoice.

2. All invoices shall be supported by statements of costs incurred in performance of this MOA.
3. Any funds that are paid by MDEQ to the SUB-GRANTEE that are deemed ineligible or not necessary for the completion of the Work in this MOA must be returned to MDEQ within 30 days from receiving MDEQ's written notification for return of funds.
4. SUB-GRANTEE understands that no payment, including final payment, shall be interpreted as acceptance of defective and incomplete Work, and SUB-GRANTEE shall remain responsible for performance in strict compliance with this MOA. If MDEQ rejects, condemns or fails to approve any part of the Statement of Work, it may terminate this MOA as permitted in paragraphs entitled Termination for Convenience, Termination for Default or Termination Upon Bankruptcy.
5. MDEQ reserves the right to refuse to pay all or any part of the funds requested in a Reimbursement Request if, at the time the request is submitted, the SUB-GRANTEE has failed to comply with any term or condition of this MOA or has otherwise failed to perform the Work to date in accordance with the Statement of Work.

- ii. Indirect Cost Rate There are no indirect costs related to the work under this MOA.

## 7. Final Payment and Reports

When SUB-GRANTEE has performed all the Work, SUB-GRANTEE shall transmit to MDEQ a comprehensive report on the Work, along with the corresponding results (the "Final Project Report"). As appropriate, the Final Project Report should include copies of any publications, press releases, and other documents, materials, and products developed as part of the Project, including, without limitation, photographs, video footage, and other electronic representations of the Project and Work. The Final Report shall be provided by the SUB-GRANTEE to MDEQ within thirty (30) days of Project completion.

Upon satisfactory completion of the work performed under this MOA, as a condition before final payment under this MOA or as a termination settlement under this MOA, the SUB-GRANTEE shall execute and deliver to MDEQ a release of all claims, Attachment "D", against MDEQ arising under, or by virtue of, this MOA, except claims which are specifically exempted by the SUB-GRANTEE to be set forth therein. Unless otherwise provided in the MOA, by state law or otherwise expressly agreed to by the parties in this MOA, final payment under this MOA or settlement upon termination of this MOA shall not constitute waiver of MDEQ's claims against the SUB-GRANTEE or its sureties under this MOA or applicable performance and payment bonds.

8. Financial Management and Compliance

MDEQ requires that the SUB-GRANTEE have in place, prior to the receipt of funds, a financial management system that will be able to isolate and trace every dollar funded under this SUB-AWARD from receipt to expenditure and have on file appropriate support documentation for each transaction. Examples of documentation are copies of checks paid to vendors, vendor invoices, bills of lading, purchase vouchers, payrolls, bank statements and reconciliations, and real property and easement appraisals. Prior to the submittal of any such documentation to MDEQ, SUB-GRANTEE shall redact, in accordance with 2. C.F.R. § 200.82, all information reflecting an individual's first name or first initial and last name in combination with any one or more of types of information, including, but not limited to, social security number, passport number, credit card numbers, clearances, bank numbers, biometrics, date and place of birth, mother's maiden name, criminal, medical and financial records, educational transcripts. This does not include Personally Identifiable Information (PII) that is required by law to be disclosed. (See also §200.79 PII). SUB-GRANTEE and any Contracted Parties (as such term is defined in Article 21) are limited to the travel rates of the State of Mississippi, including dining and hotels, in place at the time of the expenditure for which reimbursement is sought; and SUB-GRANTEE shall audit any such invoice for same, clearly indicating the actual expense and the adjustment, if any.

SUB-GRANTEE has been determined to be at a low risk of noncompliance as stated in Attachment "E", a copy of which is attached hereto and incorporated herein in its entirety. SUB-GRANTEE agrees to submit to and cooperate with MDEQ in any risk assessment evaluation and periodic audit procedures to ensure adequate financial management of all funds.

9. Employment Status

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

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

Any person assigned by the SUB-GRANTEE to perform the services hereunder shall be the employee of the SUB-GRANTEE, who shall have the sole right to hire and discharge its employee. If the SUB-GRANTEE is notified within the first eight (8) hours of assignment that the person is unsatisfactory, the SUB-GRANTEE will not charge MDEQ for those hours.

The SUB-GRANTEE shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required.

It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to the SUB-GRANTEE shall be paid as a gross sum with no withholdings or deductions being made by MDEQ for any purpose from said MOA sum except as permitted in paragraphs, entitled Termination for Convenience, Termination for Default or Termination Upon Bankruptcy.

10. Applicable Law

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

11. Availability of Funds

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

12. Representation Regarding Contingent Fees

SUB-GRANTEE represents that it has not retained a person to solicit or secure a state MOA upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in SUB-GRANTEE's bid or proposal.

13. Representation Regarding Gratuities

The SUB-GRANTEE represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations, as may be amended by the Public Procurement Review Board.

14. Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this MOA which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the MOA shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

15. Compliance with Laws

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

16. Stop Work Order

A. Order to Stop Work. MDEQ, may, by written order to the SUB-GRANTEE at any time, and without notice to any surety, require the SUB-GRANTEE to stop all or any part of the work called for by this MOA. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the SUB-GRANTEE, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the SUB-GRANTEE shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, MDEQ shall either:

- 1) Cancel the stop work order; or
- 2) Terminate the work covered by such order as provided in the Termination Clauses of this MOA.

B. Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the SUB-GRANTEE shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or service price, or both, and the MOA shall be modified in writing accordingly, if:

- 1) the stop work order results in an increase in the time required for, or in the SUB-GRANTEE's cost properly allocable to, the performance of any part of this MOA; and
- 2) the SUB-GRANTEE asserts a claim for such an adjustment within thirty (30) days after the end of the work period of work stoppage; provide that, if MDEQ decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this MOA.

C. Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.



### 17. E-Payment

SUB-GRANTEE agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-301 et seq.

### 18. E-Verification

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

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

### 19. Transparency

This MOA, including any accompanying exhibits, attachments, and appendices, is subject to the "Mississippi Public Records Act of 1983" and its exceptions. See Miss. Code Ann. §§ 25-61-1 et seq. and Miss. Code Ann. § 79-23-1. In addition, this MOA is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151, et seq. Unless exempted from disclosure due to a court-issued protective order, a copy of this executed MOA is required to be posted to the Department of Finance and Administration's independent agency Contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by SUB-GRANTEE

as trade secrets or other proprietary information, including confidential vendor information, or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes will be redacted. The personal or professional services to be provided, the price to be paid, and the terms of this MOA shall not be deemed to be a trade secret or confidential commercial or financial information.

20. Paymode

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

21. Termination for Convenience

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

22. Termination for Default

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

supplies or services in a manner and upon terms deemed appropriate by MDEQ's Executive Director or designee. SUB-GRANTEE shall continue performance of the MOA to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.

- B. *SUB-GRANTEE's Duties.* Notwithstanding termination of the MOA and subject to any directions from the procurement officer, SUB-GRANTEE shall take timely, reasonable, and necessary action to protect and preserve property in the possession of SUB-GRANTEE in which the State has an interest.
- C. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the MOA price. The State may withhold from amounts due SUB-GRANTEE such sums as MDEQ's Executive Director or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
- D. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, SUB-GRANTEE shall not be in default by reason of any failure in performance of this MOA in accordance with its terms (including any failure by SUB-GRANTEE to make progress in the prosecution of the work hereunder which endangers such performance) if SUB-GRANTEE has notified MDEQ's Executive Director or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, SUB-GRANTEE shall not be deemed to be in default, unless the services to be furnished by the subcontractor were reasonably obtainable from other sources in sufficient time to permit SUB-GRANTEE to meet the MOA requirements. Upon request of SUB-GRANTEE, MDEQ's Executive Director or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, SUB-GRANTEE's progress and performance would have met the terms of the MOA, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled "Termination for Convenience." (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).
- E. *Erroneous Termination for Default.* If, after notice of termination of SUB-GRANTEE's right to proceed under the provisions of this clause, it is determined for any reason that the MOA was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the MOA contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.

F. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this MOA.

23. Termination Upon Bankruptcy

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

24. Counterparts

This contract may be executed in counterparts, each of which shall be deemed an original but all of which together shall be deemed to be one and the same agreement. A signed copy of this MOA delivered by facsimile, e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this MOA.

25. Ownership of Documents and Work Products

SUB-GRANTEE shall own all documents, files, reports, work papers and working documentation, electronic or otherwise, created in connection with the Project, which is the subject of this MOA. SUB-GRANTEE hereby grants to MDEQ and EPA a non-exclusive license to use and reproduce any such documents, files, reports, work papers and working documentation for any non-commercial purposes including the production of documents to third parties that may submit records requests or information requests. SUB-GRANTEE shall deliver a copy of such documents and work papers to MDEQ upon termination or completion of the MOA.

26. Record Retention and Access to Records

The SUB-GRANTEE shall maintain and make available to MDEQ, any financial records, supporting documents, statistical records and all other records pertinent to the services performed under this MOA. These records shall be maintained for at least three (3) years; however, if any litigation or other legal action, by or on behalf of MDEQ has begun that is not completed at the end of the three (3) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

27. Modification or Amendment

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

28. Waiver

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this MOA.

29. Governing Law

This MOA shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. The SUB-GRANTEE expressly agrees that under no circumstances shall MDEQ be obligated to pay an attorney's fee or the cost of legal action to the SUB-GRANTEE.

30. Severability

If any term or provision of this MOA is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the MOA shall be valid and enforceable to the fullest extent permitted by law.

31. Disputes

Before pleading to any judicial system at any level, the SUB-GRANTEE must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the SUB-GRANTEE. Pending non-resolution of the complaint at this point, successive administrative remedies will include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Mississippi Code Annotated Section 49-17-35 (Rev. 2012), with appeals from the Commission's decision following procedures as outlined in Miss. Code Ann. Section 49-17-41 (Rev. 2012).

32. Conflict of Interest

The SUB-GRANTEE shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this MOA per the paragraphs entitled Termination for Convenience, Termination for Default or Termination Upon Bankruptcy.

33. Insurance

The SUB-GRANTEE represents that it will maintain Worker's Compensation Insurance as prescribed by law which shall inure to the benefit of the SUB-GRANTEE'S personnel, as well as comprehensive General Liability in an amount no less than \$500,000.00 combined single limit and Employee Fidelity Bond Insurance. The SUB-GRANTEE shall comply with applicable federal, state and local laws and regulations.

34. Indemnification

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

35. Subcontracts

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

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

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

36. Third Party Action Notification

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

37. No Third Party Beneficiaries

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

38. Authority to Contract

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

OR

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

39. Confidential Information

The SUB-GRANTEE shall treat all MDEQ data and information to which it has access by its performance under this MOA as confidential to the extent that confidential treatment of same is required under federal and/or state law and shall not disclose such data or

information to a third party without specific written consent of MDEQ. In the event that the SUB-GRANTEE receives notice that a third party request divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued administrative or judicial process ordering divulgence of confidential or otherwise protected information, the SUB-GRANTEE shall promptly inform MDEQ and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This section shall survive the termination or completion of this MOA.

#### 40. Captions

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

#### 41. Notice

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

The contact information for contract administration matters is as follows:

For MDEQ: Ms. Aweleka Moore  
P.O. Box 2261  
Jackson, MS 39225

For SUB-GRANTEE: Mr. Jeff Busby  
P. O. Box 1240  
Oxford, MS 38655

#### 42. Failure to Deliver

In the event of failure of SUB-GRANTEE to deliver services in accordance with the MOA terms and conditions, MDEQ, after due oral or written notice, may procure the services from other sources and hold SUB-GRANTEE responsible for any resulting additional purchase and administrative costs. This remedy shall be in addition to any other remedies that MDEQ may have.

#### 43. Failure to Enforce

Failure by MDEQ, at any time, to enforce the provisions of this MOA shall not be construed as a waiver of any such provisions. Such failure to enforce shall not affect the



validity of this MOA or any part thereof or the right of MDEQ to enforce any provision at any time in accordance with its terms.

44. Force Majeure

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

45. No Limitation of Liability

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

46. Oral Statements

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

47. Anti-Assignment/Subcontracting

SUB-GRANTEE acknowledges that it was selected by MDEQ to perform the services required hereunder based, in part, upon SUB-GRANTEE'S special skills and expertise. Unless contractors are otherwise identified and approved in accordance with Contracts provision of this MOA, SUB-GRANTEE shall not assign, contract, or otherwise transfer this MOA, in whole or in part without the prior written consent of MDEQ, which MDEQ may, in its sole discretion, approve or deny without reason. Any attempted assignment or transfer of its obligations without such consent shall be null and void. No such approval by MDEQ of any contract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the Maximum Amount agreed upon in this MOA. Contracts shall be subject to the terms and conditions of this MOA and to any conditions of approval that MDEQ may deem necessary. Subject to the foregoing, this MOA shall be binding upon the respective successors and assigns of the parties.

48. Public Communications and Logo Usage

SUB-GRANTEE shall not make any public announcements, communicate with any news media, or provide materials to the public related to this MOA without first obtaining the written consent of MDEQ. This includes any materials prepared for presentations or materials prepared for distribution to the public. The Parties shall cooperate as to the timing and contents of any such announcement prior to any such communications to the public.

Additionally, SUB-GRANTEE agrees to include a reference to the Mississippi Department of Environmental Quality, the U.S. Fish and Wildlife Service and the Mississippi Aquatic Invasive Species Council in any and all press releases, publications, annual reports, video credits, dedications, and other public communications regarding this Agreement or any of the deliverables associated with the Project, the Work, and/or this Agreement. Any publications or signage produced with funds from this Agreement, or informing the public about the activities funded in whole or in part by this Agreement, must clearly display the MDEQ logo, to be provided by MDEQ.

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

49. Debarment and Suspension

SUB-GRANTEE certifies to the best of its knowledge and belief, that it:

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

- E. Has not, within a three-year period preceding this MOA, had one or more public transactions (federal, state, or local) terminated for cause or default.

50. Public Records

Notwithstanding any provision to the contrary contained herein, all Parties recognize that MDEQ is a public agency of the State of Mississippi and is subject to the Mississippi Public Records Act. Miss. Code Ann. §§ 25-61-1 *et seq.* If a public records request is made for any information provided to MDEQ pursuant to this MOA and designated by the SUB-RECIPIENT in writing as trade secrets or other proprietary confidential information, MDEQ shall follow provisions of Miss. Code Ann. §§ 25-61-9 and 79-23-1 before disclosing such information. MDEQ shall not be liable to SUB-GRANTEE for disclosure of information required by court order or required by law.

51. Right to Audit

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

52. Right to Inspect Work Access

MDEQ and its representatives, invitees, and consultants shall, upon reasonable prior notice to SUB-GRANTEE, have access to inspect all Work hereunder, provided that any inspection of the Work shall be conducted at a reasonable time and in a manner that does not delay or disrupt the Work. Notwithstanding any review or inspection by MDEQ and its representatives, invitees, and consultants, SUB-GRANTEE shall not be relieved of its responsibility for performance of the Work or the submission of reports as expressly set forth in this MOA solely by virtue of such inspection or review of the Work. SUB-GRANTEE shall provide MDEQ and its representatives, invitees, and consultants with the opportunity to participate in site inspections, meetings, and/or teleconferences, as appropriate, related to SUB-GRANTEE'S performance of the Work.

53. Unsatisfactory Work

If, at any time during Period of Performance, the service performed or work done by SUB-GRANTEE is considered by MDEQ to create a condition that threatens the health, safety, or welfare of the citizens and/or employees of the State of Mississippi, SUB-GRANTEE shall, on being notified by MDEQ, immediately correct such deficient service or work. In the event SUB-GRANTEE fails, after notice, to correct the deficient service or work immediately, MDEQ shall have the right to order the correction of the deficiency by separate agreement or with its own resources.

54. Compliance With Miss. Code Ann. § 31-5-37

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

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

55. Successors and Assigns

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

56. Evaluations

SUB-GRANTEE agrees to cooperate with MDEQ by providing timely responses to all reasonable requests for information to assist in evaluation of the accomplishments of the Project and this MOA for a period of six (6) years after the date on which the Final Reports are provided.

57. Venue

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

58. Entire Agreement

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

necessary for it to form a full and complete understanding of all rights and obligations herein.

59. Additional Information.

The Parties are aware that there are state law limitations on the authority of the SUB-GRANTEE (a state agency) to enter into certain terms and conditions of the MOA, including, not limited to, those terms and conditions relating to liens on the SUB-GRANTEE'S property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), terms and conditions of the Federal Award included in Attachment "B" in the MOA and any attachments hereto, related to the Limitations, will not be binding on the SUB-GRANTEE except to the extent authorized by the laws and constitution of the State of Mississippi."

For the faithful performance of the terms of this MOA, the parties hereto have caused this MOA to be executed by their undersigned authorized representatives.

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY**

\_\_\_\_\_  
Gary C. Rikard  
Executive Director

\_\_\_\_\_  
Date

**LAFAYETTE COUNTY BOARD OF SUPERVISORS**

\_\_\_\_\_  
Jeff Busby  
President

\_\_\_\_\_  
Date