

**ATTACHMENT A**  
**FEDERAL AWARD TERMS & CONDITIONS**

1. **Contractor understands and agrees that funds provided under this Contract may come from a federal source and agrees to comply with any and all additional applicable terms.**
  - A. Contractor Capacity. Contractor agrees and confirms that it has the institutional, managerial, and financial capacity to ensure proper planning, management, and completion of the Contract. r
  - B. Technical Assistance. If, at any time, Contractor believes its capacity is compromised or Contractor otherwise needs any sort of assistance, it SHALL immediately notify the County. The County will make best efforts to provide timely technical assistance to the Contractor to bring the Contract into compliance.
  - C. Compliance with Applicable Act. Contractor understands and agrees that funds provided under this Contract may only be used, as applicable, in compliance with section 603(c) of the Social Security Act (the “Act”), as added by section 9901 of the American Rescue Plan Act, the Coronavirus State and Local Fiscal Recovery Fund (“CLFR”), the U.S. Department of Treasury’s (“Treasury’s”) regulations implementing that section, and guidance issued by Treasury regarding the foregoing.
  - D. Definitions. The term “Contractor” shall refer to a Contractor, Beneficiary, or Subrecipient, as determined in the County’s sole discretion and referenced in the FAIN table cover page.

2. **Contract Services and Requirements, and Incorporated Exhibits.**

The Contractor shall provide services and meet the requirements included in this Contract and in the following attached exhibits, each of which is incorporated herein by this reference:

EXHIBIT NAME	EXHIBIT NUMBER
Federal Award Terms and Conditions	Attachment A

- A. Scope of Eligible Expenditures. Funds shall only be used to pay or reimburse eligible expenditures as described in the Exhibit (Scope of Work). No funds may be used to pay or reimburse expenditures reimbursed under any other federal or state program, or from any other third-party source.

- B. **Contractor Responsibilities.** The funds provided under the Contract may come from a federal source. Contractor agrees to administer the Contract consistent with the terms and conditions of this Contract, in accordance with section 603(c) of the Act, the Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing, as well as any other applicable federal statutes, executive orders, regulations and interpretive guidance. As part of the invoicing process, the Contractor shall provide the County with a "Cost Certification" (Attachment E) that funding of this Contract was used for eligible expenditures, was prepared with the terms and conditions of the Grant Agreement (including Duplication of Benefits), and is not in excess of the appropriate budget Contractor shall also provide the County with a "Civil Rights Certification" (Attachment C) prior to starting work or payment for work authorized by this Contract.
3. **Access to Records.** The Treasury Office of Inspector General and the Government Accountability Office, or their authorized representatives, shall have the right of access to records (electronic and otherwise) of Contractor to conduct audits or other investigations, and may request additional information for the administration of the award, or as may be necessary or appropriate, including as may be necessary to prevent evasions of the requirements of the award.
4. **False Statements.** Contractor understands that making false statements or claims in connection with this Contract is a violation of federal law and may result in criminal, civil, or administrative sanctions, including fines, imprisonment, civil damages and penalties, debarment from participating in federal or county awards or contracts, and/or any other remedy available by law.
5. **Publications.** Any publications produced with funds from this Contract must display the following language: *"This project is supported, in whole or in part, by federal award number SLFRP 1176, awarded to Jefferson County by the U.S. Department of the Treasury."*
6. **Debts Owed the Federal Government.**
- A. Any funds paid to Contractor (1) in excess of the amount to which Contractor is finally determined to be authorized to retain under the terms of the award; (2) that are determined by the Treasury Office of Inspector General to have been misused; or (3) are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act and have not been repaid by Contractor shall constitute a debt to the federal government.
- B. Any debts determined to be owed the federal government must be paid promptly by recipient. A debt is delinquent if it has not been paid by the date specified in Treasury's initial written demand for payment, unless other satisfactory arrangements have been made or if the recipient knowingly or improperly retains funds that are a debt as defined in paragraph 14(a). Treasury will take any actions available to it to collect such a debt.
7. **Uniform Guidance Compliance.**

- A. Remedial Actions. In the event of Contractor's noncompliance with section 603(c) of the Act, Treasury's regulations implementing that section, guidance issued by Treasury regarding the foregoing, or any other applicable federal statutes, executive orders, regulations or interpretive guidance, Treasury may take available remedial actions as set forth in 2 C.F.R. 200.339 and may pursue recoupment as provided under 31 CFR Part 35.10.
- B. Recoupment.
- i. Contractor agrees that it is financially responsible for and will repay the County any and all indicated amounts following an audit exception which occurs due to Contractor's failure, for any reason, to comply with the terms of this Contract. This duty to repay the County shall not be diminished or extinguished by the termination of the Contract.
  - ii. In the event of a violation of section 603(c) of the Act, the funds shall be subject to recoupment by the County.
  - iii. Any funds paid to Contractor (1) in excess of the amount to which Contractor is authorized to retain under the terms of the Contract; (2) that are determined by the Treasury Office of Inspector General to have been misused; (3) are determined by Treasury to be subject to a repayment obligation pursuant to section 603(e) of the Act; or (4) are otherwise subject to recoupment by the County and have not been repaid by Contractor to the County shall constitute a debt to the County.
  - iv. Any debts determined to be owed the County must be paid promptly by the Contractor. A debt is delinquent if it has not been paid by the date specified in the County's initial written demand for payment, unless other satisfactory arrangements have been made or if the County knowingly or improperly retains funds that are a debt. The County will take any actions available to it to collect such a debt.
- C. Return of Unused Funds. If Contractor has any funds that have not been expended as of the earlier of the termination of this Contract or December 31, 2026, Contractor shall return all unspent funds to the County within ten (10) calendar days.

8. **Disclaimer.**

- A. The United States expressly disclaims any and all responsibility or liability to recipient or third persons for the actions of recipient or third persons resulting in death, bodily injury, property damages, or any other losses resulting in any way from the performance of this award or any contract, or subcontract under this award.
- B. The acceptance of this award by recipient does not in any way establish an agency relationship between the United States and recipient.

9. **Protection for Whistleblowers.**

- A. In accordance with 41 U.S.C. § 4712, Contractor 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.
  - B. The list of persons and entities referenced in the paragraph above includes the following:
    - i. A member of Congress or a representative of a committee of Congress;
    - ii. An Inspector General;
    - iii. The Government Accountability Office;
    - iv. A Treasury employee responsible for contract or grant oversight or management;
    - v. An authorized official of the Department of Justice or other law enforcement agency;
    - vi. A court or grand jury; or
    - vii. A management official or other employee of Contractor or subcontractor who has the responsibility to investigate, discover, or address misconduct.
  - C. Contractor shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce.
10. **Increasing Seat Belt Use in the United States**. Pursuant to Executive Order 13043, 62 FR 19217 (Apr. 18, 1997), Contractor is encouraged to adopt and enforce on-the-job seat belt policies and programs for its employees when operating company-owned, rented, or personally owned vehicles.
11. **Reducing Text Messaging While Driving**. Pursuant to Executive Order 13513, 74 FR 51225 (October 6, 2009), Contractor is encouraged to adopt and enforce policies that ban text messaging while driving, and to establish workplace safety policies to decrease accidents caused by distracted drivers.
12. **Conflict of Interest**
- A. Applicability.
    - (1) In the procurement of supplies, equipment, construction, and services by the Contractor the conflict-of-interest provisions in 2 CFR 200, shall apply.
    - (2) In all cases not governed by 2 CFR 200, the provisions of this section shall apply.

- B. Conflicts prohibited. The general rule is that no persons described in paragraph (C) of this section who exercise or have exercised any functions or responsibilities with respect to ARPA activities assisted under this part, or who are in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a financial interest or benefit from a ARPA-assisted activity, or have a financial interest in any contract, subcontract, or Agreement with respect to a ARPA-assisted activity, or with respect to the proceeds of the ARPA- assisted activity, either for themselves or those with whom they have business or immediate family ties, during their tenure or for one year thereafter.
- C. Persons covered. The conflict-of-interest provisions of paragraph (B) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the recipient, or of any designated public agencies, or of subrecipients that are receiving funds under this part.
- D. Exceptions. Upon the written request of the Contractor, the County may grant an exception to the provisions of paragraph (B) of this section on a case- by-case basis when it has satisfactorily met the threshold requirements of (D)(1) of this section, taking into account the cumulative effects of paragraph (D)(2) of this section.
- (1) Threshold requirements. The County will consider an exception only after the Contractor has provided the following documentation:
- (i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and
  - (ii) An opinion of the Contractors attorney that the interest for which the exception is sought would not violate State or local law.
- (2) Factors to be considered for exceptions. In determining whether to grant a requested exception after the recipient has satisfactorily met the requirements of paragraph (D)(1) of this section, The County shall conclude that such an exception will serve to further the purposes of the Act and the effective and efficient administration of the recipient's program or project, taking into account the cumulative effect of the following factors, as applicable:
- (i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available;
  - (ii) Whether an opportunity was provided for open competitive bidding or negotiation;
  - (iii) Whether the person affected is a member of a group or class of low- or moderate-income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;
  - (iv) Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision making process with respect to the specific assisted activity in question;
  - (v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section.

- (vi) Whether undue hardship will result either to the Contractor or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and
- (vii) Any other relevant considerations.

13. **Applicable Law.**

- A. This Contract shall be construed and interpreted in accordance with the laws of the State of Alabama.
- B. Contractor agrees to comply with the requirements of section 603 of the Act, the Treasury's regulations implementing that section, and guidance issued by Treasury regarding the foregoing. Contractor also agrees to comply with all other applicable federal statutes, regulations, and executive orders, and Contractor shall provide for compliance with the Act, section 603 of the Act, and any interpretive guidance by other parties in any agreements it enters into with other parties relating to this Contract.
- C. Federal regulations applicable to this award include, without limitation, the requirements set forth in Section 14, each of which is incorporated by reference herein, as applicable.

14. **Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,**

A. 2 C.F.R. Part 200, including the following:

Subpart A, Acronyms and Definitions;  
Subpart B, General Provisions;  
Subpart C, Pre-Federal Award Requirements and Contents of Federal Awards;  
Subpart D, Post-Federal Award Requirements;  
Subpart E, Cost Principles; and  
Subpart F, Audit Requirements.

And all appendices thereto including without limitation appendix II to Part 200, Contract Provisions for Non-Federal Entity Contracts Under Federal Awards.

- i. As applicable, the Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- ii. Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- iii. OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Non-procurement), 2 C.F.R. Part 180, including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury's implementing regulation at 31 C.F.R. Part 19.

- iv. Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
  - v. Government-wide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
  - vi. New Restrictions on Lobbying, 31 C.F.R. Part 21.
  - vii. Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (42 U.S.C. §§ 4601-4655) and implementing regulations.
  - viii. Generally applicable federal environmental laws and regulations.
- B. Statutes and regulations prohibiting discrimination (which prohibit the denial of benefits or services, or otherwise discriminate on the basis of race, color, national origin (including limited English proficiency), disability, age, or sex (including sexual orientation and gender identity)) applicable to this award include, without limitation, the following:
- i. 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 prohibit discrimination on the basis of race, color, or national origin under programs or activities receiving federal financial assistance; Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22;
  - ii. The 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;
  - iii. 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;
  - iv. The 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; and
  - v. 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.
- C. Hatch Act. Contractor agrees to comply, as applicable, with requirements of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328), which limits certain political

activities of federal employees, as well as certain other employees who work in connection with federally funded programs.

15. **Contract Provisions for Non-Federal Entity Contracts Under Federal Awards**

In addition to other provisions required by the Federal agency or non-Federal entity, all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.

- A. **Contracts for more than the simplified acquisition threshold**, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by [41 U.S.C. 1908](#), 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.
- B. **All contracts in excess of \$10,000** must address termination for cause and for convenience by the non-Federal entity including the manner by which it will be affected and the basis for settlement.
- C. **Equal Employment Opportunity**. Except as otherwise provided under [41 CFR Part 60](#), all contracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) must include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with Executive Order 11246, “Equal Employment Opportunity” ([30 FR 12319, 12935, 3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”
- D. **Contract Work Hours and Safety Standards Act** ([40 U.S.C. 3701-3708](#)). Where applicable, all contracts awarded by the non-Federal entity in excess of \$100,000 that involve the employment of mechanics or laborers must include a provision for compliance with [40 U.S.C. 3702](#) and [3704](#), as supplemented by Department of Labor regulations ([29 CFR Part 5](#)). Under [40 U.S.C. 3702](#) of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of [40 U.S.C. 3704](#) are applicable to construction work and provide that no laborer or mechanic must 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.
- E. **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.

- F. **Clean Air Act** ([42 U.S.C. 7401-7671q](#).) and the Federal Water Pollution Control Act ([33 U.S.C. 1251-1387](#)), as amended - Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act ([42 U.S.C. 7401-7671q](#)) and the Federal Water Pollution Control Act as amended ([33 U.S.C. 1251-1387](#)). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- G. **Debarment and Suspension** (Executive Orders 12549 and 12689) - A contract award (see [2 CFR 180.220](#)) must not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at [2 CFR 180](#) that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), “Debarment and Suspension.” SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.
- H. **Byrd Anti-Lobbying Amendment** ([31 U.S.C. 1352](#)) - Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by [31 U.S.C. 1352](#). Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- I. **Solid Waste Disposal Act**-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at [40 CFR part 247](#) that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- J. **Telecommunications and Video Surveillance Services Or Equipment**
- a) Recipients and subrecipients are prohibited from obligating or expending loan or grant funds to:
    1. Procure or obtain;
    2. Extend or renew a contract to procure or obtain; or

3. Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part 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).
  - I. For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
  - II. Telecommunications or video surveillance services provided by such entities or using such equipment.
  - III. (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- b) 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.

K. **Domestic Preferences For Procurements**

- A. As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, 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 award.
- B. For purposes of this section:
  1. “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.
  2. “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.

16. **Subaward Language.** Pursuant to 2 C.F.R. Part 200.332(a)(1), the County must make a determination whether the scope of work falls under a Beneficiary, Subrecipient or Contractor relationship, or whether the funds are being provided for the purpose of directly benefitting the individual or entity as a result of experiencing a public health impact or negative economic impact of the COVID-19 pandemic, in which case the individual or entity is acting as a Beneficiary rather than a Subrecipient or Contractor. The non-Federal entity may concurrently receive Federal awards as a Recipient, a Subrecipient, a Contractor, and a Beneficiary, depending on the substance of its agreements with Federal awarding agencies and pass-through entities. Therefore, a pass-through entity must make case-by-case determinations whether each agreement it makes for the disbursement of Federal program funds casts the party receiving the funds in the role of a Subrecipient, a Contractor or a Beneficiary. The awarding agency may supply and require recipients to comply with additional guidance to support these determinations provided such guidance does not conflict with this section.

(a) Beneficiary. Awards or payments to individuals or entities that are direct Beneficiaries of a federal award are not considered payment to Subrecipients or Contractors. If the funds are provided to an individual or entity for the purpose of directly benefitting the individual or entity as a result of the individual or entity experiencing a public health impact or negative economic impact of the COVID-19 pandemic, the individual or entity is acting as a Beneficiary.

(b) Subrecipients. A subaward is for the purpose of carrying out a portion of a Federal award and creates a Federal assistance relationship with the Subrecipient. A Subrecipient does not include an individual or entity that is a Beneficiary of such award. Characteristics which support the classification of the non-Federal entity as a Subrecipient include when the non-Federal entity:

- (1) Determines who is eligible to receive what Federal assistance;
- (2) Has its performance measured in relation to whether objectives of a Federal program were met;
- (3) Has responsibility for programmatic decision making;
- (4) Is responsible for adherence to applicable Federal program requirements specified in the Federal award; and
- (5) In accordance with its agreement, uses the Federal funds to carry out a program for a public purpose specified in authorizing statute, as opposed to providing goods or services for the benefit of the pass-through entity.

(c) Contractors. A contract is for the purpose of obtaining goods and services for the non-Federal entity's own use and creates a procurement relationship with the Contractor. A Beneficiary is not a Contractor. Characteristics indicative of a procurement relationship between the non-Federal entity and a Contractor are when the Contractor:

- (1) Provides the goods and services within normal business operations;
- (2) Provides similar goods or services to many different purchasers;
- (3) Normally operates in a competitive environment;

- (4) Provides goods or services that are ancillary to the operation of the Federal program; and
  - (5) Is not subject to compliance requirements of the Federal program as a result of the agreement, though similar requirements may apply for other reasons.
- (d) Use of judgment in making determination. In determining whether an agreement between a pass-through entity and another non-Federal entity casts the latter as a Subrecipient, Contractor, or Beneficiary, the substance of the relationship is more important than the form of the agreement. All of the characteristics listed above may not be present in all cases, and the pass-through entity must use judgment in classifying each agreement as a subaward, a procurement contract, or as funding provided to a Beneficiary.

If the pass-through entity determines that the scope of work falls under a Subrecipient relationship, all of the information below must be included in any subaward agreement.

[END OF FEDERAL TERMS AND CONDITIONS]