

ADDENDUM NO. 1

**APACHE FLATS SEDIMENT REMOVAL
PROJECT NO. 2024-202-1**

**COLE COUNTY DEPARTMENT OF PUBLIC WORKS
November 7, 2024**

SECTION ADDITION

The Bidder shall make following changes to the Bid Documents:

SECTION 11 ARPA REQUIREMENTS

This project will utilize ARPA funds. Therefore, Section 11 is being added to the contract to inform the contractor of these requirements.

DOCUMENTS ATTACHED FOR REFERENCE

- **Table of Contents**
- **ARPA Requirements**

END OF ADDENDUM NO. 1

REVISED TABLE OF CONTENTS

TABLE OF CONTENTS

| | PAGE NO. |
|---|-----------------|
| SECTION 1 | |
| Advertisement for Bids | 1-1 |
| Notice to Bidders | 1-3 |
| SECTION 2 | |
| Instructions to Bidders | 2-1 |
| SECTION 3 | |
| Plan Holder Contact Information Form | 3-1 |
| Bid Proposal Form | 3-3 |
| Anti-Collusion Statement | 3-9 |
| Contractor's Affidavit | 3-11 |
| SECTION 4 | |
| Construction Contract | 4-1 |
| Certificate of Insurance | 4-7 |
| Performance and One-Year Guarantee Bond | 4-9 |
| SECTION 5 | |
| Current Prevailing Wage Rate | 5-1 |
| SECTION 6 | |
| Job Special Provisions | 6-1 |
| SECTION 7 | |
| General Special Provisions | 7-1 |
| SECTION 8 | |
| Technical Specifications | 8-1 |
| SECTION 9 | |
| Permits | 9-1 |
| SECTION 10 | |
| SWPPP | 10-1 |
| SECTION 11 | |
| ARPA Requirements | 11-1 |

SECTION 11 ARPA REQUIREMENTS

Contract Clauses Required under the American Rescue Plan Act (ARPA)

State and Local Fiscal Recover Fund

Compliance Supplement (date 04/2022) states the County/Subrecipient must, “ensure that every contract includes the applicable contract clauses required by 2 CFR section 200.327.”

2 CFR Section 200.327 states that, “The Non-Federal entity's contracts must contain the applicable provisions described in Appendix II to this part [2 CFR Part 200].”

Appendix II to 2 CFR Part 200 states that, “Contract Provisions for Non-Federal Entity Contracts Under Federal Awards lists the following contract provision that are required... all contracts made by the non-Federal entity under the Federal award must contain provisions covering the following, as applicable.”

1. Contracts for more than the simplified acquisition threshold - administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms and provide for such sanctions and penalties as appropriate.
2. Contracts for more than \$10,000 – 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.
3. Equal Employment Opportunity.
4. Davis-Bacon Act,
5. Contract Work Hours and Safety Standards Act
6. Rights to Inventions Made Under a Contract or Agreement.
7. Clean Air Act
8. Debarment and Suspension
9. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)
10. See § 200.323. § 200.323 Procurement of recovered materials.
11. See § 200.216. 200.216 Prohibition on certain telecommunications and video surveillance services or equipment.
12. See § 200.322. Domestic preferences for procurements.

We have taken the liberty of compiling the content of the required contract provision below. Please note, FORVIS is providing guidance, but is not a legal firm and is in no way providing legal advice. We recommend consulting with an attorney for contract law requirements, provisions, and enforceability of the outlined provisions.

1. Termination.

- a. Termination for Convenience: The Contract may be terminated by the Contractee without cause, in whole or in part, at any time during the term specified in the Contract, by providing the other party thirty (30) calendar days advance written notice of the termination. The Contract may be suspended by the Contractee without cause, in whole or in part, at any time during the term specified in the Contract, by providing the Contractor thirty (30) calendar days advance written notice of the suspension.
- b. Termination for Default: The Contractee may terminate or suspend this Contract, in whole or in part, upon ten (10) days advance written notice if: (1) the Contractor breaches any duty, obligation, or service required pursuant to this Contract. If the Contract is terminated by the Contractee pursuant to Contract or this Appendix, the Contractor shall be liable for damages, including any additional costs of procuring similar goods or services from another source. If the termination results from acts or omissions of the Contractor, including but not limited to misappropriation or nonperformance of required goods, the Contractor shall return to the Contractee immediately any funds, misappropriated or unexpended, that have been paid to the Contractor by the Contractee.
- c. Termination for Non-Appropriation: If expected or actual funding is withdrawn, reduced, or limited in any way prior to the termination date set forth in the Contractor, the Contractee may, upon ten (10) days advance written notice to the Contractor, terminate or suspend this Contract in whole or in part. If the Contract is terminated or suspended as provided in this Section: (1) the Contractee will be liable only for payment in accordance with the terms of this Contract for goods delivered prior to the effective date of termination or suspension; and (2) the Contractor shall be released from any obligation to provide such further goods pursuant to the Contract as are affected by the termination or suspension.
- d. Non-Waiver of Rights: Nothing herein shall limit, waive, or extinguish any right or remedy provided by this Contract or by law or equity that either party may have if any of the obligations, terms, and conditions set forth in this Contract are breached by the other party.

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

During the performance of this Contract, the Contractor agrees as follows:

- (1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their

race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965,

so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: Provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

The Contractor further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: Provided, that if the party so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the contract.

The Contractor agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of contractors and sub-contractors with the equal opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to Executive Order 11246 of September 24, 1965, with a contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon contractors and sub-contractors by the administering agency or the Secretary of Labor pursuant to Part II, Subpart D of the Executive Order. In addition, the Contractor agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

3. Davis-Bacon; Prevailing Wage. If any purchase exceeds \$2,000 and federal funds in addition to ARPA funds will be used, the Contract shall include the necessary Davis-Bacon Act clause addressing prevailing wage rates, as applicable.

Alternatively, to the extent required by Law, Contractor agrees to pay not less than the prevailing hourly rate of wages to all of its workers performing work for the public use or benefit or that uses public funds under this Agreement, or, alternatively, as applicable, the public works contracting minimum wage. The prevailing hourly rate of wages shall be those as set out in the Wage Order attached to and made part of the Contract. Each worker shall be paid the locally prevailing wage or public works contracting minimum wage, as applicable,

pursuant §§ 290.210 – 290.340, RSMo. and pursuant to each workers' scope of work and in accordance with the occupational titles and work descriptions set forth in state regulation.

Contractor agrees to keep full and accurate records of the names, occupations and crafts of every worker employed by it in connection with the Agreement, together with an accurate record of the number of hours worked by each worker and the actual wages paid for a period of one year following completion of the Work. The contractor shall provide these records at the end of each month during the Project. The contractor shall post a legible list of prevailing wage rates in a prominent and easily accessible place at the work site for the full time that any worker is on the job. Upon completion of the Project and prior to final payment, the Contractor agrees to complete and certify in an affidavit stating that the Contractor has fully complied with the Missouri Prevailing Wage law.

Contractor agrees to be responsible for payment of any penalty to the Contractee of One Hundred Dollars (\$100) per day (or portion of a day) for each worker that is paid less than the prevailing rate for any work performed under this Agreement by Contractor.

4. Contract Work Hours and Safety Standards Act. Where applicable, all contracts in excess of \$100,000 that involve the employment of mechanics or laborers shall include a provision for compliance with 40 U.S.C 3702 and 3704 of the Contract Work Hours and Safety Standards Act, as supplemented by the Department of Labor regulations (29 CFR part 5). Under Section 3702 of the Act, each Contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard workweek of forty (40) hours. Work in excess of the standard workweek 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 forty (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.

5. Rights to Inventions Made Under a Contract or Agreement. If a Contractor 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.

6. Clean Air Act & Federal Water Pollution Control Act. Where applicable, all contracts for the purchase of goods in excess of \$150,000, Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401. Contractor agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251. Contractor agrees to report each violation of the Clean Air Act and the Water Pollution Control Act to Contractee and understands that the Contractee will, in turn, report

each violation as required to assure notification to the Federal Emergency Management Agency, and the appropriate Environmental Protection Agency Regional Office. The contractor agrees to include these requirements in each subcontract exceeding \$150,000 financed in whole or in part with Federal assistance.

7. Suspension and Debarment. If this Contract is a covered transaction for purposes of federally funded grant requirements, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. Debarment status may be verified at <https://www.sam.gov>. By signing and submitting this Contract, the Contractor certifies as follows:

The certification in this clause is a material representation of fact relied upon by Contractee. If it is later determined that the Contractor knowingly rendered an erroneous certification, in addition to remedies available to Contractee, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Contractor agrees to comply with the requirements of 49 CFR 29, Subpart C while performing this Contract and further agrees to include a provision requiring such compliance in its lower tier covered transactions

8. Byrd Anti-Lobbying Amendment. Contractor 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 or a Member of Congress in connection with obtaining any Federal contract, grant, or any other award covered by 31 U.S.C. § 1352. The contractor shall 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 recipient who in turn will forward the certifications to the awarding agency.

9. Procurement of Recovered Materials. Where applicable, within the performance of this Contract involving the use of materials, the Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired. The contractor agrees to comply with all other applicable requirements of Section 6002 of the Solid Waste Disposal Act.

10. Prohibition on Certain Telecommunications and Video Surveillance Services or Equipment. The contractor agrees to comply with all requirements of 2 CFR 200.216 regarding prohibition on certain telecommunications and video surveillance services or equipment. Contractor asserts that this Contract does not relate to such prohibited telecommunications and video surveillance services or equipment.

11. Domestic Preference. Contractor should, to the greatest extent practicable under Federal award, provide a preference of 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) pursuant with 2 CFR § 200.322. The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.