

## RESOLUTION 22-10

### **A RESOLUTION APPROVING AND AUTHORIZING THE SIGNATURE OF A MEMORANDUM OF UNDERSTANDING WITH PORT KC AND APPROVING THE APPROPRIATION AND EXPENDITURE OF MISSOURI HIGHWAY AND TRANSPORTATION COMMISSION 2022-2023 ADMINISTRATIVE EXPENSES GRANT FUNDS FOR A MISSOURI RIVER NAVIGATION STUDY TO BE CONDUCTED BY THE DEPARTMENT OF THE ARMY AND PORT KC**

**WHEREAS**, the St. Charles County Port Authority (“Port Authority”) is a port authority authorized under Chapter 68 of Revised Statutes of Missouri (“RSMo.”) and Chapter 170 of the Ordinances of St. Charles County, Missouri (“OSCCMo.”), as amended; and

**WHEREAS**, the Board of Commissioners (“Board”) is the governing body of the Port Authority; and

**WHEREAS**, the Missouri Highway and Transportation Commission (“MHTC”) is authorized to make grants for administration and planning expenses to the Port Authority; and

**WHEREAS**, the MHTC has awarded such a grant to the Port Authority for the period beginning July 1, 2022 and ending June 30, 2023 (the “2022-2023 MHTC Administrative Expenses Grant”) in the amount of Thirty Thousand Six Hundred Seventy-Seven dollars and Fourty-Two cents (\$30,677.42); and

**WHEREAS**, a portion of the funding from the 2022-2023 MHTC Administrative Expenses Grant was provided in contemplation of Missouri port authorities contributing to a Missouri River navigation study to aid the port authorities in their planning efforts and to be conducted by the Department of the Army and Port KC, the port authority of Kansas City;

**WHEREAS**, the Board wishes to appropriate and expend funds from 2022-2023 MHTC Administrative Expenses Grant in the amount of Ten Thousand dollars and Zero cents (\$10,000.00) to the local match obligation of the Missouri River navigation study;

**WHEREAS**, the Memorandum of Understanding attached hereto as Exhibit A details the obligations of the Port Authority and Port KC with respect to the matters described herein; and

**WHEREAS**, pursuant to Section IV.5 of the Spending Policy for the Port Authority (“Spending Policy”), all funds expended by the Port Authority in support of a project or activity supported by State or Federal funding shall be approved by the Board.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ST. CHARLES COUNTY PORT AUTHORITY AS FOLLOWS:**

1. The Board hereby approves the Memorandum of Understanding with Port KC attached hereto as EXHIBIT A and authorizes the Board Chairperson to execute the Memorandum of Understanding.
2. The Board approves the appropriation of funds received from the 2022-2023 MHTC Administrative Expenses Grant in the amount of Ten Thousand dollars and Zero cents (\$10,000.00) to the local obligation match of the Missouri River navigation study conducted by the Department of the Army and Port KC.
3. The Board approves the expenditure of the funds appropriated herein upon the full execution of the Memorandum of Understanding by both the Port Authority and Port KC and authorizes the Board Chairperson and Board Treasurer to execute such documents necessary for the expenditure of the funds.
4. This Resolution shall be in full force and effect immediately from and after its adoption as provided by law.

**ADOPTED THIS 11TH DAY OF AUGUST, 2022  
ST. CHARLES COUNTY PORT AUTHORITY**

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Roger Ellis, Chairperson

ATTEST:

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Monica Combest, Vice Chairperson

**Vote:**

Aye: \_\_\_\_

Nay: \_\_\_\_

Abstain: \_\_\_\_

Absent: \_\_\_\_

Not Present at vote: \_\_\_\_



## MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (“MOU”) is entered into this 5<sup>th</sup> day of August, 2022 (“Effective Date”), by and between the Port Authority of Kansas City, Missouri, a political subdivision of the State of Missouri created pursuant to Section 68.010 et seq., RSMO, located at 110 Berkley Plaza, Kansas City, Missouri 64120 (“Port KC”) and the St. Charles County Port Authority, a political subdivision of the State of Missouri created pursuant to Section 68.010 et seq., RSMO, located at 201 N. Second Street, Suite 410, St. Charles, Missouri 63301 (“Project Partner”).

WHEREAS, Port KC is party to that certain “Agreement Between the Department of the Army and the Port Authority of Kansas City, MO Lower Missouri Basin Feasibility Study” dated July 9, 2021 (the “Feasibility Agreement”), a copy of which is attached hereto and incorporated herein as **Attachment A**; and

WHEREAS, the Feasibility Agreement provides for the Department of the Army to perform certain activities and tasks required to identify and evaluate alternatives for improvements in the operation and performance of the Missouri River Bank Stabilization and Navigation Project; (the “Study”); and

WHEREAS, the costs to complete the Study have been estimated at \$3,000,000, one half of which will be funded by the federal government, and the balance of which will be funded by Port KC; and

WHEREAS, Port KC, in anticipation of its local match obligation, reached out to multiple public and private stakeholders operating on the Lower Missouri River for purposes of determining their interest in sharing the financial obligations imposed by the Feasibility Agreement; and

WHEREAS, the objectives of the Study are expected to benefit multiple public and private stakeholders, including but not limited to the Project Partner, such that various public and private stakeholders have elected to financially participate in the Study for purposes of ensuring sufficient funding for the local match;

NOW, THEREFORE, for good and valuable consideration given and received, the sufficiency of which is hereby acknowledged, Port KC and Project Partner agree as follows:

**Section 1. Receipt of Contribution.** Project Partner shall remit to Port KC the sum of Ten Thousand Dollars (\$10,000.00) (“Project Partner Contribution”) within thirty (30) calendar days of the Effective Date of this MOU.

**Section 2. Use of Contribution.** Port KC shall receive the Project Partner Contribution and utilize the same for purpose of funding its monetary obligations pursuant to the Feasibility Agreement and for no other purpose whatsoever.

**Section 3. Information Sharing.** Port KC shall provide Project Partner a copy of all materials, including but not limited to the results of the Study, provided to it by the Department of the Army pursuant to the Feasibility Agreement.

**Section 4. Review and Comment.** In the event the Department of the Army shall, pursuant to the terms of the Feasibility Agreement, allow Port KC the opportunity to review and comment on any action to be undertaken by the Department of the Army in performing the Study, Port KC shall seek review and comment from Project Partner prior to responding to the same, and shall include such review and comment in any response it may provide to the Department of the Army.

[SIGNATURES FOLLOW]

**PORT AUTHORITY OF KANSAS CITY,  
MISSOURI**

**ST. CHARLES COUNTY PORT  
AUTHORITY**

By: \_\_\_\_\_  
Jon D. Stephens  
President & CEO

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Attachment A**

**(11 pages follow)**

AGREEMENT  
BETWEEN  
THE DEPARTMENT OF THE ARMY  
AND  
THE PORT AUTHORITY OF KANSAS CITY, MO  
LOWER MISSOURI RIVER BASIN  
FEASIBILITY STUDY

THIS AGREEMENT is entered into this 9<sup>th</sup> day of June, 2024, by and between the Department of the Army (hereinafter the "Government"), represented by the District Commander for Kansas City District (hereinafter the "District Commander") and the Port Authority of Kansas City, Missouri, (hereinafter the "Non-Federal Sponsors"), represented by the duly appointed directors of each respective agency.

WITNESSETH, THAT:

WHEREAS, Section 216 of the Flood Control Act of 1970, as amended authorizes the Secretary, acting through the Chief of Engineers to review the operation of the Missouri River Bank Stabilization and Navigation Project (BSNP) to report to Congress with recommendations on the advisability of modifying the project or its operation, and for improving the quality of the environment;

WHEREAS, Section 105(a) of the Water Resources Development Act of 1986, Public Law 99-662, as amended (33 U.S.C. 2215(a)), specifies the cost-sharing requirements; and

WHEREAS, the Government and the Non-Federal Sponsors have the full authority and capability to perform in accordance with the terms of this Agreement.

NOW, THEREFORE, the parties agree as follows:

ARTICLE I - DEFINITIONS

A. The term "Study" means the activities and tasks required to identify and evaluate alternatives and the preparation of a decision document that, as appropriate, recommends improvements in the operation and performance of the Missouri River Bank Stabilization and Navigation Project (BSNP).

B. The term "shared study costs" means all costs incurred by the Government and Non-Federal Sponsors after the effective date of this Agreement that are directly related to performance of the Study and cost shared in accordance with the terms of this Agreement. The term includes, but is not necessarily limited to, the Government's costs for preparing the PMP; for plan formulation and evaluation, including costs for economic, engineering, real estate, and environmental analyses; for preparation of a floodplain management plan if

undertaken as part of the Study; for preparing and processing the decision document; for supervision and administration; for Agency Technical Review and other review processes required by the Government; and for response to any required Independent External Peer Review; and the Non-Federal Sponsors' creditable costs for in-kind contributions, if any. The term does not include any costs for dispute resolution; participation by the Government and Non-Federal Sponsors in the Study Coordination Team to discuss significant issues and actions; audits; an Independent External Peer Review panel, if required; or negotiating this Agreement.

C. The term "PMP" means the project management plan, and any modifications thereto, developed in consultation with the Non-Federal Sponsors, that specifies the scope, cost, and schedule for Study activities and tasks, including the Non-Federal Sponsors' in-kind contributions, and that guides the performance of the Study.

D. The term "in-kind contributions" means those planning activities (including data collection and other services) that are integral to the Study and would otherwise have been undertaken by the Government for the Study and that are identified in the PMP and performed or provided by the Non-Federal Sponsors after the effective date of this Agreement and in accordance with the PMP.

E. The term "maximum Federal study cost" means the \$1,500,000 Federal cost limit for the Study, unless the Government has approved a higher amount.

F. The term "fiscal year" means one year beginning on October 1<sup>st</sup> and ending on September 30th of the following year.

## ARTICLE II - OBLIGATIONS OF THE PARTIES

A. In accordance with Federal laws, regulations, and policies, the Government shall conduct the Study using funds appropriated by the Congress and funds provided by the Non-Federal Sponsors. In carrying out its obligations under this Agreement, the Non-Federal Sponsors shall comply with all the requirements of applicable Federal laws and implementing regulations.

B. The Non-Federal Sponsors shall contribute 50 percent of the shared study costs in accordance with the provisions of this paragraph and provide required funds in accordance with Article III.

1. No later than 15 calendar days after the effective date of this Agreement, the Non-Federal Sponsors shall provide funds in the amount of \$25,000, for the Government to initiate the Study, including preparation of the PMP. In the event more funds are needed to develop the PMP, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors, and no later than 15 calendar days after such notification, the Non-Federal Sponsors shall provide the full amount of such funds to the Government.

2. As soon as practicable after completion of the PMP, and after considering the estimated amount of credit for in-kind contributions, if any, that will be afforded in accordance with paragraph C. of this Article, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors to meet its share of shared study costs for the remainder of the initial fiscal year of the Study. No later than 15 calendar days after such notification, the Non-Federal Sponsors shall provide the full amount of such funds to the Government.

3. No later than August 1<sup>st</sup> prior to each subsequent fiscal year of the Study, the Government shall provide the Non-Federal Sponsors with a written estimate of the amount of funds required from the Non-Federal Sponsors during that fiscal year to meet its cost share. No later than September 1<sup>st</sup> prior to that fiscal year, the Non-Federal Sponsors shall provide the full amount of such required funds to the Government.

C. The Government shall include in shared study costs and credit towards the Non-Federal Sponsors' share of such costs, the costs, documented to the satisfaction of the Government, that the Non-Federal Sponsors incur in providing or performing in-kind contributions, including associated supervision and administration. Such costs shall be subject to audit in accordance with Article VI to determine reasonableness, allocability, and allowability, and crediting shall be in accordance with the following procedures, requirements, and limitations:

1. As in-kind contributions are completed and no later than 60 calendar day after such completion, the Non-Federal Sponsors shall provide the Government appropriate documentation, including invoices and certification of specific payments to contractors, suppliers, and the Non-Federal Sponsors' employees. Failure to provide such documentation in a timely manner may result in denial of credit. The amount of credit afforded for in-kind contributions shall not exceed the Non-Federal Sponsors' share of shared study costs less the amount of funds provided pursuant to paragraph B.1. of this Article.

2. No credit shall be afforded for interest charges, or any adjustment to reflect changes in price levels between the time the in-kind contributions are completed and credit is afforded; for the value of in-kind contributions obtained at no cost to the Non-Federal Sponsors; for any items provided or performed prior to completion of the PMP; or for costs that exceed the Government's estimate of the cost for such item if it had been performed by the Government.

D. To the extent practicable and in accordance with Federal laws, regulations, and policies, the Government shall afford the Non-Federal Sponsors the opportunity to review and comment on solicitations for contracts prior to the Government's issuance of such solicitations; proposed contract modifications, including change orders; and contract claims prior to resolution thereof. Ultimately, the contents of solicitations, award of contracts, execution of contract modifications, and resolution of contract claims shall be exclusively within the control of the Government.

E. The Non-Federal Sponsors shall not use Federal program funds to meet any of its obligations under this Agreement unless the Federal agency providing the funds verifies in writing that the funds are authorized to be used for the Study. Federal program funds are those funds provided by a Federal agency, plus any non-Federal contribution required as a matching share therefor.

F. Except as provided in paragraph C. of this Article, the Non-Federal Sponsors shall not be entitled to any credit or reimbursement for costs it incurs in performing its responsibilities under this Agreement.

G. If Independent External Peer Review (IEPR) is required for the Study, the Government shall conduct such review in accordance with Federal laws, regulations, and policies. The Government's costs for an IEPR panel shall not be included in shared study costs or the maximum Federal study cost.

H. In addition to the ongoing, regular discussions of the parties in the delivery of the Study, the Government and the Non-Federal Sponsors may establish a Study Coordination Team to discuss significant issues or actions. The Government's costs for participation on the Study Coordination Team shall not be included in shared study costs, but shall be included in calculating the maximum Federal study cost. The Non-Federal Sponsors' costs for participation on the Study Coordination Team shall not be included in shared study costs and shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

### ARTICLE III - PAYMENT OF FUNDS

A. As of the effective date of this Agreement, shared study costs are projected to be \$3,000,000, with the Government's share of such costs projected to be \$1,500,000 and the Non-Federal Sponsors' share of such costs projected to be \$1,500,000. These amounts are estimates only that are subject to adjustment by the Government and are not to be construed as the total financial responsibilities of the Government and the Non-Federal Sponsors.

B. The Government shall provide the Non-Federal Sponsors with monthly reports setting forth the estimated shared study costs and the Government's and Non-Federal Sponsors' estimated shares of such costs; costs incurred by the Government, using both Federal and Non-Federal Sponsors' funds, to date; the amount of funds provided by the Non-Federal Sponsors to date; the estimated amount of any creditable in-kind contributions; and the estimated remaining cost of the Study.

C. The Non-Federal Sponsors shall provide to the Government required funds by delivering a check payable to "FAO, USAED, Kansas City (G5)" to the District Commander, or verifying to the satisfaction of the Government that the Non-Federal Sponsors have deposited such required funds in an escrow or other account acceptable to

the Government, with interest accruing to the Non-Federal Sponsors, or by providing an Electronic Funds Transfer of such required funds in accordance with procedures established by the Government.

D. The Government shall draw from the funds provided by the Non-Federal Sponsors to cover the non-Federal share of shared study costs as those costs are incurred. If the Government determines at any time that additional funds are needed from the Non-Federal Sponsor to cover the Non-Federal Sponsors' required share of shared study costs, the Government shall provide the Non-Federal Sponsors with written notice of the amount of additional funds required. Within 60 calendar days of such notice, the Non-Federal Sponsors shall provide the Government with the full amount of such additional funds.

E. Upon completion of the Study and resolution of all relevant claims and appeals, the Government shall conduct a final accounting and furnish the Non-Federal Sponsors with the written results of such final accounting. Should the final accounting determine that additional funds are required from the Non-Federal Sponsors, the Non-Federal Sponsors, within 60 calendar days of written notice from the Government, shall provide the Government with the full amount of such additional funds. Should the final accounting determine that the Non-Federal Sponsors have provided funds in excess of its required amount, the Government shall refund the excess amount, subject to the availability of funds. Such final accounting does not limit the Non-Federal Sponsors' responsibility to pay its share of shared study costs, including contract claims or any other liability that may become known after the final accounting.

#### ARTICLE IV - TERMINATION OR SUSPENSION

A. Upon 30 calendar days written notice to the other party, either party may elect at any time, without penalty, to suspend or terminate future performance of the Study. Furthermore, unless an extension is approved by the Assistant Secretary of the Army (Civil Works), the Study may be terminated if a Report of the Chief of Engineers, or, if applicable, a Report of the Director of Civil Works, is not signed for the Study within 3 years after the effective date of this Agreement.

B. In the event of termination, the parties shall conclude their activities relating to the Study. To provide for this eventuality, the Government may reserve a percentage of available funds as a contingency to pay the costs of termination, including any costs of resolution of contract claims, and resolution of contract modifications.

C. Any suspension or termination shall not relieve the parties of liability for any obligation incurred. Any delinquent payment owed by the Non-Federal Sponsors pursuant to this Agreement shall be charged interest at a rate, to be determined by the Secretary of the Treasury, equal to 150 per centum of the average bond equivalent rate of the 13 week Treasury bills auctioned immediately prior to the date on which such

payment became delinquent, or auctioned immediately prior to the beginning of each additional 3 month period if the period of delinquency exceeds 3 months.

#### ARTICLE V - DISPUTE RESOLUTION

As a condition precedent to a party bringing any suit for breach of this Agreement, that party must first notify the other party in writing of the nature of the purported breach and seek in good faith to resolve the dispute through negotiation. If the parties cannot resolve the dispute through negotiation, they may agree to a mutually acceptable method of non-binding alternative dispute resolution with a qualified third party acceptable to the parties. Each party shall pay an equal share of any costs for the services provided by such a third party as such costs are incurred. The existence of a dispute shall not excuse the parties from performance pursuant to this Agreement.

#### ARTICLE VI - MAINTENANCE OF RECORDS AND AUDIT

A. The parties shall develop procedures for the maintenance by the Non-Federal Sponsors of books, records, documents, or other evidence pertaining to costs and expenses for a minimum of three years after the final accounting. The Non-Federal Sponsor shall assure that such materials are reasonably available for examination, audit, or reproduction by the Government.

B. The Government may conduct, or arrange for the conduct of, audits of the Study. Government audits shall be conducted in accordance with applicable Government cost principles and regulations. The Government's costs of audits for the Study shall not be included in shared study costs, but shall be included in calculating the maximum Federal study cost.

C. To the extent permitted under applicable Federal laws and regulations, the Government shall allow the Non-Federal Sponsors to inspect books, records, documents, or other evidence pertaining to costs and expenses maintained by the Government, or at the request of the Non-Federal Sponsors, provide to the Non-Federal Sponsors or independent auditors any such information necessary to enable an audit of the Non-Federal Sponsors' activities under this Agreement. The costs of non-Federal audits shall be paid solely by the Non-Federal Sponsors without reimbursement or credit by the Government.

#### ARTICLE VII - RELATIONSHIP OF PARTIES

In the exercise of their respective rights and obligations under this Agreement, the Government and the Non-Federal Sponsors each act in an independent capacity, and neither is to be considered the officer, agent, or employee of the other. Neither party shall provide, without the consent of the other party, any contractor with a release that

waives or purports to waive any rights a party may have to seek relief or redress against that contractor.

#### ARTICLE VIII - NOTICES

A. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be deemed to have been duly given if in writing and delivered personally or mailed by certified mail, with return receipt, as follows:

If to the Non-Federal Sponsors:

President  
Port Authority of Kansas City, Missouri  
110 Berkley Plaza  
Kansas City, Missouri 64120

If to the Government:

Kansas City District USACE  
Richard Bolling Federal Building  
Attn: CENWK-PMP-F, Room 529  
601 E. 12 Street  
Kansas City, MO 64106

B. A party may change the recipient or address for such communications by giving written notice to the other party in the manner provided in this Article.

#### ARTICLE IX - CONFIDENTIALITY

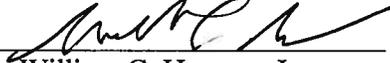
To the extent permitted by the laws governing each party, the parties agree to maintain the confidentiality of exchanged information when requested to do so by the providing party.

#### ARTICLE X - THIRD PARTY RIGHTS, BENEFITS, OR LIABILITIES

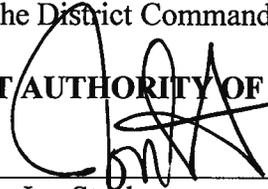
Nothing in this Agreement is intended, nor may be construed, to create any rights, confer any benefits, or relieve any liability, of any kind whatsoever in any third person not a party to this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, which shall become effective upon the date it is signed by the District Commander.

**DEPARTMENT OF THE ARMY**

BY:   
William C. Hannan, Jr.  
Colonel, U.S. Army  
District Commander

**PORT AUTHORITY OF KANSAS CITY**

BY:   
Jon Stephens  
President

DATE: 9 JUN 21

DATE: 6/8/2021

CERTIFICATE OF AUTHORITY

I, Mark R. Coulter, do hereby certify that I am the principal legal officer for the Port Authority of Kansas City, Missouri, that the Port Authority of Kansas City, Missouri is a legally constituted public body with full authority and legal capability to perform the terms of the Agreement between the Department of the Army and the Port Authority in connection with the Lower Missouri River Basin Feasibility Study, and to pay damages, if necessary, in the event of the failure to perform in accordance with the terms of, as required by Section 221 of Public Law 91-611, as amended (42 U.S.C. 1962d-5b), and that the person who executed this Agreement on behalf of the Port Authority of Kansas City, Missouri acted within his statutory authority.

8th IN WITNESS WHEREOF, I have made and executed this certification this  
day of June 2021.



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Mark R. Coulter  
General Counsel

**NON-FEDERAL SPONSOR'S  
SELF-CERTIFICATION OF FINANCIAL CAPABILITY  
FOR DECISION DOCUMENTS**

I, Joe Lohman, do hereby certify that I am the Director of Finance for the Port Authority of Kansas City, Missouri (the "Non-Federal Sponsor"); that I am aware of the financial obligations of the Non-Federal Sponsor for the Lower Missouri River Basin Feasibility Study; and that the Non-Federal Sponsor will have the financial capability to satisfy the Non-Federal Sponsor's obligations for that project. I understand that the Government's acceptance of this self-certification shall not be construed as obligating either the Government or the Non-Federal Sponsor to implement a project.

IN WITNESS WHEREOF, I have made and executed this certification this 8<sup>th</sup> day of June, 2021.

BY: 

TITLE: Director, Finance

DATE: 6/8/21

CERTIFICATION REGARDING LOBBYING

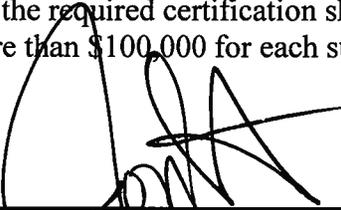
The undersigned certifies, to the best of his or her knowledge and belief that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

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



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Jon Stephens  
President

DATE: 6/8/2021