

**PROFESSIONAL SERVICES AGREEMENT****BETWEEN****THE CITY OF NEW ORLEANS****AND****GREENPOINT ENGINEERING, LLC****2019 DRAINAGE IMPROVEMENTS PROJECT**

**THIS AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and GreenPoint Engineering, LLC, represented by Amer Tufail, P.E., Principal (the “**Engineer**”). The City and the Engineer are sometimes collectively referred to as the “**Parties**.” This Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, on March 15, 2019, the City issued a request for qualifications No. 500C-02057, supplemented by its Addendum No. 1 dated March 27, 2019 and Addendum No. 2 dated April 8, 2019 (collectively, the “**RFQ**”), seeking qualified firms to provide professional design, engineering, public works asset management, construction management and/or inspection services to design, assess, build and/or repair streets, sidewalks, drainage systems, utilities, and other public works infrastructure features city-wide as part of the 2019 Drainage Improvements Project (the “**Project**”);

**WHEREAS**, the Engineer submitted a proposal dated April 15, 2019, and the City selected the Engineer to perform the professional services described in the RFQ;

**WHEREAS**, on June 17, 2019, the City requested a proposal and fee schedule for the Engineer to provide Phase I Scoping Services of the Project;

**WHEREAS**, the Engineer submitted a proposed fee schedule and scope of work for the Project dated June 26, 2019 (the “**Engineer’s Proposal**”) to perform the professional services described in the RFP, and the City accepted the Engineer’s Proposal;

**NOW THEREFORE**, the City and the Engineer, for good and valuable consideration, agree as follows:

**ARTICLE I – OBLIGATIONS OF THE ENGINEER**

**A. SCOPE OF SERVICES:** The Engineer shall provide professional engineering design and construction administration services for the 2019 Drainage Improvements Project. The Engineer shall perform each of the services and provide all deliverables and any other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFQ; the Engineer’s Proposal, and as set forth in this Article and elsewhere in this Agreement

(collectively, the “**Services**”). The Engineer will, in accordance with the schedule approved by the City, perform a broad range of design and construction management services, to include construction project administration, resident inspection, and related services to satisfy fluctuating needs and conditions in accordance with plans developed under the direction of the Department of Public Works (“**DPW**” or the “**Department**”), and other City policy and regulations. The purpose of these activities is to manage construction contracts and provide engineering services to assure that construction of projects by the City’s Construction Contractor is carried out in strict accord with construction plans and specifications, standard DPW design guidelines and specifications, and in accordance with the Construction Contractor’s schedule. These services may be performed during one or more phases of work, to include but not limited to preliminary design, final design, and construction. The services to be performed shall consist of, but may not be limited to, the following:

- a) Attend pre-construction meeting and prepare meeting agenda and minutes;
- b) Review and track material submittals, approve, or take other appropriate action, for shop drawings and samples which the contractor is required to submit (as warranted);
- c) Obtain and document pre-construction video (if required);
- d) Provide drainage design and drainage calculation to insure proper pipe size selection
- e) Design pavement to maintain positive drainage accordingly to City of New Orleans Department of Public Works guidelines;
- f) Review CCTV and recommend repairs;
- g) Review and track contractor Requests for Information (RFIs), and respond as necessary;
- h) Assist with technical issues arising during construction;
- i) Attend progress meetings;
- j) Perform occasional site visits at intervals appropriate to various stages of construction
- k) Recommend work be rejected while in progress if not in accordance with contract documents and threatens integrity of the design concept
- l) Issue necessary interpretations and clarifications of the contract documents and specifications as appropriate (field orders)
- m) Evaluate and coordinate with City regarding acceptability of substitute or “or-equal” materials and equipment proposed by the Construction Contractor
- n) Review quantities and pay applications for the Construction Contractor invoicing and recommend payment
- o) Observe construction at all times the Construction Contractor is working on critical work items
- p) Inspect, measure and appropriately track (eligible) work completed.
- q) Ensure work does not adversely affect utilities, adjacent areas and/or property, etc.
- r) Prepare daily field reports, and/or field books
- s) Photograph and/or document work progress

- t) Document and coordinate with the Designer of Record & the City for unforeseen items encountered during construction
- u) Coordinate with and monitor work performed by material testing agency, utilities, and other on-site visitors as required
- v) Prepare memorandums or documentation required for field changes
- w) Verify contractor providing adequate traffic control and site safety procedures
- x) Prepare incident reports

The Engineer shall submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Engineer as set forth in this Agreement.

The Engineer shall promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation.

The Engineer shall monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

The Engineer shall perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within thirty (30) days after the approval of the associated plan change or amendment.

The services to be performed by the Engineer are divided into three (3) phases of work identified in general as follows and more fully described below:

Phase I – Scoping

Phase II – Design Services

Phase III – Construction Administration and Resident Inspection

### **Phase I – Scoping**

In accordance with the Engineer's Proposal, the Engineer shall visit all pre-determined sites to identify issues and propose solutions prior to the beginning of the construction.

The Engineer shall prepare a spreadsheet listing all scoped sites with the sites identified problems and recommend repairs. If issues on certain sites cannot be determined, the Engineer shall categorize site solution as CCTV and plan to review videos after CCTV is completed during construction.

### **Phase II – Design Services**

The Engineer shall design new drainage, if required, according to State of Louisiana Department of Transportation Development's (DOTD 10 year storm design.

The Engineer shall review and approve contract invoice and recommend for payment.

The Engineer shall perform all tasks without limitations listed in the work description section.



### **Phase III – Construction Administration and Resident Inspection Services**

1. During construction, the Engineer shall maintain all construction field records normally maintained by the Department. Entries shall be made daily in the project diary to indicate the Engineer's personnel on the project, as well as, the forces of the Construction Contractor, the Construction Contractor's equipment, and the work performed.

The Engineer shall continually observe the progress of the project, with particular emphasis on project site safety and the requirements of the General and Special Specifications relative to the timely review of submittals, shop drawings and samples, value engineering proposals, evaluation of substitute materials, timely rejection of all nonconforming work and materials, the applications of the work forces to particular portions of the work, the conformance of the work to the Construction Contractor's schedule, the timely prosecution of the work and perform any required interviews of the Construction Contractor.

The Engineer shall forward the Construction Contractor's monthly updated schedule of work with the partial payment requests and weather reports.

2. **Notifications.** The Engineer shall in a timely manner, notify DPW of all problems that may impact the project's cost or schedule. The Engineer shall submit all required documentation and process plan changes in a timely manner as applicable.

3. **Responsibilities in Relation to Contractor's Means and Methods.** The Engineer will not be responsible for and will not have control or charge of construction means, methods, techniques, sequences, or procedures or for safety precautions and programs in connection with the work. These duties and responsibilities are exclusively the Construction Contractor's obligation. The Engineer will not be responsible or have control or charge over the acts or omissions of the Construction Contractor, Subcontractors, or any agents, employees, or any other persons performing any of the construction work.

4. **Rejection of Work.** DPW and the Engineer will have the authority to reject work that does not conform to the Construction Documents. The Engineer may recommend special inspections for testing of the work at any stage of preparation or completion to DPW.

5. **Field/Plan Changes.** The Engineer will not authorize or direct the Construction Contractor to deviate from the plans and specifications without written authorization from DPW. The Engineer shall submit to DPW for written approval within two (2) working days after signature by the Construction Contractor, any plan change which increases the project's cost or time required prior to the work being authorized. Should the Engineer approve any plan change without written approval from DPW, the Engineer shall be liable for the cost. DPW personnel authorized to approve such plan changes shall include the Director, Chief Engineer, and Project Manager assigned to the project. The Engineer is not responsible for any costs incurred as a result of delays incurred in obtaining written authorization by the Department for necessary or desired changes in the plans and/or specifications.



6. **Discrepancies Between Plans and Specifications.** When construction contract plans and specifications (applicable for construction work to which construction personnel are assigned) are in conflict with standard DPW design guidelines and specifications, then the construction contract plans and specifications shall govern. When there appears to be a discrepancy between two or more construction contract specifications, in the construction contract plans, between any other regulations applicable to the construction contracts, or when there appears to be an ambiguity in any of these documents, then the construction quality assurance personnel shall appeal to the DPW POC to resolve discrepancies or ambiguities.

7. **Release of Data.** The Engineer shall acquire permission from DPW, in writing, prior to releasing any data, analysis, results, conclusions or computations relative to any work performed under this Agreement to any agency, business concern, or individual outside the City.

8. **Reporting.** All documents submitted to the City must be signed by the Engineer's Louisiana Registered Civil Engineer assigned to be in charge of the Services. All reports shall be submitted within the time period specified by the City. The Engineer shall submit all required documentation and process plan changes in a timely manner.

9. **Cooperation.** In a timely manner, the Engineer shall advise the Sewerage & Water Board of any drainage, sewer, and water damages so that such facilities may be properly inspected. The Engineer shall cooperate with the City, the Designer of Record, and any other contractors providing services to the City as needed. The Engineer shall cooperate with the City and any person performing work for the City. The City's officers and employees are not authorized to request or instruct the Engineer to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

10. **Construction Contractor Payment Processing.** The Construction Contractor's invoice is to be submitted directly to the Engineer. The Construction Contractor's monthly pay request: forms STS 651 and "E-14 Weather and Working Day Report" shall be submitted for payment within five (5) working days after the Construction Contractor has submitted the signed invoice. Project diary and weekly progress reports shall be submitted within five (5) working days after the end of the reporting period. The Engineer shall prepare the Construction Contractor's monthly pay request within five (5) work days after the end of the reporting period. The preparation of the Construction Contractor's monthly pay request consists of coordinating with the Construction Contractor on quantities in place and submitting to the Department completed pay request form "STS 651" (signed by the Construction Contractor and the Engineer) and form "E-14 Weather and Working Day Report" (signed by the Construction Contractor and the Engineer). The Engineer shall document and verify all pay items of work and quantities completed, and prepare partial and final requests for payment on City's forms for work satisfactorily completed by the Construction Contractor. Quantities shall be derived from the plans unless otherwise directed.

11. **Materials and Testing.** The Engineer shall coordinate the activities of the testing laboratory designated by the Department to ensure that all materials entering the project are in accordance with the Project Construction Documents (plans and specifications). The Engineer shall review all testing reports as submitted by the testing laboratory and shall report to the Department

if any of the work or material is not in conformance with the project's Construction Documents based upon test results. The Engineer shall review reports prepared by the testing laboratory for accuracy. The Engineer shall review and make recommendation for approval of pay requests for the testing laboratory for consistency with the testing performed.

**12. Project Completion.** When notified by the Construction Contractor that, in its opinion, all items of work required by the Contract have been completed, the Engineer shall make a final inspection of the Work, including any tests of operation. After completion of this inspection, the Engineer shall, if all things are satisfactory to it, recommend acceptance of the project to the Director, shall prepare an overrun/underrun statement, and establish the need, if necessary, to impose liquidated damages on the Construction Contractor. The Engineer shall conduct the one (1) year warranty inspection eleven (11) months after project acceptance and provide the Department with a detailed report with photographs depicting all deficiencies and listing corrective actions for which the Construction Contractor is responsible.

**13. Deliverables.** The deliverables to be provided to DPW shall consist of, but may not be limited to, the following:

- a) Construction Field Records
- b) Daily Reports or Working Day Reports
- c) Monthly Pay Requests, Schedule Updates, Weather Reports
- d) Field Change Authorizations
- e) Plan Change Requests
- f) Non-Conforming Materials Notifications
- g) Recommendation for Approval of Testing Laboratory Pay Request
- h) Final Inspection Report
- i) Overrun/Underrun Statement
- j) Warranty Inspection Report
- k) Project Schedule
- l) Monthly Progress Report and Invoice
- m) Final "As Built" Project Drawings

**B. ENGINEER PERSONNEL:** All personnel must be duly qualified and experienced to perform the type of required services in accordance with applicable regulations, policies, and standard operating procedures. The determination of whether personnel are duly qualified and experienced or whether the Engineer's work is unsatisfactory will be made by DPW. Personnel who are determined to be not qualified and/or experienced, or who do not perform the required services in accordance with the provisions herein, or who compromise or jeopardize DPW's position in any way, shall be replaced immediately by the Engineer at his (the Engineer's) expense. Engineer

employees shall be thoroughly familiar with the construction phases of the respective work to which they are assigned. Field construction inspector(s) experienced in roadway construction shall be provided and be on the project site at all times when critical construction work is being performed.

A Louisiana Registered Civil Engineer shall be in charge of the Services. Management of employees and the tasks they perform are the Engineer's responsibility. The Engineer is expected to furnish all supervision necessary in planning, organizing, performing and checking the work to produce the end products required by DPW. All costs in connection with the Engineer's management personnel are considered to be included in the contract unit prices listed in the Schedule of Prices and shall not be paid for as a separate item.

The Engineer shall exercise extraordinary diligence to obtain competent employees of good reputation and shall safeguard all data and prevent the theft or unauthorized use of the same. The DPW POC reserves the right to require replacement of any personnel immediately upon determining that a person is not performing the required services in accordance with recognized standards, procedures and competency. Should the continued employment of any of the Engineer's personnel performing services under this Agreement be deemed by the DPW POC to be prejudicial to the interest of the City, that person shall be immediately removed from the work. The Engineer will make a satisfactory replacement for the personnel released at his (the Engineer's) expense.

**C. ENGINEER'S STANDARD OF CARE:** The Engineer represents and warrants that it has the requisite skills and expertise necessary to perform the Services. Accordingly, the Engineer is expected to perform all services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in providing similar services in major United States metropolitan areas under the same or similar circumstances. The Engineer acknowledges and agrees that, at the City's option, the Engineer shall be obligated to re-perform, at no additional cost to the City, any or all of the Services that fail to satisfy the foregoing standard of care.

**D. COMPLIANCE WITH LAWS:** The Engineer, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

**E. SCHEDULE:** The Engineer will perform all work under this Agreement according to the schedule mutually agreed upon by the Parties. The Engineer will submit a proposed progress schedule to the City within fourteen (14) calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed.

The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications. The Engineer acknowledges and agrees that time is of the essence in the performance of this Agreement.

**F. RECORDS AND REPORTING:** The Engineer will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records,



and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of FIVE (5) years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Engineer will deliver to the City all plans and records of work compiled through the date of termination. The Engineer will identify any reporting requirements, including the frequency, method and contents. The Engineer is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

**G. UTILIZATION OF THE DPW DASHBOARD:** The Department has developed a web based Dashboard System (the “**DPW Dashboard**”) to enhance communications and documentation among outside agencies, Engineers, vendors, and contractors by facilitating the electronic exchange of information and overall contract management as well as providing the means for the Engineer to input, track, and electronically share information with the City. The Engineer will be required to use the DPW Dashboard to input, track, and electronically share information with the City throughout the duration of the Agreement and during all phases of work as directed by the Department. The Engineer will be required to use the DPW Dashboard in the following areas: Design, Contract Administration, Finance, Quality Control, Submittal Monitoring such as shop drawings, RFI’s etc., Scheduling, and Import/Export of other relevant data. This list is non-exhaustive and the City may direct the Engineer to use the DPW Dashboard in other areas.

## **ARTICLE II – REPRESENTATIONS AND WARRANTIES**

**A.** The Engineer represents and warrants to the City that:

1. The Engineer, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
2. The Engineer has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
3. The Engineer is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Engineer, its employees, or its subcontractors in the performance of this Agreement;
4. The Engineer is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Engineer’s performance of this Agreement;
5. The Engineer has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;
6. The Engineer is not in breach of any federal, state, or local statute or regulation applicable to the Engineer or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Engineer's most favored customer for the same or substantially similar services;

8. The Engineer has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Engineer and the execution of this Agreement by the Engineer's representative constitutes a sworn statement, under penalty of perjury, by the Engineer as to the truth of the foregoing representations and warranties.

**B. NON – SOLICITATION STATEMENT:** The Engineer swears that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Engineer has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement

**C. CONVICTED FELON STATEMENT:** The Engineer swears that it complies with City Code §2-8 (c). No Engineer principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**D. AUDIT AND OTHER OVERSIGHT:** The Engineer will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Engineer, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Engineer's office or place of business in Louisiana. If no such location is available, the Engineer will make the documents available at a time and location that is convenient for the City. It is agreed that the Engineer will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the Engineer to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Agreement. In signing this Agreement, the Engineer agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**E. CONFLICT OF INTEREST:** To ensure that the Engineer's efforts do not conflict with the City's interests, and in recognition of the Engineer's obligations to the City, the Engineer will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Engineer will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Engineer's performance of this Agreement. The City will make the final determination whether the Engineer may accept the other employment.

**F. EMPLOYEE VERIFICATION:** The Engineer swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that

all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Engineer a sworn affidavit verifying compliance with items (i) and (ii) above. The Engineer acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation, and may further result in the Engineer being ineligible for any public contract for a period of three years from the date the violation is discovered. The Engineer further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Engineer agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement.

**G. COMPLIANCE WITH CITY'S HIRING REQUIREMENTS – BAN THE BOX:**

The Engineer agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Engineer must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Engineer notice of noncompliance and allow the Engineer thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Engineer remains noncompliant, the City may move to suspend payments to the Engineer, void the Agreement, or take any such legal action permitted by law or this Agreement. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect. The Engineer will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**ARTICLE III – THE CITY'S OBLIGATIONS**

**A. ADMINISTRATION:** The City will:

1. Administer this Agreement through the Department of Public Works;
2. Provide the Engineer with any documents deemed necessary for the Engineer's performance of any work required under this Agreement; and
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Engineer.



**B. PAYMENT:** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Engineer's certified invoices, except:

1. The City's obligation to pay is contingent upon the Engineer's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;

2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

3. The City may set off any amounts due to the Engineer against any amounts deemed by the City to be owed to the City by the Engineer pursuant this Agreement; and

4. All compensation owed to the Engineer under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Engineer that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Engineer or its subcontractors; or the City is not expressly obligated to pay under this Agreement. 6. If this Agreement is terminated for any reason, the City will pay the Engineer only for the work requested by the City and satisfactorily performed by the Engineer through the date of termination, except as otherwise provided in this Agreement.

#### **ARTICLE IV – CONTRACT TIME AND SCHEDULE**

**A. INITIAL TERM:** The initial term of this Agreement shall be for one (1) year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**B. EXTENSION:** This Agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Agreement facilitates continuity of services provided herein. This Agreement may be extended by the City on an annual basis for no longer than four (4) one-year periods.

**C. TERMINATION FOR CONVENIENCE:** The City may terminate this Agreement at any time during the term of the Agreement by giving the Engineer written notice of the termination at least thirty (30) calendar days before the intended date of termination.

**D. TERMINATION FOR NON-APPROPRIATION:** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement

without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**E. TERMINATION FOR CAUSE:** Either Party may terminate this Agreement immediately for cause by sending written notice to the other Party. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

**F. SUSPENSION:** The City may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Engineer.

#### **ARTICLE V – COMPENSATION**

**A. RATE OF COMPENSATION:** The City will pay the Engineer in accordance with the following fee schedule in accordance with the Engineer's approved hourly rates attached and incorporated hereto as "Exhibit A":

Phase I Scoping	\$56,256.00
Phase II Design Services	TBD
Phase III Construction Management	<u>TBD</u>
Total Amount	\$56,256.00

**B. MAXIMUM AMOUNT:** The maximum aggregate amount payable by the City under this Agreement is not to exceed **FIFTY – SIX THOUSAND TWO HUNDRED FIFTY – SIX AND 00/100 DOLLARS (\$56,256.00)**. This amount is inclusive of all services and cannot be increased except by a validly executed amendment and the City's Department of Finance has certified the availability of the additional funding. The City's obligation to compensate the Engineer under this Agreement will not exceed the maximum aggregate amount payable at any time.

**C. PLAN CHANGE:** The Engineer shall prepare plan changes caused by errors or omissions of the Engineer without additional compensation. The Engineer shall be financially responsible for costs that result from errors and/or omissions that exceed an acceptable level pursuant to the standard of care as described in Article 1, Section C. The Department shall participate in the cost of omissions to the extent of the value received by the Department.

- *Errors* are changes to the work caused by the Engineer's negligence for which the Construction Contractor is entitled to payment but for which the Department receives no value. Typically, these involve work that has been constructed and must be demolished and replaced.

- *Omissions* are changes to the work caused by the Engineer for which the Construction Contractor is entitled to payment for which the Department receives value. Typically, these involve work that must be added to the contract with little or no change to the work that has been constructed.

**D. ACKNOWLEDGEMENTS:** The Engineer acknowledges and agrees that, unless otherwise provided by a validly executed amendment:

1. The City's officers and employees are not authorized to request or instruct the Engineer to perform any work beyond the scope or duration of this Agreement, except as may be provided by laws governing emergency procedures;
2. Officers and employees of the City are not authorized to offer or promise the Engineer additional funding in excess of the maximum amount payable established in this Agreement;
3. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement;
4. The stated compensation is inclusive, and includes no additional amounts for, the Engineer's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Engineer any other charges or fees and the Engineer will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement; and
5. The Engineer immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

#### **ARTICLE VI – INVOICES**

The Engineer will submit monthly invoices for work performed under this Agreement to the City no later than ten (10) calendar days following the end of the period covered by the invoice in a format approved by the Department. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information and supporting documentation: copies of all inspection reports, daily logs, and a man-hours breakdown report as back-up documentation to support the monthly invoice.

All invoices must be signed by an authorized representative of the Engineer under penalty of perjury attesting to the validity and accuracy of the invoice. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.



## **ARTICLE VII – DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM**

**A. IN GENERAL:** The Engineer agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City’s Office of Supplier Diversity (“**OSD**”) oversees the DBE Program and assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

**B. MONITORING:** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Engineer’s use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Engineer or DBE Entities.

**C. COOPERATION:** The Engineer shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Engineer’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.

2. Execute written contracts with DBE Entities that meet the applicable DBE goals and shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Engineer.

3. Establish and maintain the following records for review upon request by the OSD:
  - a. Copies of written contracts with DBE Entities and purchase orders;
  - b. Documentation of payments and other transactions with DBE Entities;
  - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Engineer does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.

The Engineer is required to maintain such records for three (3) years after completion or closeout of this Agreement to verify compliance with its DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.

- a. The Engineer shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document)

issued by the City to the Engineer. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.

- b. Reports are required even when no activity has occurred in a monthly period.
  - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - d. The Engineer may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
- a. The total dollar amount of the Agreement shall include approved change orders and amendments.
  - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
  - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

**D. POST – AWARD MODIFICATION:** The OSD may grant a post-award modification request if:

1. For a reason beyond the Engineer’s control, the Engineer is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Engineer must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Engineer shall use and document “Good Faith Efforts” to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing “Good Faith Efforts” in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

2. Engineer reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Engineer shall use and document “Good Faith Efforts” to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

### **ARTICLE VIII – INDEMNITY**

**A. INDEMNITY:** To the fullest extent permitted by law, the Engineer will indemnify, defend, and hold the City, its officials, employees, and agents (the “**Indemnified Parties**”) harmless from and against: (1) any and all claims, demands, suits, judgments of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act or omission or the operation of the Engineer or any of its subcontractors, or any of its or their agents, servants, employees, while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the

Engineer under this Agreement; and (2) any and all claims and/or liens for labor, services, or materials furnished to the Engineer in connection with the performance of its obligation under this Agreement.

**B. LIMITATION:** The Engineer's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Engineer nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

**C. INDEPENDENT DUTY:** The Engineer has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Engineer is ultimately absolved from liability.

**D. EXPENSES:** The Engineer will bear all expenses, including without limitation the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

#### **ARTICLE IX – INSURANCE**

**A. MINIMUM SCOPE OF INSURANCE:** At all times during the term of this Agreement, the Engineer, at its own expense, will maintain policies of insurance sufficient to provide the following minimum scope of insurance coverage:

1. ***Commercial General Liability ("CGL")***: Insurance Services Office ("ISO") Form CG 00 01 or similar acceptable to the City, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury, and personal & advertising injury with limits no less than \$1,000,000.00 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this Project/location or the general aggregate limit shall be twice the required occurrence limit.

2. ***Automobile Liability***: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1 or Symbols 7, 8, 9), or if the Engineer has no owned autos, hired (Code 8), and non-owned autos (Code 9), with limits no less than \$1,000,000.00 Combined Single Limit per accident for bodily injury and property damage.

3. ***Workers' Compensation***: as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limits no less than \$1,000,000.00 per accident for bodily injury or disease.

4. ***Professional Liability (Errors and Omissions)***: with limits no less than \$1,000,000.00 per claim.

**B. OTHER INSURANCE PROVISIONS:** The insurance policies are to contain, or be endorsed to contain, the following provisions:

1. ***Additional Insured Status***: The Engineer will provide and maintain a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers,



officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Engineer’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

**2. Primary Coverage:** For any claims related to this Agreement, the Engineer’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Engineer’s coverage.

**3. Claims Made Policies:** If applicable, the retroactive date must be shown and must be before the Effective Date of this Agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, the Engineer must purchase “extended reporting” coverage for minimum of 5 years after the termination of this Agreement.

**4. Waiver of Subrogation:** The Engineer and its insurers agree to waive any right of subrogation that any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.

**5. Notice of Cancellation:** Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than 60 days.

**6. Acceptability of Insurers:** Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A:VII, unless otherwise acceptable to the City.

## **ARTICLE X – NON-DISCRIMINATION**

**A. EQUAL EMPLOYEMENT OPPORTUNITY:** In all hiring or employment made possible by, or resulting from this Agreement, the Engineer (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Engineer’s employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, 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. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. The Engineer will require all subcontractors to comply with the requirements of this article.

**B. NON – DISCRIMINATION:** In the performance of this Agreement, Engineer will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with Engineer in any of Engineer's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Engineer. Engineer agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

#### **ARTICLE XI – INDEPENDENT CONTRACTOR STATUS**

**A. INDEPENDENT CONTRACTOR STATUS:** The Engineer is an independent contractor and will not be deemed an employee, servant, agent, partner, or joint venturer of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

**B. EXCLUSION OF WORKERS' COMPENSATION COVERAGE:** The City will not be liable to the Engineer, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Engineer will not be considered an employee of the City for any reason, including for the purpose of Worker's Compensation coverage.

**C. EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE:** The Engineer, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Engineer nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the Engineer has been and will be free from any control or direction by the City over the performance of the services covered by this Agreement; (b) the services to be performed by the Engineer are outside the normal course and scope of the City's usual business; and (c) the Engineer has been independently engaged in performing the services required under this Agreement prior to the effective date of this Agreement.

**D. WAIVER OF BENEFITS:** The Engineer, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

## **ARTICLE XII – NOTICES**

Except for any routine communication, any notice, demand, communication, or request required or permitted hereunder shall be in writing and delivered in person or by certified mail, return receipt requested as follows:

If to the City:            Director, Department of Public Works  
                                 City of New Orleans  
                                 1300 Perdido Street, Suite 6W03  
                                 New Orleans, LA 70112

&

City Attorney  
City of New Orleans  
1300 Perdido Street, Suite 5E03  
New Orleans, LA 70112

If to the Engineer:    Amer Tufail, Principal  
                                 GreenPoint Engineering, LLC  
                                 701 Loyola Ave., Suite 801  
                                 New Orleans, LA 70113

Notices shall be effective when received, except any notice that is not received due to the intended recipient's unjustified refusal or avoidance of delivery shall be deemed received as of the date of the first attempted delivery. Each party shall be responsible for notifying the other in writing that references this Agreement of any changes in the respective addresses set forth above.

Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of the City and the Engineer.

## **ARTICLE XIII – ADDITIONAL TERMS AND CONDITIONS**

**A. ASSIGNABILITY:** The Engineer will not assign any interest in this Agreement and will not transfer any interest in the same without the City's prior written consent.

**B. CHOICE OF LAW:** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**C. CITY'S RIGHT TO APPROVE PERSONNEL:** The City reserves the right to approve or reasonably disapprove all engineers, workers, and other field personnel assigned to the Project.

**D. CONFLICTING EMPLOYMENT:** To ensure that the Engineer's efforts do not conflict with the City's interests, and in recognition of the Engineer's obligations to the City, the Engineer will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Engineer will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Engineer's performance of this Agreement. The



City will make the final determination whether the Engineer may accept the other employment.

**E. ENTIRE AGREEMENT:** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**F. EXHIBITS:** The following exhibits will be and are incorporated into this Agreement:

- Exhibit “A” –Engineer’s Approved Hourly Rates
- Exhibit “B” – HUD Compliance Provisions for Direct Grantee Contracts

**G. JURISDICTION & VENUE:** For all claims arising out of or related to this Agreement, the Engineer consents and yields to the exclusive jurisdiction of and venue in the state civil courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence, including any right of removal to federal court based upon diversity of citizenship.

**H. LIMITATIONS OF THE CITY’S OBLIGATIONS:** The City has no obligations not explicitly set forth in this Agreement.

**I. LIVING WAGES:** To the fullest extent permitted by law, the Engineer agrees to abide by City Code sections 70-801, et seq., which requires payment of a wage to covered employees equal to the amounts defined in the Code (“**Living Wage**”). If the Engineer fails to comply with the requirements of the Living Wage during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City.

**J. MODIFICATION:** This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

**K. NO THIRD PARTY BENEFICIARIES:** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

**L. NON – EXCLUSIVITY FOR THE CITY:** This Agreement is non-exclusive and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

**M. NON – WAIVER:** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach will not affect or constitute a waiver of either party’s right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**N. ORDER OF DOCUMENTS:** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; the RFQ; the Engineer’s Proposal.

**O. OWNERSHIP INTEREST DISCLOSURE:** The Engineer will provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Engineer and stating that no other person holds an ownership interest in the Engineer via a counter letter. For the purposes hereof, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Engineer fails to submit the required affidavits, the City may, after thirty (30) days’ written notice to the Engineer, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**P. OWNERSHIP OF DOCUMENTS:** All data collected by the Engineer and all documents, notes, drawings, tracings, and files collected or prepared for the Project, except the Engineer’s personnel and administrative files, shall upon payment therefore become and be the property of the City and the City shall not be restricted in any way whatsoever in the use of such material for the specific purpose intended; provided, however, that any use except for the specific purpose intended will be without liability or legal exposure to the Engineer. Notwithstanding anything to the contrary contained herein, any tools, systems or information used by the Engineer to provide the Services hereunder, including computer software (object code and source code), know-how, methodologies, equipment or processes and the intellectual property inherent therein and appurtenant thereto, shall remain the sole and exclusive property of the Engineer or its suppliers. The Engineer makes no representations as to the compatibility of files and deliverables with the City’s hardware and/or software configurations unless specifically set forth in this Agreement. Because data stored on electronic media can deteriorate undetected or be modified, the Engineer shall not be held liable for the completeness or accuracy of the electronic data after the acceptance by the City. Only the submitted hard copy documents with the Engineer’s seal on them will be considered instruments of service hereunder. If there is a discrepancy between the electronic files and the hard copies, the hard copies shall govern.

**Q. PERFORMANCE MEASURES:** The City will measure the performance of the Engineer according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

If the Engineer fails to perform according to the Agreement, the City will notify the Engineer. If there is a continued lack of performance after notification, the City may declare the Engineer in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting Engineer for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Engineer.

**R. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT:** No elected official or employee of the City shall have a financial interest, direct or indirect, in this

Agreement. For purposes of this Section, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Engineer, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Engineer pursuant to this Agreement without regard to the Engineer's satisfactory performance of such Services.

**S. PROHIBITION ON POLITICAL ACTIVITY:** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**T. REMEDIES CUMULATIVE:** No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate, and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

**U. RULES OF CONSTRUCTION:** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement will be construed or resolved in favor of or against the City or the Engineer on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender will include the neutral and other gender.

**V. SEVERABILITY:** Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

**W. SPECIAL CONDITIONS FOR CDBG – FUNDED CONTRACTS:** The “HUD Compliance Provisions for Direct Grantee Construction and Professional Services Contracts,” attached as Exhibit “A” to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to the Engineer that the City intends to seek reimbursement from the Community Development Block Grant Program in connection with the work to be performed under this Agreement.

**X. SUBCONTRACTOR REPORTING:** The Engineer will provide a list of all persons,



natural or artificial, who are retained by the Engineer at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Engineer's work for the city. In regard to any subcontractor proposed to be retained by the Engineer to perform work on the Agreement with the City, the Engineer must provide notice to the City within thirty (30) days of retaining said subcontractor. If the Engineer fails to submit the required lists and notices, the City may, after 30 days' written notice to the Engineer, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

**Y. SURVIVAL OF PROVISIONS:** All representations and warranties and all responsibilities regarding record retention, access, and ownership, cooperation with Office of Inspector General investigations, and indemnification shall survive the termination of this Agreement and continue in full force and effect thereafter.

#### **ARTICLE XIV – ELECTRONIC SIGNATURE AND DELIVERY**

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

*(Signatures and Exhibits contained on the following pages)*

*(Remainder of this page intentionally left blank)*

IN WITNESS WHEREOF, the City and the Engineer, through their duly authorized representatives, execute this Agreement.


**CITY OF NEW ORLEANS**

BY:   
LATOYA CANTRELL,  
MAYOR

Executed on this 8<sup>th</sup> day of November, 2019.

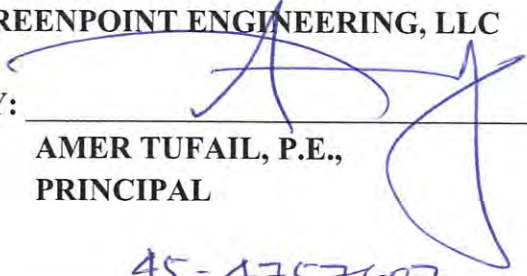
**FORM AND LEGALITY APPROVED:**

Law Department

By: 

Printed Name: Tracy Tyler

**GREENPOINT ENGINEERING, LLC**

BY:   
AMER TUFAIL, P.E.,  
PRINCIPAL

45-4757607

**CORPORATE TAX I.D.**

**EXHIBITS:**

“A” – Engineer’s Approved Hourly Rates

“B” – HUD Compliance Provisions for Direct Grantee Contracts

**EXHBIT "A"**  
**ENGINEER'S APPROVED HOURLY RATES**

	ENG-SR	ENG-PE1	ENG-EIT	ADM-CL	Direct Expense	Total
Project Scoping	\$202.00	\$145.00	\$105.00	\$65.00		
Mapping repair sites	1		4	16		\$1,662
Field data collection (at 2-hr/site)		170	170		\$250.00	\$42,750
Data processing and analysis	8		20	40		\$6,316
Project Scoping Memorandum	4		40	8		\$5,528
						<b>\$56,256</b>



**EXHBIT “B”**  
**HUD COMPLIANCE PROVISIONS FOR DIRECT GRANTEE**  
**CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS**

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**1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**

*(Applicable to contracts and subcontracts exceeding \$10,000)*

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, 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, 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.
- B. 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 without regard to race, color, religion, sex, or national origin.
- C. 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 by the Contract Compliance Officer advising the said labor union or workers 'representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, 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 Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G 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, as amended, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department 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 Contractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

**2. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS** (applicable to contracts and subcontracts exceeding \$10,000)

- A. As used in these specifications:
- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
  - (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
  - (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - (4) "Minority" includes:
    - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
    - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);
    - (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
    - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. When the Contractor, or any contractor, at anytime, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or Contractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has



employees. The overall good faith performance by other Contractors or contractors toward a goal in an approved Plan does not excuse any covered Contractor's or contractor's failure to take good faith efforts to achieve the Plan goals and timetables.

- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.
- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
  - (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
  - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
  - (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for

referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.

- (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.
- (6) Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on a bulletin board accessible to all employees at each location where construction work is performed.
- (7) Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination, or other employment decisions including specific review of these items with onsite supervisory personnel such as Superintendents, General Foreman, etc. Prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- (8) Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and Contractors with whom the Contractor does or anticipates doing business.
- (9) Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- (10) Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer, and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.

- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60 3.
  - (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
  - (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
  - (14) Ensure that all facilities and company activities are no segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
  - (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitation to minority and female Contractor associations and other business associations.
  - (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.
- I. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or national origin.
- K. The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to E.O. 11246.



- L. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause including suspension, termination, and cancellation of existing subcontracts as may be imposed or ordered pursuant to E.O.11246, as amended.
- M. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph G of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60 4.8.
- N. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include for each employee, the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number where assigned, social security number, race, sex, status (e.g., mechanic, apprenticeship trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.
- O. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application or requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

### **3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION**

*(Applicable to contracts and subcontracts exceeding \$10,000)*

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Contractor's construction work (whether or not it's federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to

Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the total work hours performed.

- C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any).

#### **4. CERTIFICATION OF NONSEGREGATED FACILITIES**

*(Applicable to contracts and subcontracts exceeding \$10,000)*

By the entering into this contract, Contractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offer or, applicant or Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason. He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed contractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed contractors (except where proposed contractors have submitted identical certifications for specific time periods).

#### **5. CIVIL RIGHTS**

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

#### **6. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974**

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be

subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**7. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES (Section 3 Clause)** *(applicable to contracts and subcontracts exceeding \$100,000 funded by Section 3 covered assistance)*

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u(section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon finding that the Contractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any Contractor where the Contractor has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR part 135.
- E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future unassisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act(25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest



extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

**8. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**

*(Applicable to contracts and subcontracts exceeding \$10,000)*

- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding that the Contractors bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Contractor will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

**9. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED**

The Contractor agrees that no otherwise qualified individual with disabilities shall, solely by reason of his disability, be denied the benefits, or be subjected to discrimination including discrimination in employment, any program or activity that receives the benefits from the federal financial assistance.

## **10. AGE DISCRIMINATION ACT OF 1975**

The Contractor shall comply with the provisions of the Age Discrimination Act of 1975. No person in the United States shall, on the basis of age, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under, any program or activity receiving federal financial assistance.

## **11. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

*(Applicable to contracts and subcontracts exceeding \$100,000)*

The Contractor and all contractors shall comply with the requirements of the Clean Air Act, as amended, 42 USC 1857 et seq., the Federal Water Pollution Control Act, as amended, 33 USC 1251 et seq., and the regulations of the Environmental Protection Agency with respect thereto, at 40 CFR Part 15, as amended. In addition to the foregoing requirements, all nonexempt Contractors and contractors shall furnish to the owner, the following:

- A. A stipulation by the Contractor or contractors, that any facility to be utilized in the performance of any nonexempt contract or subcontract, is not listed on the List of Violating Facilities issued by the Environmental Protection Agency (EPA) pursuant to 40 CFR Part 15, as amended.
- B. Agreement by the Contractor to comply with all the requirements of Section 114 of the Clean Air Act, as amended, (42 USC 1857 c 8) and Section 308 of the Federal Water Pollution Control Act, as amended, (33 USC 1318) relating to inspection, monitoring, entry, reports and information, as well as all other requirements specified in said Section 114 and Section 308, and all regulations and guidelines issued there under.
- C. A stipulation that as a condition for the award of the contract, prompt notice will be given of any notification received from the Director, Office of Federal Activities, EPA, indicating that a facility utilized, or to be utilized for the contract, is under consideration to be listed on the EPA List of Violating Facilities.
- D. Agreement by the Contractor that he will include, or cause to be included, the criteria and requirements in paragraph (1) through (4) of this section in every nonexempt subcontract and requiring that the Contractor will take such action as the government may direct as a means of enforcing such provisions.

## **12. SPECIAL CONDITIONS PERTAINING TO HAZARDS, SAFETY STANDARDS AND ACCIDENT PREVENTION**

- A. Lead-Based Paint Hazards. The construction or rehabilitation of residential structures is subject to the HUD Lead Based Paint regulations, 24 CFR Part 35. The Contractor and contractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.
- B. Use of Explosives. When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats. The Contractor shall notify all owners of public utility property

of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Contractor or his Surety for damages that may be caused by such use.

- C. Danger Signals and Safety Devices (Modify as Required). The Contractor shall make all necessary precautions to guard against damages to property and injury to persons. He shall put up and maintain in good condition, sufficient red or warning lights at night, suitable barricades and other devices necessary to protect the public. In case the Contractor fails or neglects to take such precautions, the Owner may have such lights and barricades installed and charge the cost of this work to the Contractor. Such action by the Owner does not relieve the Contractor of any liability incurred under these specifications or contract.

### **13. FLOOD DISASTER PROTECTION**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973(P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act. Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

### **14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS**

The Department of Housing and Urban Development, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and records of the Contractor which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the unit of local government and will be maintained for a period of five (5) years from the official date of the final closeout of the grant.

### **15. INSPECTION**

The authorized representative and agents of the Department of Housing and Urban Development shall be permitted to inspect all work, materials, payrolls, records of personnel, invoices of materials, and other relevant data and records.

### **16. REPORTING REQUIREMENTS**

The Contractor shall complete and submit all reports, in such form and according to such schedule, as may be required by the Owner.



## **17. CONFLICT OF INTEREST**

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the Contractor shall cause to be incorporated in all subcontracts the language set forth in this paragraph prohibiting conflict of interest.
- B. No member of or delegate to Congress, or Resident Commissioner, shall be admitted to any share or part of this contract or to any benefit that may arise therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

## **18. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED** *(applicable to contracts and subcontracts of \$10,000 and under)*

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

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.
- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

## **19. PATENTS**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.
- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the

Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

## **20. COPYRIGHT**

No materials, to include but not limited to reports, maps, or documents produced as a result of this contract, in whole or in part, shall be available to the Contractor for copy-right purposes. Any such materials produced as a result of this contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner.

## **21. TERMINATION FOR CAUSE**

If, through any cause, the Contractor shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Contractor shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the Contractor of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the Contractor under this contract shall, at the option of the Owner, become the Owner's property and the Contractor shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Contractor shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the Contractor, and the Owner may withhold any payments to the Contractor for the purpose of set-off until such time as the exact amount of damages due the Owner from the Contractor is determined.

## **22. TERMINATION FOR CONVENIENCE**

The Owner may terminate this contract at any time by giving at least ten (10) days' notice in writing to the Contractor. If the contract is terminated by the Owner as provided herein, the Contractor will be paid for the time provided and expenses incurred up to the termination date.

## **23. ENERGY EFFICIENCY**

The Contractor shall comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163).

## **24. SUBCONTRACTS**

- A. The Contractor shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind contractor to the Contractor by the terms of the contract documents insofar as applicable to the work of contractors and to give the Contractor the same power as regards

terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.

- D. Nothing contained in this contract shall create any contractual relation between any Contractor and the Owner.

## **25. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Contractor represents and warrants that it and its contractors are not debarred, suspended, or placed in ineligibility status under the provisions of 2 CFR 200.213(government debarment and suspension regulations).

## **26. PROTECTION OF LIVES AND HEALTH**

The Contractor shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages to persons or property, either on or off the worksite, which occur as a result of his prosecution of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by Chapter XIII, Bureau of Labor Standards, Department of Labor, Part 1518, Safety and Health Regulations for Construction, as outlined in the Federal Register, Volume 36, No. 75, Saturday, April 17, 1971, Title 29 -LABOR, shall be observed and the Contractor shall take or cause to be taken, such additional safety and health measures as the Owner may determine to be reasonably necessary.

## **27. BREACH OF CONTRACT TERMS**

Any violation or breach of terms of this contract on the part of the Contractor or the Contractor's contractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

## **28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced although it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

## **29. CHANGES**

The Owner may, from time to time, request changes in the scope of the services of the Contractor to be performed hereunder. Such changes, including any increase or decrease in the amount of the Contractor's compensation which are mutually agreed upon by and between the Owner and the Contractor, shall be incorporated in written and executed amendments to this Contract.

## **30. PERSONNEL**

The Contractor represents that it has, or will secure at its own expense, all personnel required in performing the services under this Contract. Such personnel shall not be employees of or have any contractual relationship with the Owner. All the services required hereunder will be performed by the



Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

**31. ANTI-KICKBACK RULES**

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The Contractor shall comply with all applicable "Anti-Kickback" regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to insure compliance by the contractors with such regulations, and shall be responsible for the submission of affidavits required of contractors there under except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**32. ASSIGNABILITY**

The Contractor shall not assign any interest in this Contract, and shall not transfer any interest in the same (whether by assignment or novation) without prior written approval of the Owner provided that claims for money due or to become due the Contractor from the Owner under this Contract may be assigned to a bank, trust company, or other financial institution, or to a Trustee in Bankruptcy, without such approval. Notice of any such assignment or transfer shall be furnished promptly to the Owner.

**33. INTEREST OF CONTRACTOR**

The Contractor covenants that he presently has no interest and shall not acquire any interest direct or indirect in the above described project or any parcels therein or any other interest which would conflict in any manner or degree with the performance of his services hereunder. The Contractor further covenants that in the performance of this Contract no person having any such interest shall be employed.

**34. POLITICAL ACITIVITY**

The Contractor will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

**35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET**

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars 2 CFR 200, as they relate to the use of Federal funds under this contract.

**36. DISCRIMINATION DUE TO BELIEFS**

No person with responsibilities in operation of the project to which this grant relates will discriminate with respect to any program participant or any applicant for participation in such program because of political affiliation or beliefs.

### 37. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the Contractor under this Contract are confidential, and the Contractor agrees that they shall not be made available to any individual or organization without prior written approval of the Owner.

### 38. LOBBYING

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

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, 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.
- B. If any funds other than federally 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 Contractor shall complete and submit Standard Form LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

### 39. FEDERAL LABOR STANDARDS PROVISIONS

The Contractor shall abide by the requirements of the Federal Labor Standards Provisions (form HUD-4010) as follows.

Federal Labor Standards Provisions  
U.S. Department of Housing and Urban Development  
Office of Labor Relations

Applicability. The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

- A. 1. (I) Minimum Wages. All laborers and mechanics employed or working upon the site of the work will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of 29 CFR 5.5(a)(1)(iv); also, regular contributions made or costs

4. Apprentices and Trainees.

- (i). Apprentices. Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bonafide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
- (ii). Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe



benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

- (iii). Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.
- 5. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract
- 6. Subcontracts. The Contractor or Contractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Contractor or lower tier Contractor with all the contract clauses in this paragraph.
- 7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Contractor as provided in 29 CFR 5.12.
- 8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.
- 9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its contractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.
- 10. (i) Certification of Eligibility. By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a) (1) or to be awarded HUD contracts or participate in Deprograms pursuant to 24 CFR Part 24.

incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis Bacon poster (WH-1321) shall be posted at all times by the Contractor and its contractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

- (ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
  - (1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and
  - (2) The classification is utilized in the area by the construction industry; and
  - (3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.
- (b). If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)
- (c). In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
- (d). The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (ii) (b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

- (iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
  - (iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the planer program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)
2. Withholding. HUD or its designee shall upon its own action or upon written request of unauthorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainer helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.
3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fid fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)



- (ii) (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3) (i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all contractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)
- (b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
- (1). That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;
  - (2). That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR 3;
  - (3). That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.
- (c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).
- (d) The falsification of any of the above certifications may subject the Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.
- (iii) The Contractor or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Contractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

- (ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.
  - (iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C.1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... Makes, utters or publishes any statement knowing the same to be false..... Shall be fined not more than \$5,000 or imprisoned not more than two years, or both."
11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.
- B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.
- (1) Overtime requirements. No Contractor or Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.
  - (2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Contractor responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.
  - (3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or contractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or contractor for unpaid wages and liquidated damages as provided in the

clause set forth in subparagraph (2) of this paragraph.

- (4) Subcontracts. The Contractor or contractor shall insert in any subcontracts the clauses set forth in subparagraph (1) through (4) of this paragraph and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for compliance by any Contractor or lower tier contractor with the clauses set forth in subparagraphs (1) through (4) of this paragraph.

C. Health and Safety. The provisions of this paragraph C are applicable only where the amount of the prime contract exceeds \$100,000.

- (1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
- (2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.
- (3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each contractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

#### **40. SOLID WASTE DISPOSAL ACT**

The Grantee shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

Applicability.(a)(1) This guideline applies to all procurement actions using federal funding and involving items designated by EPA in this part, where the purchase price of the item exceeds \$10,000, the value of the quantity acquired by the preceding fiscal year exceeds \$10,000. This guideline shall require that all solid waste management services procurements are conducted in a manner that maximizes energy and resource recovery. (2) This guideline applies to any public agency using appropriated Federal funds to procure designated items, and to persons contracting with any such agencies with respect to work performed under such contracts. (3) The \$10,000 threshold applies to public agencies as a whole rather than to agency subgroups such as regional offices or sub-agencies of a larger department or agency.

(b) The term procurement actions includes:

- (1) Purchases made directly by a procuring agency or purchases made directly by any person (e.g., a contractor) in support of work being performed for a procuring agency using federal funds



- (2) Any purchases of designated items made “indirectly” by a procuring agency, as in the case of procurements resulting from grants, loans, funds, and similar forms of disbursements of monies.

(c) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

#### **41. CONFIDENTIALITY**

The Contractor shall comply with the Confidentiality regulations, per 24 CFR 574.440. Per 24 CFR 574.440, “the grantee shall agree, and shall ensure that each project sponsor agrees, to ensure the confidentiality of the name of any individual assisted under this part and any other information regarding individuals receiving assistance.” The Contractor shall ensure all documentation and written agreements protect the confidentiality of all individuals/agencies funded or receiving any assistance under this grant.

#### **42. REPAYMENT OF FUNDS**

The Contractor acknowledges that funds provided through this Agreement are Federal funds administered by HUD and that all funds provided by this Agreement are subject to audit, disallowance, and repayment. Any disagreement with adverse findings by HUD may be challenged pursuant to Federal regulations, however, the Contractor shall promptly return to Grantee any and all funds that are found to be ineligible, unallowable, unreasonable, a duplication of benefits, or non-compliance, no matter the cause. This clause shall survive indefinitely the termination of this Agreement for any reason.

#### **43. DUPLICATION OF BENEFITS**

The Contractor shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). The Contractor must comply with HUD’s requirements for duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal Register notice requires compliance with the following HUD guidance documents: (1) the guidance published by HUD in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060); and (2) the guidance document entitled “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recover (DR) Assistance,” issued on July 25, 2013.

#### **44. LIMITED ENGLISH PROFICIENCY (LEP)**

Assistance to Those with Limited English Proficiency. The Contractor agrees to take all reasonable actions to communicate with persons who have Limited English Proficiency (LEP) to ensure that such persons have meaningful access and an equal opportunity to participate in the program(s) and/or services funded under this Agreement.