

K15-390

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
CITY OF NEW ORLEANS
AND
RICHARD C. LAMBERT CONSULTANTS, L.L.C.**

**MIS-14-03
ISAAC DRAINAGE POINT REPAIRS**

May **THIS AGREEMENT** (the "Agreement") is made and entered into this 5th day of May, 2015 (the "Effective Date"), by and between the City of New Orleans, represented herein by Mitchell J. Landrieu, Mayor (the "Owner" or "City"), and Richard C. Lambert Consultants, LLC. represented herein by its duly authorized representative, Richard C. Lambert, Principal and Owner (the "Consultant").

WHEREAS, the Consultant was qualified to provide professional design, engineering, and construction management and inspection services to the City pursuant to Request for Qualifications No. 500C-01553, dated October 31, 2013 and Addendum No. 1 dated November 18, 2013 (collectively, the "RFQ");

WHEREAS, in response to a request from the Department of Public Works dated October 3, 2014 seeking a proposal from the Consultant for Isaac Drainage Point Repairs Project No. MIS-14-03 (the "Project") submitted a proposal on January 22, 2015 (the "Proposal"); and

WHEREAS, the Consultant is qualified and desires to provide the required services for the Project, and the City has selected the Consultant to provide the required services for the Project;

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

I. CONSULTANT'S OBLIGATIONS.

A. Services.

1. The Consultant's basic services shall include professional engineering services to prepare construction and bid documents for the Project.
2. Plans and specifications for the project shall include the following design features where applicable: roadway pavement complete with curbs; a base for the roadway pavement; subsurface drain line improvements and repairs, adjustments and repair as required; and, adjustments as required at driveways, intersecting streets, and project termini. Final grades must be compatible with adjacent properties and ensure a positive flow of water towards catch basins. Installation of ramps for the handicapped at intersections (including medians) shall be included.
3. The Consultant shall provide data and computations to support the design of any new drain line installation.

4. Plans shall be prepared using City-compatible AutoCAD software. The Consultant shall also submit to the City all designs, computations, original reproducible drawings, typed originals of all specifications and proposal documents as required, and the final drawings in electronic DWG and/or PDF file formats compatible with the City's software systems.
5. All plans must be signed and stamped by a Louisiana Registered Civil Engineer of the Consultant's firm responsible for the services performed.
6. The City reserves the right to approve or disapprove all engineers, workers, and other field personnel assigned to the Project.
7. The Consultant shall obtain verification from the utilities of all locations shown in the above. The Consultant shall report all verified conflicts to the City's Department of Public Works for coordination.
8. The Consultant shall, in a timely manner, contact the City's Department of Parks and Parkways relative to horticultural requirements and resolve any conflicts prior to completion of final plans.
9. The Consultant shall communicate to a single point of contact who shall be the City's Director of the Department of Public Works or the Director's Authorized Representative. Meetings with the City shall be scheduled as required by the City to solicit input on project progress and upcoming issues or concerns. Consultant shall prepare and deliver a record of decisions and action items to the City for each meeting.
10. The Consultant shall provide the City with all services required for preparation of preliminary design plans, final plans, specifications, and bid documents. These services include, but are not limited to, environmental field investigations, preliminary plans, computations used to develop design, participation in the plan-in-hand conference, a preliminary estimate of a construction contract cost based on estimated quantities developed from the preliminary plans, and a final estimate of construction contract cost based on estimated quantities developed from the final plans.
11. It is the intent of this Agreement that (with the exception of data specifically listed to be furnished by the City) the Consultant shall obtain all data and furnish all services and materials required to fully develop and complete the plans, specifications, and bid proposals through the contract plan stages, including any and all work beyond the limits of the project that may be necessary to make proper connection at the beginning and end of the project, at street intersections, driveways, walkways and bikeways.
12. In addition, the Consultant shall obtain all data and furnish all services required during the construction stage, maintain all records necessary during the construction stage, ensure compliance with plans and specifications, and prepare partial and final payment to the Construction Consultant. If directed by the City, the Consultant will establish suitable roadway and flow line elevations and grades. Attendance by the Consultant or their

representatives at legal hearings and appearances in court are to be furnished by the Consultant.

13. The Consultant shall attend meetings, conferences, and public hearings as required and shall provide all items required to accomplish these results, whether or not specifically mentioned in this Agreement, the costs of which are included in Article III Compensation specified hereunder.
14. The Consultant shall be responsible for the relevance and accuracy of items and details included in the plans, specifications, or other contractual documents. The City will review and approve such documents only for general conformance to the Scope of Services. It is understood that the preparation of preliminary and final plans, specifications, bid documents, and estimates required of the Consultant under this Agreement will meet the standard requirements of the City as to general format and content and shall be performed to the satisfaction of the City. Errors and omissions in the plans and specifications discovered subsequent to the acceptance by the City shall be corrected by the Consultant without additional compensation.
15. The Consultant is advised that these projects will be funded by Community Development Block Grants (CDBG) through the State Office of Community Development. The Special Conditions for CDBG Contracts applicable to this Agreement are attached as Exhibit "A" hereto.

B. Phases of Work. The services to be performed by the Consultant are divided into three (3) Phases of Work identified in general as follows:

- Phase I Scoping
- Phase II Design and Bidding Services
- Phase III Construction Management and Monitoring

1. PHASE I: SCOPING

- a. This phase shall consist of, but not be limited to the following services:

The Consultant shall conduct site visits of all known sites supplied by the City and determine the cause of the reported condition. If the issue is drain line related, the Consultant will identify the extent of repair necessary to fix the drain line.

If a determination cannot be provided, the site will be noted for CCTV and inspection that will be performed in Phase III of the contract.

- b. Phase I Deliverables:

(1) Scoping Report including results of all site inspections/determinations.

2. PHASE II: DESIGN AND BIDDING SERVICES

- a. Upon completion of Phase I Scoping and prior to the commencement of this phase, a pre-design conference will be held between the Consultant and the City in order to clarify any aspect of the proposed work. This phase shall consist of the furnishing of services required for the preparation of the contract documents and bidding specifications.
- b. The design shall consist of a tabulated spreadsheet of all sites with type of repair necessary to fix the drain line issue. A set of project specifications will need to be developed for bidding purposes.
- c. The Consultant shall then submit to the City electronic files and one (1) set of complete documents at a time and date mutually agreed to in advance. A written summary of the plan-in hand comments, additions, and deletions compiled by the Consultant for inclusion in the final documents shall be submitted to the City for approval.
- d. Upon receipt of the City's comments pertaining to plans and specifications, the Consultant shall revise and complete the final contract plans and specifications.
- e. A construction contract cost estimate, based on estimated quantities developed from the preliminary plans, shall be submitted with the preliminary plans.
- f. The consultant shall attend the pre-bid conference and bid opening, provide meeting notes of both meeting above, prepare all addendums, answer prospective bidder questions via addendum, prepare a bid tabulation and recommendation letter, and certify the low bidder for award.
- g. Phase II Deliverables:
 - 1 Pre-Design Meeting Notes
 - 2 Design Spreadsheet
 - 3 Project Specifications
 - 4 Plan-in-Hand meeting notes
 - 5 Written summary of plan in hand comments and additions and deletions compiled by the Consultant
 - 6 Construction contract cost estimate
 - 7 Pre-Bid Conference and Bid Opening Meeting Notes
 - 8 Addenda (If applicable)
 - 9 Bid Tabulation and Recommendation Letter

3. PHASE III: CONSTRUCTION MANAGEMENT AND MONITORING

- a. The services to be performed during construction shall consist of furnishing personnel to ensure that all work performed by the City's Construction Contractor is carried out in strict accord with the construction plans and specifications and in accordance with the Construction Consultant's schedule.

- b. A Louisiana Registered Civil Engineer shall be in charge of the work. Field construction inspector(s) experienced in roadway construction shall be provided and be on the project site at all times when construction work is being performed. Such personnel shall be qualified for their assignments and shall be approved by the City.
- c. During construction, the Consultant shall maintain all construction field records normally maintained by the City. Entries shall be made daily in the project diary to indicate the Construction Contractor's personnel on the project, as well as, the forces of the Construction Contractor, the Construction Contractor's equipment, and the work performed.
- d. The Consultant shall document and verify all pay items of work; quantities completed, and prepare partial and final requests for payment on City's forms for work satisfactorily completed by the Construction Contractor.
- e. Quantities shall be derived from the plans unless otherwise directed.
- f. The Consultant shall forward the Construction Contractor's monthly updated schedule of work with the partial payment requests and weather reports. All documents submitted to the City must be signed by the Consultant's Louisiana Registered Civil Engineer assigned to be in charge of the work.
- g. All reports shall be submitted within the time period specified by the City.
- h. The Consultant shall, in a timely manner, advise the Sewerage & Water Board of New Orleans of proposed drainage, sewer, and water work so that such facilities may be properly inspected.
- i. The Consultant shall continually observe the progress of the project, with particular emphasis on the requirements of the General and Special Specifications relative to the 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, and the timely prosecution of the work.
- j. The Consultant shall, in a timely manner, notify the City, through the Director of the Department of Public Works or the Director's Authorized Representative of all problems which may impact the project's cost or construction time.
- k. The Consultant is further required to judiciously assign its inspection personnel based on the Construction Contractor's schedule and items of work in progress. The Consultant shall submit all required documentation and process plan changes in a timely manner.
- l. The Consultant 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 Consultant will not be

- responsible or have control or charge over the acts or omissions of the Construction Contractor, Construction Subcontractors, or any agents, employees, or any other persons performing any of the work.
- m. The City and the Consultant will have the authority to reject work which does not conform to the Construction Documents. The City and the Consultant may require special inspections for testing of the work at any stage of preparation or completion.
 - n. The Consultant will not authorize or direct the Construction Contractor to deviate from the plans and specifications without written authorization from the City, through its Director of the Department of Public Works or the Director's Authorized Representative. The Consultant is not responsible for any costs incurred as a result of delays incurred in obtaining written authorization by the City for necessary or desired changes in the plans and/or specifications.
 - o. The Consultant shall submit to the City through its Director of the Department of Public Works or the Director's Authorized Representative for written approval, any plan change which increases the project's cost or time required prior to the work being authorized. Should the Consultant approve a plan change which increases the project's cost or time required, without prior written approval, the Consultant shall be liable for the increased cost. City personnel (designee) authorized to approve such plan changes shall include the Director, Chief Engineer of Design and/or Construction.
 - p. In addition to the above services, the Consultant shall coordinate the activities of the testing laboratory designated by the City to ensure that all materials entering the project are in accordance with the Project Construction Documents (plans and specifications).
 - q. The Consultant shall review all testing reports as submitted by the testing laboratory and shall report to the City if any of the work or material is not in conformance with the project's Construction Documents based upon test results. The Consultant shall review reports prepared by the testing laboratory for accuracy. The Consultant shall review and make recommendation for approval of pay requests for the testing laboratory for consistency with the testing performed.
 - r. Upon completion of this Agreement, the Consultant shall submit certified "As Built" drawings of the project on 3-mil (0.003") ebony line polyester film and in electronic format compatible with the City's CAD and software systems.
 - s. The Consultant shall submit plan changes to the City for approval within two (2) working days after signature by the Construction Contractor. The Consultant shall prepare the Construction Contractor's monthly pay request within five (5) working 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 City completed pay request form "STS 651" (signed by the Construction Contractor and the Consultant) and form "E-14 Weather and Working Day Report" (signed by the Construction Contractor and the Consultant).

- t. The Construction Contractor's invoice is to be submitted to the Consultant for review. 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 signed the invoice. Project diary and weekly progress reports shall be submitted within five (5) working days after the end of the reporting period.
- u. When notified by the Construction Contractor that, in his opinion, all items of work required by the Contract have been completed, the Consultant shall make a final inspection of the Work, including any tests of operation. After completion of this inspection, the Consultant shall, if all things are satisfactory to him, recommend acceptance of the project to the City, shall prepare an overrun/underrun statement, and establish the need, if necessary, to impose liquidated damages on the Construction Contractor. The Consultant shall conduct the one (1) year warranty inspection and provide the City with a detailed report with photographs depicting all deficiencies and listing corrective actions for which the Construction Contractor is responsible.
- v. Phase III Deliverables:
 - (1) Construction Field Records
 - (2) Monthly Pay Requests, Schedule Updates and Weather Reports
 - (3) Plan Change Requests
 - (4) Non-Conforming Materials Notifications
 - (5) Recommendation for Approval of Testing Laboratory Pay Request
 - (6) As-Built Drawings
 - (7) Final Inspection Report
 - (8) Overrun/Underrun Statement
 - (9) Warranty Inspection Report

C. General Project Deliverables. Consultant is also responsible for submitting the following general project deliverables:

- 1. Project Schedule
- 2. Monthly Progress Report and Invoice

D. Cooperation. Consultant shall cooperate with the City and any other Consultants providing services to the City as needed.

E. Standard of Care. Consultant hereby represents and warrants that it has the requisite skills and expertise necessary to perform the Services. Accordingly, Consultant shall be obligated to perform such services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which Consultant is engaged in providing similar services in major United States metropolitan areas under the same or similar circumstances. Consultant acknowledges and agrees that, at City's option, Consultant shall be

obligated to re-perform, at no additional cost to City, any or all of the Services that fail to satisfy the foregoing standard of care.

II. CITY'S OBLIGATIONS.

The City will:

- A. Administer this Agreement through the Department of Public Works; and
- B. Provide reasonable access during normal business hours to all personnel and records necessary for Consultant's performance of this Agreement;
- C. Make payments to the Consultant based on the Consultant's certified invoices, provided:
 1. The City's obligation to pay is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; and (b) satisfactory performance of the services and conditions required by this Agreement.
 2. Unless specifically authorized by a validly executed amendment, the City is not obligated under any circumstances to pay for any work performed or costs incurred by the Consultant that: (a) exceeds the maximum amount payable established by this Agreement; (b) is beyond the scope or duration of this Agreement; (c) is for services on days on which construction was suspended, due to circumstances beyond its control, and no services were performed; (d) arises from or relates to the correction of errors or omissions of the Consultant or its subcontractors; or (e) the City is not expressly obligated to pay under this Agreement.
 3. 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.

All compensation owed to the Consultant under this Agreement is contingent upon the appropriation and allocation of funds by the City.

III. COMPENSATION.

A. Rate of Compensation. For services provided herein, the City shall pay and the Consultant agrees to accept, as full compensation for the engineering services to be performed under this agreement, as shown in the Fee Schedule below:

Phase I	SCOPING	\$ 170,600.00	Lump Sum
Phase II	DESIGN & BIDDING SERVICES	\$ 48,063.00	Lump Sum
Phase III	CONSTRUCTION MANAGEMENT	\$ <u>TBD</u>	Lump Sum
	TOTAL	\$ 218,663.00	

The lump sum amounts represent all costs incurred by the Consultant including labor, direct and indirect expenses, overhead, and profit. The Phase III to be determined (TBD) Lump Sum amount will be addressed by an amendment to be issued before commencement of construction.

B. Truth-In-Negotiation. As of the Effective Date of this Agreement, Consultant represents and warrants that the rates charged City as set forth in this Article III for the performance of the Services are no higher than those charged Consultant's most favored customer for the same or substantially similar services. In the event Consultant's "most favored customer" rates are reduced during the term of this Agreement, Consultant shall be obligated to promptly notify City of such reduction in writing, and such reduced rates shall apply to any services provided on or after the date that Consultant first reduced such rates. City shall have the right to enforce this provision for up to one (1) year following the termination of this Agreement.

C. Detailed Monthly Invoices. As a prerequisite to payment, Consultant shall submit to City monthly invoices describing in detail, at a minimum, the services performed and time expended in the performance of such services.

The Consultants' monthly invoice shall show the percentage and dollar amount of the work accomplished to date for such submission.

D. Maximum Compensation; Subject to Appropriation. The City's obligation to compensate Consultant hereunder shall not at any time exceed the maximum compensation, in the aggregate, of TWO HUNDRED EIGHTEEN THOUSAND SIX HUNDRED AND SIXTY THREE DOLLARS AND 00/100 (**\$218,663.00**), absent a written amendment executed by the parties. Further, all compensation owed Consultant pursuant to this Agreement is contingent upon the appropriation and allocation of funds by City.

E. No Payment for Services Beyond Scope of Agreement. Except as may be provided by laws governing emergency procedures, officers and employees of City are not authorized to request Consultant to provide additional services that would result in the performance of services beyond the scope set forth in Article I, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such additional services and/or expenditures. City shall not be required to reimburse Consultant for any services that are provided by Consultant that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto.

F. No Payments in Excess of Maximum Compensation. Officers and employees of City are not authorized to offer or promise to Consultant additional funding for the contract in excess of the maximum amount of funding set forth above. Additional funding for services provided under this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such increase and the Department of Finance has certified the availability of such additional funding. Absent the prior duly authorized amendment of this Agreement and the necessary certification of the Department of Finance, City shall not be required to honor—and will not remit to Consultant—any offered or promised additional funding for any of the Services performed pursuant to this Agreement in excess of the maximum amount set forth above.

IV. DURATION.

A. Initial Term. This Agreement shall commence on the Effective Date and shall continue for a period of twelve (12) months. The Consultant agrees to complete each phase as shown in the schedule below. A written Notice to Proceed (NTP) will be supplied by the City for each Phase.

Phase I. SCOPING	120	Calendar days after NTP
Phase II. DESIGN & BIDDING SERVICES	30	Calendar days after NTP
Phase III. CONSTRUCTION MANAGEMENT	TBD	Calendar days after NTP

B. Extension. The City may extend the term this Agreement for up to five (5) successive one (1) year periods pursuant to validly executed amendments, provided that: any extension of this Agreement shall be subject to and contingent upon the encumbrance of funds; and the City determines that the extension facilitates the continuity of services provided under this Agreement.

V. TERMINATION.

A. Termination for Convenience. The City may terminate this Agreement at any time during the term of the Agreement by giving the Consultant written notice of its intention to terminate at least thirty (30) days before the intended date of termination. In the event City elects to terminate for convenience, City shall be obligated to pay Consultant only for those services performed up to and through the date of termination.

B. Termination for Cause. The City may terminate this Agreement immediately for cause. "Cause" includes, without limitation, any failure to perform any obligation or abide by any condition of this Agreement, including without limitation failure to comply with the requirements of the City's Disadvantaged Business Enterprise program. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause will be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

VI. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.

A. DBE Program Compliance. The Consultant agrees to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including, without limitation, all reporting requirements and specific DBE participation goals. The Consultant's failure to carry out these requirements, as determined in good faith by the DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the City's Policy Memorandum for the DBE Program.

B. DBE Compliance Reporting. The Consultant agrees to provide written reports to the City's Director of Supplier Diversity on all expenditures made to achieve compliance with the

DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

1. The name and business address of each DBE involved in the contract;
2. A description of the work performed and/or the product or service supplied by each DBE;
3. The date and amount of each expenditure made to a DBE; and
4. Such other information as may assist the DBE Compliance Officer in determining State's compliance with the DBE Program and the status of any DBE performing any portion of the contract.

C. Access to Books and Records. The Consultant agrees to grant the DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program.

D. Disqualification from Future Contracts. If the City terminates this Agreement in connection with any misrepresentation of the Consultant's DBE status, the Consultant may be disqualified from contracting with or participating in any contracts with City contracts with the City of New Orleans.

VII. INDEMNITY.

A. Indemnity. To the fullest extent permitted by law, the Consultant 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 Consultant 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 Consultant under this Agreement; and
2. Any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of its obligation under this Agreement.

B. Limitation. The Consultant'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 Consultant nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Consultant 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 Consultant is ultimately absolved from liability.

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

VIII. INSURANCE.

A. The Consultant, at its own expense, will purchase and at all times maintain in full force and effect for the duration of the Agreement policies of insurance sufficient to provide the following insurance coverage and requirements on a primary basis for all liability, demands, claims, and suits (including loss of use) that may arise out of or result from the Consultant's performance of services under this Agreement, whether performed by the Consultant or any subcontractor, partner, supplier, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable:

1. Workers Compensation and Employer's Liability.

- a. Must meet the minimum requirements of the Louisiana Revised States.
- b. Employer's Liability with minimum acceptable limits of \$500,000;
- c. Must include Other States endorsement
- d. These requirements do not apply if the Consultant has no employees.

2. Professional Liability.

- a. Minimum acceptable per claim and annual aggregate limits as follows:
 - \$500,000 (projects with less than \$1,000,000 total construction value)
 - \$1,000,000 (projects with \$1,000,000-\$5,000,000 total construction value);
 - \$1,000,000/\$2,000,000 (projects with \$5,000,000.01-\$10,000,000 total construction value);
 - \$5,000,000 (projects with \$10,000,000.01-\$25,000,000 total construction value).
- b. Must include a worldwide policy territory, contractual liability coverage sufficient to meet the obligations of the Agreement, and coverage for punitive damages unless prohibited by the jurisdiction where a claim is brought.
- c. For claims made policies, the retroactive date of coverage shall be no later than the inception date of claims coverage, and any retroactive date applicable to future coverage will be maintained at this inception date or an extended discovery period that will be exercised for a period of five (5) years from the acceptance of the project.
- d. Notwithstanding any other conditions of this Agreement, professional liability insurance must be maintained for at least five (5) years following the acceptance of the work.

3. General Liability.

- a. Written on an occurrence basis with minimum acceptable limits of \$1,000,000 per occurrence and \$2,000,000 aggregate.
 - b. Must include independent contractors, personal and advertising injury, contractual liability, premises liability, and products/completed operations, explosion, collapse and underground property damage.
4. Commercial Auto Liability.
- a. Minimal limit Combined Single Limit of \$500,000;
 - b. Any Auto or All Owned Autos and Non-Owned and Hired Autos; and
 - c. Additional Insured endorsement in favor of The City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, and volunteers.
- B. All policies of insurance must:
- 1. Name as additional insureds the City of New Orleans, its elected and appointed officials, agents, directors, servants, employees and volunteers;
 - 2. include a waiver of subrogation in favor of the City of New Orleans, its elected and appointed officials, agents, directors, servants, employees, volunteers, and any other entities who may require waivers; and
 - 3. be endorsed to provide thirty (30) days prior written notice of cancellation, non-renewal, or reduction in coverage or limits.
- C. All insurers providing insurance for the Consultant must:
- 1. Be duly licensed and lawfully authorized by the State of Louisiana to issue insurance policies for the limits and coverage as required by the Agreement; and
 - 2. Have a minimum rating of a “X” (ten) as of the most current edition of A.M. Best’s Key Rating Guide unless otherwise approved by the City.
- D. The Consultant will:
- 1. Provide the City, as requested, with:
 - a. Proof of coverage for each required policy of insurance, including the disclosure of any deductible or self-insured retention;
 - b. A complete copy of all policies, forms and endorsements; and
 - c. Statements disclosing of any policy aggregate limit and the extent to which it is impaired.
 - 2. Without notice from the City:
 - a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work;
 - b. Substitute insurance coverage acceptable to the City within thirty (30) days if any insurance company providing any insurance to the Consultant with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and

c. Notify the City's Risk Manager in writing within forty-eight (48) hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

3. Require all subcontractors to maintain the same insurance coverage at limits at least equal to those required of the Consultant for each portion of services that the subcontractor is to perform.

E. The City may suspend or terminate the Agreement for cause for the Consultant's failure to purchase, furnish, deliver, or maintain insurance, or provide evidence of insurance, as required by the Agreement. The Consultant's failure to purchase and maintain insurance will not relieve the Consultant from any liability under the Agreement and the insurance requirements will not be construed to conflict with the Consultant's indemnity obligations under the Agreement. The Consultant is responsible for any losses, expenses, damages, claims and/or suits and costs of any kind that exceed the Consultant's limits of liability or which may be outside the coverage scope of the Consultant's insurance policies.

IX. NOTICE.

Any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

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

To the Consultant: Richard C. Lambert, P.E.
Richard C. Lambert Consultants, LLC.
900 West Causeway Approach
Mandeville, LA 70471

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 Agreement shall be construed to restrict the transmission of routine communications between representatives of the City and the Consultant.

X. INDEPENDENT CONTRACTOR STATUS.

A. Independent Contractor Status. The Consultant 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 Worker's Compensation Coverage. The City will not be liable to the Consultant, 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 Consultant 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 Consultant, 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 Consultant 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 Consultant has been and will be free from any control or direction by the City over the performance of the services covered by this contract; (b) the services to be performed by the Consultant are outside the normal course and scope of the City's usual business; and (c) the Consultant has been independently engaged in performing the services required under this Agreement prior to the Effective Date.

D. Waiver of Benefits. The Consultant, 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.

XI. ADDITIONAL TERMS AND CONDITIONS.

A. Non-Discrimination. In the performance of this Agreement, the Consultant 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 the Consultant in any of Consultant'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 the Consultant. The Consultant 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.

B. Non-Discrimination in Employment. In all hiring or employment made possible by, or resulting from this Agreement, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Consultant's employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, 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, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. The Consultant will require all subcontractors to comply with the requirements of this article.

C. 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.

D. 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.

E. Assignability. The Consultant will not assign any interest in this Agreement and will not transfer any interest in the same without the City's prior written consent.

F. Jurisdiction & Venue. For all claims arising out of or related to this Agreement, the Consultant 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.

G. Governing 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.

H. 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.

I. 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.

J. 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 Consultant 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

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. Conflict of Interest. To ensure that the Consultant's efforts do not conflict with the City's interests, and in recognition of the Consultant's obligations to the City, the Consultant 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 Consultant 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 Consultant's performance of this Agreement. The City will make the final determination whether the Consultant may accept the other employment.

N. 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 Consultant, 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 Consultant pursuant to this Agreement without regard to the Consultant's satisfactory performance of such Services.

O. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by Consultant in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Consultant's personnel and administrative records and any tools, systems, and information used by the Consultant to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form with the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Consultant's consent and for no for no additional consideration to the Consultant.

P. Ownership Interest Disclosure. The Consultant will provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Consultant and stating that no other person holds an ownership interest in the Consultant 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 Consultant fails to submit the required affidavits, the City may, after thirty (30) days’ written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

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

R. Employee Verification. The Consultant 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 Consultant a sworn affidavit verifying compliance with items (i) and (ii) above. The Consultant acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation, and may further result in the Consultant being ineligible for any public contract for a period of three years from the date the violation is discovered. The Consultant 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 Consultant 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.

S. Modifications. This Agreement shall not be modified except by written amendment executed by authorized representatives of the parties.

T. Non-Solicitation Statement. The Consultant 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 Consultant 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

U. Convicted Felon Statement. The Consultant swears that it complies with City Code §2-8 (c). No Consultant 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.

V. Audit and Other Oversight: It is agreed that the Consultant will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the Consultant 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 Consultant agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

W. Complete 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.

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IN WITNESS WHEREOF, the City and the Consultant, through their duly authorized representatives, execute this Agreement as of the date written above.

CITY OF NEW ORLEANS

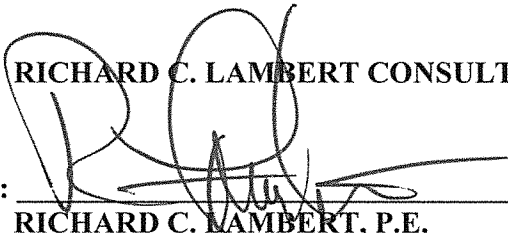
BY: 
MITCHELL J. LANDRIEU, MAYOR 5/5/15

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: 

RICHARD C. LAMBERT CONSULTANTS, LLC.

BY: 
RICHARD C. LAMBERT, P.E.
PRINCIPAL AND OWNER


CORPORATE TAX I.D.

EXHIBIT “A”
TO PROFESSIONAL SERVICES AGREEMENT BETWEEN
THE CITY OF NEW ORLEANS AND RICHARD C. LAMBERT CONSULTANTS, L.L.C.
SPECIAL CONDITIONS FOR CDBG CONTRACTS

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1. **EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)**
(applicable to contracts and subcontracts above \$10,000)

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

A. The Consultant will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant 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 Consultant 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 Consultant will, in all solicitations or advertisements for employees placed by or on behalf of the Consultant, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.

C. The Consultant 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 Consultant's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

D. The Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant 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 subcontractor or vendor. The Consultant 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 Consultant becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the Department, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

2. CERTIFICATION OF NONSEGREGATED FACILITIES
(applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offeror, applicant or subcontractor 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, offeror, applicant or subcontractor 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 subcontractors 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 subcontractors (except where proposed subcontractors have submitted identical certifications for specific time periods).

3. CIVIL RIGHTS

The Consultant 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.

4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

The Consultant 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.

5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

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 Consultant agrees to send to each labor organization or representative of workers with which the Consultant has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Consultant'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 Consultant 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 a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The Consultant will not subcontract with any subcontractor where the Consultant has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

E. The Consultant will certify that any vacant employment positions, including training positions, that are filled (1) after the Consultant 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 Consultant'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 HUD assisted 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).

6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
(applicable to contracts and subcontracts over \$10,000)

A. The Consultant 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 Consultant 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 Consultant 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 Consultant'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 Consultant 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 Consultant'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 Consultant will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Consultant is 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 Consultant 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 subcontractor or vendor. The Consultant 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.

7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

The Consultant 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.

8. AGE DISCRIMINATION ACT OF 1975

The Consultant 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.

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS

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

The Consultant and all subcontractors 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 subcontractors shall furnish to the owner, the following:

A. A stipulation by the Consultant or subcontractors, 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 Consultant 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 thereunder.

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 Consultant 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 Consultant will take such action as the government may direct as a means of enforcing such provisions.

10. 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.

11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of Louisiana, 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 Consultant 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 State's final closeout of the grant.

12. INSPECTION

The authorized representative and agents of the State of Louisiana and 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.

13. REPORTING REQUIREMENTS

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

14. 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 Consultant 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.

15. 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 Consultant agrees as follows:

A. The Consultant shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Consultant 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 Consultant 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 Consultant shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

C. Consultants shall incorporate foregoing requirements in all subcontracts.

16. PATENTS

A. The Consultant 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 Consultant.

C. If the Consultant 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 Consultant 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.

17. 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 Consultant for copyright 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.

18. TERMINATION FOR CAUSE

If, through any cause, the Consultant shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the Consultant 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 Consultant 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 Consultant under this contract shall, at the option of the Owner, become the Owner's property and the Consultant shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the Consultant 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 Consultant, and the Owner may withhold any payments to the Consultant for the purpose of set-off until such time as the exact amount of damages due the Owner from the Consultant is determined.

19. TERMINATION FOR CONVENIENCE

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

20. ENERGY EFFICIENCY

The Consultant 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).

21. SUBCONTRACTS

A. The Consultant shall not enter into any subcontract with any subcontractor 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 Consultant shall be as fully responsible to the Owner for the acts and omissions of the Consultant's subcontractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Consultant.

C. The Consultant shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Consultant by the terms of the contract documents insofar as applicable to the work of subcontractors and to give the Consultant the same power as regards terminating any subcontract that the Owner may exercise over the Consultant under any provision of the contract documents.

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

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Consultant represents and warrants that it and its subcontractors are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

23. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the Consultant or the Consultant's subcontractors 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 thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

24. 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 as though 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.

25. CHANGES

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

26. PERSONNEL

The Consultant 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 Consultant 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.

27. 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 Consultant 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 subcontractors with such regulations, and shall be responsible for the submission of affidavits required of subcontractors thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

28. ASSIGNABILITY

The Consultant 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 Consultant 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.

29. INTEREST OF CONSULTANT

The Consultant 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 Consultant further covenants that in the performance of this Contract no person having any such interest shall be employed.

30. POLITICAL ACTIVITY

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

31. 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 A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

32. 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.

33. CONFIDENTIAL FINDINGS

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

34. LOBBYING

The Consultant 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 Consultant, 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 Consultant shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.