

K17-464

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**TOLUNAY-WONG ENGINEERS, INC.**

**RR – TES – 17 – 11**

**GEOTECHNICAL ENGINEERING & MATERIAL TESTING SERVICES**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “**City**”), and Tolunay-Wong Engineers, Inc., herein represented by Dustin Walker, P.E., its authorized agent/officer (the “**Consultant**”). The City and the Consultant may 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**, the City issued Request For Qualifications No. 500C – 02117 on November 18, 2016, supplemented by Addendum No. 1 dated December 6, 2016 (collectively, the “**RFQ**”) seeking qualified firms to provide professional geotechnical engineering and material testing services;

**WHEREAS**, the Consultant submitted its qualifications for consideration on December 20, 2016, in response to the City’s RFQ;

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

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

**I. OBLIGATIONS OF THE CONSULTANT**

**A. SCOPE OF SERVICES**: The Consultant will perform all professional services described in the RFQ No. 500C – 02117, which incorporated by reference into this Agreement and made a part hereof, and as set forth herein below. Upon written authorized by the City, the Consultant will provide all materials testing services necessary for the performance of items of work on City projects and other consulting services needed to support the design, reconstruction,

restoration, and repair of multiple subsurface and surface work and to make other improvements as may be required or requested by the City (the “Services”). The Consultant shall conduct tests and inspections in accordance with the latest applicable requirements of the American Society of Testing Materials (ASTM), the American Concrete Institute (ACI), the American Association of State Highway & Transportation Officials (AASHTO), and/or the Louisiana Department of Transportation & Development (LA DOTD), or the requirement of the other recognized authorities.

The Consultant shall furnish all equipment and personnel and perform materials testing services required for design and construction of street, drainage, and utility improvements in connection with the services, including rotary core drilling, split-barrel sampling, Shelby tube sampling, preparation of test boring logs, design of roadway pavement section using traffic data provided by the City. The Consultant will perform all inspections and materials testing during construction as directed by the City in a punctual and timely manner and submit a report of same, in full compliance with applicable provisions of the City of New Orleans, General Specifications for Roads and Bridges (latest edition). The Consultant shall perform all items required to accomplish these results, including but not limited to attending pre-construction conferences, the costs of which are included in the Fee Schedule specified herein.

Soil boring will be drilled with an approved drill rig. Undisturbed samples of cohesive or semi – cohesive soils will be obtained at closed intervals or changes in stratum using a Shelby sampler. Non – cohesive soils will be sampled during the Standard Penetration test. Borings will be grouted upon completion of the drilling operations.

Samples obtained from the borings will be subjected to soil mechanics laboratory tests consisting primarily of natural water content, unit weight, either unconfined or triaxial compression shear, and Atterberg limits determinations on selected samples.

Based on the results of the soil borings and laboratory tests, the Consultant shall prepare a soils engineering report on the findings and recommendations. The report should include:

- (1) Boring location plan,
- (2) Individual boring logs,
- (3) Summary of laboratory test data,
- (4) Discussion of subsoil and ground water conditions,
- (5) Pavement design and component recommendations, and
- (6) Construction recommendations

The Consultant shall perform all testing services under this Agreement to the satisfaction of the City. Errors and omissions in the tests discovered subsequent to the acceptance by the City shall be corrected by the Consultant without additional compensation.

The Consultant shall be responsible for the relevance and accuracy of all items and details included in the reports and shall endorse all plans prepared by them in the manner required by the City. The City will review such documents only for general conformance to the Scope of Services.

The Consultant shall cooperate with the City and any other contractors providing services to the City as needed. During the progress of the work performed under this Agreement, representatives of the City and of other interested parties, when so named herein, shall have the right to examine the work and may confer with the Consultant thereon. The Consultant shall confer with the City and from time to time may submit sketches illustrating significant features of the work for interim approval.

The City may call upon the Consultant to render special testing services and act as a testing laboratory to the City in connection with the work performed under this Agreement. Fees for these services shall be mutually agreed upon prior to the issuance of any work order. Cost of court appearances, requested by the City on its behalf, shall be reimbursed at the Consultant's normal rates at the time of such appearances.

**B. RECORDS AND INSPECTION:** The Consultant and any subcontractors 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, any costs incurred through the later of three (3) 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 Consultant will deliver to the City all plans and records of work compiled through the date of termination.

Except as otherwise provided by law, all data collected and all products of work prepared, created or modified by Consultant in the performance of the 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 Work, 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 City's exclusive property 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 Consultant will make all Work Product available to the City at all times for any purpose and, upon request, will deliver any Work Product in a format agreeable to the City.

After reasonable notice, the Consultant will make all documents other than Work Product pertaining to the performance of this Agreement available for inspection, copying, and auditing by the City or its designee at the Consultant's office during regular business hours. If not such location is available, the Consultant will make such documents available at a time and place designated by the City.

**C. AUDIT AND OTHER OVERSIGHT:** 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 request 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.

**D. RELEASE OF DATA:** The Consultant will obtain written permission from the City's Department of Public Works before 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.

**E. COMPLIANCE WITH LAWS:** In the performance of this Agreement, the Consultant and any subcontractors, and any of their employees and agents, will comply with all applicable federal, state, and local laws and ordinances, including without limitation, La. R.S. 37:681 – La. R.S. 37:703 (dealing with engineering and land surveying practices).

**F. INVOICES:** On a monthly basis, the Consultant will submit to the City one (1) original invoice and five (5) copies with any of back-up or verification documentation required by the City. The invoices will be in a format previously approved by the City and must show at a minimum all services performed in the prior month, all time expended in the performance of those services, the rates for each service provided, the costs for which the Consultant seeks reimbursement, and the amount that the Consultant claims is due for those services. Payments for services rendered under this Agreement will be made monthly by the City within forty – five (45) days after receipt of approved certified invoices from the Consultant. No payment will be made for testing services on days on which (1) construction was suspended due to circumstances beyond the City's control, or (2) no construction has taken place.

**G. RECORDATION:** The Consultant will be responsible for complying with the recordation requirements set forth in La. R.S. 38:2222, including without limitation the payment of any costs associated therewith. A copy of each registration recordation shall be furnished to the Department of Public Works within 30 days after approval of the associated plan change or amendment.

## II. CONSULTANT'S WARRANTIES AND REPRESENTATIONS

A. **REPRESENTATIONS AND WARRANTIES:** The Consultant represents and warrants to the City that as of the effective date of this Agreement:

1. The Consultant has the full power and authority to enter into and execute this Agreement and this Agreement is legally binding upon and enforceable against the Consultant in accordance with its terms;
2. The Consultant is not under any obligation to any other person that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way its performance of this Agreement;
3. The Consultant has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations, or its ability to fulfill its obligations under this Agreement;
4. The Consultant is not in breach of any federal, state or local statute or regulation applicable to the Consultant or its operations;
5. The Consultant presently has no, and will not acquire any, interest, direct or indirect, in any area in which the work will be conducted or any other interest that would conflict in any manner or degree with the performance of this Agreement, and will not employ in the performance of this Agreement any person having any such an interest;
6. The Consultant's work will be accurate and free from any material errors and the Consultant's obligations under this Agreement will not be diminished in any way by the City's approval of any work. It is understood that the City, at all times, is relying ultimately upon the Consultant's skill and knowledge in performing the Agreement;
7. The Consultant has the requisite skills and expertise necessary to perform the services that may be required under this Agreement, will 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 the Consultant is engaged in providing similar services in major United States metropolitan areas under the same or similar circumstances, and will re-perform, at the City's option and at no additional cost to the City, any or all of services that fail to satisfy this standard of care;
8. The Consultant is bonded, if required by law, and fully and adequately insured to for the injury of its employees and any others incurring loss or injury as a result of the actions of the Contractor or its employees or subcontractors in the performance this Agreement;

9. The Consultant has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition; and
10. The Consultant represents and warrants to the City that all representations and warranties contained in the Agreement remain true and correct on the date of its signature and that no event has occurred that would constitute a violation or contradiction of any representations and warranties contained in the Agreement.

The Consultant's representations and warranties are material and the City is relying on the Consultant's representations and warranties in entering this Agreement.

**B. 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.

**C. 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.

**D. 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.

**E. 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.

### III. THE CITY'S OBLIGATIONS

The City will:

- A. Provide administration of this Agreement through the Department of Public Works;
- B. Provide assignments to the Consultant through the issuance of a Notice To Proceed;
- C. Provide the Consultant with any records or documents deemed necessary for the performance of the Services by the Consultant, including traffic data for the design of the roadway pavement section and a set of plans and specifications for the material testing work as required.,
- D. Provide access to personnel to discuss the scope of services during normal working hours, as requested by the Consultant;
- E. Make payments to the Consultant monthly based upon the Consultant's certified invoices, except as otherwise authorized by this Agreement or by law. The City's payment obligation is subject to the Consultant's satisfactory performance of the services and conditions required by this Agreement, including, without limitation, the submission of satisfactory deliverables, progress schedules, invoices, and evidence of necessary insurance.

### IV. COMPENSATION

A. **FEES UNDER THIS AGREEMENT:** The Consultant's compensation for the services performed under this Agreement shall be in accordance with the approved Fee Schedule, attached hereto as **Exhibit "A"**. These fees represent all costs incurred by the Consultant, including labor, equipment direct and indirect expenses, overhead, and profit. No additional monies shall be paid by the City unless specified in a written amendment to this Agreement. In case the City needs to order special testing of which the price is not included in the Fee Schedule, the unit price (or lump sum) shall be negotiated between the City and the Consultant.

B. **MAXIMUM AMOUNT:** The maximum aggregate amount payable by the City for all services performed under this Agreement is **NOT TO EXCEED ("NTE") TWO HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$250,000.00)**. 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 Consultant under this Agreement will not exceed the maximum aggregate amount payable at any time.

C. **ACKNOWLEDGEMENTS**: The Consultant 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 Consultant 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 Consultant additional funding in excess of the maximum amount payable established in this Agreement; and
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.

## V. DURATION AND TERMINATION

A. **INITIAL TERM**: The term of this Agreement shall be for one (1) year, beginning on 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. The Consultant is authorized to begin work only upon the issuance of a notice to proceed from the City. Time is of the essence in completing each phase of work required by this Agreement.

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 Consultant written notice of the termination at least thirty (30) calendar days before the intended date of termination. Upon termination, the Consultant shall deliver to the City all plans and records of work compiled up to and through the date of termination and the City shall pay in full for all work accomplished up to the date of termination, including any retained percentage earned to date.

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. "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 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 2 business days written notice to the Consultant. The Consultant will resume work upon 5 business day's written notice from the City.

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

**A. IN GENERAL:** The Consultant 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 Consultant'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 Consultant or DBE Entities.

C. **COOPERATION:** The Consultant shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’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 Consultant.
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 Consultant does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.

The Consultant 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 Consultant 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 Consultant. 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 Consultant 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 Consultant's control, the Consultant is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Consultant 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 Consultant 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. The Consultant 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 Consultant shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

## **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. MINIMUM SCOPE OF INSURANCE:** At all times during the term of this Agreement, the Consultant, 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 Consultant 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 Consultant 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 Consultant’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 Consultant’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 Consultant’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 Consultant must purchase “extended reporting” coverage for minimum of 5 years after the termination of this Agreement.
4. ***Waiver of Subrogation:*** The Consultant 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.

## IX. NON – DISCRIMINATION

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.

## **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 WORKERS’ 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 Agreement; (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 of this Agreement.

**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. 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 Consultant:     Dustin Walker, P.E.  
  Tolunay-Wong Engineers, Inc.  
  1201 24th Street  
  Kenner, LA 70062

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 Consultant.

## **XII. ADDITIONAL TERMS AND CONDITIONS**

**A. OWNERSHIP OF DOCUMENTS:** All data collected by the Consultant and all documents, notes, drawings, tracings, and files collected or prepared for the Project, except the

Consultant'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 Consultant. Notwithstanding anything to the contrary contained herein, any tools, systems or information used by the Consultant 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 Consultant or its suppliers. The Consultant 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 Consultant 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 Consultant'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.

**B. 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.

**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. LIVING WAGES:** To the fullest extent permitted by law, the Consultant 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 Consultant 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.

**I. 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.

**J. PERFORMANCE MEASURES:** The City will measure the performance of the Consultant 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 Consultant fails to perform according to the Agreement, the City will notify the Consultant. If there is a continued lack of performance after notification, the City may declare the Consultant 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 Consultant for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting Consultant.

**K. 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.

**L. 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

**M. 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.

**N. 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.

**O. 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.

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

**S. SPECIAL CONDITIONS FOR FEMA COMPLIANCE:** The Consultant is advised that this Agreement may have some funding by the Federal Emergency Management Agency (“FEMA”) and that special conditions for FEMA-funded contracts may apply. Said conditions are attached hereto as Exhibit “B” entitled “Special Conditions for Compliance of FEMA – Funded Contracts” and are expressly incorporated in the Agreement. These provisions will be effective, notwithstanding any provision of the Agreement or any incorporated documents to the contrary, upon the City’s notice to the Consultant that the City intends to seek reimbursement from FEMA in connection with the work to be performed under this Agreement.

**T. SPECIAL CONDITIONS FOR HUD COMPLIANCE:** The Consultant is advised that this Agreement may have some funding by the Department of Housing and Urban Development (“HUD”) and that special conditions for HUD-funded contracts may apply. Said conditions are attached hereto as Exhibit “C” entitled “Special Conditions for Compliance of HUD – Funded Contracts” and are expressly incorporated in the Agreement. These provisions will be effective, notwithstanding any provision of the Agreement or any incorporated documents to the contrary, upon the City’s notice to the Consultant that the City intends to seek reimbursement from HUD in connection with the work to be performed under this Agreement.

**U. 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.

### **XIII. 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 are contained on the following pages)*

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

CITY OF NEW ORLEANS

BY:   
MITCHELL J. LANDRIEU,  
MAYOR

Executed on this 18<sup>th</sup> day of April, 2017.

FORM AND LEGALITY APPROVED:  
Law Department

By: 

Printed Name: Paul D. Myz

TOLUNAY-WONG ENGINEERS, INC.

BY:   
DUSTIN WALKER, P.E.,  
AUTHORIZED AGENT/OFFICER

 D.

*(Exhibits contained on the following pages)*

- Exhibit "A" – Fee Schedule
- Exhibit "B" – Special Conditions for Compliance of FEMA – Funded Contracts
- Exhibit "C" – Special Conditions for Compliance of HUD – Funded Contracts

**EXHIBIT "A"**

**FEE SCHEDULE**

<b>Item #</b>	<b>Description of Service</b>	<b>Unit of Measure</b>	<b>Unit Price</b>
<b>A) GEOTECHNICAL TESTING</b>			
A-01	Mobilization, including permits and utility drawing review	Lump Sum	\$750.00
A-02	5 ft. deep boring and associated laboratory testing	Each	\$300.00
A-03	10 ft. deep boring and associated laboratory testing	Each	\$400.00
A-04	20 ft. deep boring and associated laboratory testing	Each	\$520.00
A-05	20ft to 100ft deep boring and associated laboratory testing	Per Foot	\$28.00
A-06	Letter report from geotechnical engineer presenting test results and pavement design	Lump Sum	\$1,800.00
A-07	Abandoning a boring due to encountered obstruction	Each	\$150.00
A-08	Traffic Control on an as needed basis	Hour	\$50.00
A-09	Additional services of registered geotechnical engineer (approved in advance)	Hour	\$130.00

<b>B) PILING INSPECTION</b>			
B-01	Pile load test (ASTM D-1143), 50-ton maximum	Each	\$2,500.00
B-02	Timber pile inspection (3,500 linear feet minimum)	Ln Ft	\$0.15
B-03	Prestressed pile/girder inspection	Hour	\$45.00
B-04	Prestressed pile/girder inspection, Overtime after 8 hours	Hour	\$67.00
B-05	Pile logging	Hour	\$43.00
B-06	Pile logging, Overtime after 8 hours	Hour	\$63.00
B-07	Numbered pile plan	Sheet	\$120.00
B-08	Cost of painting piles including labor and materials	Lump Sum	Cost + 15%

<b>C) SOIL TESTING</b>			
C-01	Standard or modified Proctor test on sand with five (5) or more soil samples	Each	\$150.00

C-02	Standard or modified Proctor test on sand with less than or equal to four (4) soil samples	Each	\$152.00
C-03	Modified Proctor test on aggregate with five (5) or more soil samples	Each	\$160.00
C-04	Modified Proctor test on aggregate with less than or equal to four (4) soil samples	Each	\$175.00
C-05	Depth check of engineered base material	Each	\$21.00
C-06	Atterberg limits, material passing No. 40 sieve with gradation	Each	\$86.00
C-07	Base course gradation, LADOTD 1003.03	Each	\$82.00
C-08	Sieve analysis (200 wash)	Each	\$61.00
C-09	Soil classification	Each	\$70.00
C-10	Field nuclear density test (ASTM D-2933)(LADOTD TR 401), minimum three (3) tests per trip. The Technician will not be required to wait between tests.	Each	\$40.00
C-11	Unconsolidated Undrained Triaxial Compression Test (ASTM D2850)	Each	\$70.00
C-12	California Bearing Ratio Test (ASTM D1883)	Each	\$280.00
C-13	Proof Roll Inspection	Per Visit	\$220.00

#### **D) ASPHALTIC CONCRETE**

D-01	Review of contractor submitted job mix formula	Each	\$100.00
D-02	Atterberg limits, material passing No. 4 sieve	Each	\$61.00
D-03	Using the services of one (1) technician (Technician shall be Louisiana Department of Transportation and Development Certified Asphaltic Concrete Plant Technician)(500 ton minimum)	Ton	\$1.20
D-04	Services of roadway technician at the job site	Hour	\$44.00
D-05	Services of roadway technician at the job site, Overtime after eight (8) hours devoted to City work only	Hour	\$66.00
D-06	Testing of cores cut by contractor for density and thickness	Each	\$42.00
D-07	Determining the thickness of the existing asphaltic concrete pavement, 4 inch diameter by 8 inch depth maximum, and identify type	Each	\$95.00
D-08	For each additional inch of asphalt or part thereof	Inch	\$11.00
D-09	Determining the thickness of the existing combination of asphalt concrete pavement, 4 inch diameter by 8 inch depth maximum, and identify type	Each	\$130.00
D-10	For each underlying additional inch of combination asphalt and concrete pavement or part thereof		\$11.00

<b>E) CONCRETE MATERIALS INSPECTION AND TESTS</b>			
E-01	Review of contractor submittal for compliance with specification requirements	Lump Sum	\$100.00
E-02	Gradation tests of sand and/or gravel	Each	\$69.00
E-03	Sampling sand and/or gravel for gradation test, (minimum 4 hours)	Hour	\$42.00
E-04	Services of technician at the job site during concrete paving operations	Hour	\$44.00
E-05	Overtime after eight hours fully devoted to City work only	Hour	\$66.00
E-06	Concrete cylinder break	Each	\$14.00
E-07	Determining the thickness of the existing hardened concrete pavement, 4 inch diameter by 8 inch depth maximum, and identify type	Each	\$122.00
E-08	For each additional inch or part thereof	inch	\$11.00
E-09	Compressive strength of drilled cores, per core	Each	\$45.00
E-10	Sampling concrete at the job site; conducting a slump test; molding cylinders including collecting, curing, and reporting results; by Technician who has ACI Certification (minimum four cylinders per trip)	Each	\$220.00

<b>F) MATURITY METHOD (ASTM C1014)</b>			
F-01	Establish Curve	Each	\$600.00
F-02	Installation/Recording	Hour	\$45.00
F-03	Loggers	Each	Cost + 15%

<b>G) TRANSPORTATION</b>			
G-01	Rate per mile (determined by IRS each year)	Mile	IRS Rate

<b>H) VIBRATION MONITORING</b>			
H-01	Vibration monitoring (four-hour minimum)	Hour	\$50.00
H-02	Overtime after 8 hours for vibration monitoring devoted to City work only	Hour	\$75.00

<b>I) GREEN INFRASTRUCTURE TESTING</b>			
I-01	Engineering technician (1-man)	Hour	\$72.00
I-02	Project Management (1 hr. min.)	Hour	\$89.00
I-03	Hydraulic conductivity of saturated porous materials using a flexible wall permeameter permeability test (ASRM-D5054) ASTM D5084 – Hydraulic Conductivity Fixed-Wall Permeability.	Each	\$390.00
I-04	Infiltration Test – single ring infiltrometer single ring infiltration testing (6hr. Period) single ring infiltrometer Test (Max. 5 days p/test)	Each	\$1,600.00



## EXHIBIT "B"

### SPECIAL COMPLIANCE CONDITIONS FOR FEMA – FUNDED CONTRACTS

The Consultant is advised that the services performed under this Agreement may be wholly or in part funded by the Federal Emergency Management Agency ("FEMA"). Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions apply upon notice by the City to the Consultant that the services are FEMA-eligible:

**A. TERMINATION FOR CAUSE:** The City and the Consultant shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall 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.

**B. TERMINATION FOR CONVENIENCE:** The City shall have the right to terminate this Agreement without cause by giving the Consultant written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Consultant only for those Services performed up to and through the date of termination.

**C. RECORDS RETENTION AND ACCESS:**

The Consultant shall grant the City, the State of Louisiana, the Federal Emergency Management Agency, the Comptroller General of the United States, or any of their duly authorized representatives, access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and

The Consultant shall retain all required records for five (5) years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement are closed.

**D. COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:** As applicable, the Consultant shall comply with each of the following, all of which are incorporated herein by reference.

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);

- The Copeland “Anti-Kickback” Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- 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 (Pub. L. 94–163, 89 Stat. 871)
- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

**E. DEBARMENT, SUSPENSION, AND INELIGIBILITY:** The Consultant represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

**F. REMEDIES AND SANCTIONS AGAINST CONSULTANT’S DEFAULT:** The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Consultant breach or violation hereof.

## EXHIBIT “C”

### SPECIAL COMPLIANCE CONDITIONS FOR HUD – FUNDED CONTRACTS

The Consultant is advised that the services performed under this Agreement may be wholly or in part funded by the Department of Housing and Urban Development (“HUD”). Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions apply upon notice by the City to the Consultant that the services are HUD-eligible:

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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 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 subcontractor 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 subcontractor 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. **CERTIFICATION OF NONSEGREGATED FACILITIES**  
(Applicable to contracts and subcontracts over \$10,000)

By the submission of this bid, the bidder, offer or, 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, offer or, 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 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.

**4. 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.

**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 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 a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor 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 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 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 Contractor 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 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 subcontractor 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.

**7. 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.

**8. 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.

**9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS**

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

The Contractor 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 Contractor 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 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 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 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.

## **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 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 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 Contractor 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 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 there from, 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 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.

**16. 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.

**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 Contractor 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 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.

**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 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.

**20. 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).

**21. SUBCONTRACTS**

- A. The Contractor 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 Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor'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 Contractor.

C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind subcontractor to the Contractor by the terms of the contract documents insofar as applicable to the work of subcontractors 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 subcontractor and the Owner.

**22. DEBARMENT, SUSPENSION, AND INELIGIBILITY**

The Contractor 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 Contractor or the Contractor'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 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.

**26. 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.

**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 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 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 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.

**29. 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.

**30. POLITICAL ACTIVITY**

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.

**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 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.

**34. LOBBYING**

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

1. 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.
2. 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.