

MK18-664

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
BATTURE, LLC
RFQ NO. 500C-02348
ST. ANTHONY GREEN STREETS - PROGRAMMING AND DESIGN SERVICES**

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THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into by and between the City of New Orleans, represented by its authorized representative ("Owner" or the "City"), and Batture, LLC, represented by Jennifer Snape, P.E., Principal (the "Consultant"). The City and the Consultant may sometimes be collectively referred to as the "Parties." The Agreement is effective as of the date of execution by the City (the "Effective Date").

RECITALS

WHEREAS, on February 26, 2018 the City issued a request for qualifications RFQ No. 500C-02348 seeking qualified persons to provide professional design, engineering, and construction management services for resilience, stormwater management, and/or green infrastructure relating to the St. Anthony Green Streets (the "RFQ");

WHEREAS, the Consultant submitted a proposal dated April 4, 2018, and the City has selected the Consultant to perform the professional services described in the RFQ.

NOW THEREFORE, the City and the Consultant agree as follows:

ARTICLE I – DEFINITIONS

As used in this Agreement, the following terms have the meanings given below:

"Construction Documents" means all of the graphic and written information prepared or assembled by the Consultant or the Owner for communicating the design and for the bidding and construction of the Project in accordance with all applicable laws.

"Construction Progress Schedule" means Contractor's construction progress schedule as approved by the Owner.

"Project" means the scope of the project as fully described in Exhibit A.

"Work" means all design services for the entire Project, commencing from the initial concept planning until construction completion, including such other related services as required by the City to complete the Project.

ARTICLE II – SCOPE OF SERVICES

A. Basic Services

1. The Consultant's basic services ("**Basic Services**") shall consist of the following eight phases: Programming/Scope, Schematic Design, Design Development, Construction Documents, Bidding, Construction, Closeout and Warranty. Basic Services shall include: usual and customary architectural, civil, structural, mechanical, and electrical engineering; landscape design services; and all other disciplines and services as stipulated and required for this Project.

2. Consultant's responsibility under this Agreement is to provide Work under the conditions and requirements set forth herein and in the Exhibits and attachments hereto, all of which are incorporated as part of this Agreement by this reference. Under no circumstances shall authorization for services exceed the dollar amounts authorized by the City and specifically allocated to pay for services.
3. In the performance of the Work under this Agreement, Consultant shall abide by and comply with the expressed intent and requirements set out in the RFQ, including but not limited to the provisions therein relating to scope of services and all other provisions relating to the services to be performed; the provisions of said RFQ are hereby incorporated into this Agreement by reference. In the event of any conflict(s) between the RFQ and other provisions of this Agreement, the City Attorney shall resolve such conflicts in his/her sole discretion.

B. Programming/Scope Phase

1. Upon the Owner's written approval to proceed, the Consultant shall begin the Programming/Scope Phase of the Project.
2. During the Programming/Scope Phase, the Consultant shall:
 - a. Review the scope and programming requirements and determine whether the information is generally in agreement with the available funds for construction ("AFC"), site location, and time schedule;
 - b. Advise the Owner, in writing, if it determines that any scope or programmatic requirements are not be achievable;
 - c. If required by Owner, engage the services of a land surveyor to perform site-surveying services and pay for such fees and expenses as an additional service;
 - d. If site-surveys are procured by the Owner, assist the Owner with coordinating the surveyor's services;
 - e. Confirm with surveyor providing site survey that all information provided (*i.e.* ground elevations and benchmarks) are adjusted according to the most current government adjusted reference benchmarks. Consultant shall reconfirm prior to the issuance of Construction Documents for bidding purposes;
 - f. Assist the Owner with coordinating Owner secured testing services of a geotechnical engineer or other consultants, including reports, test borings, test pits, soil bearing values, percolation tests, and water pollution tests and other necessary operations for determining subsoil, air and water conditions, with appropriate professional interpretations thereof when such services are deemed necessary;

- g. Prepare all documents to scale and utilize current and accurate site surveys as basis for developing documents;
 - h. Acknowledge that a thorough compilation of Hurricane Katrina and/or Rita damage is of the utmost importance;
 - i. Promptly notify the Owner of any Hurricane Katrina and/or Rita damages discovered at the Project site which impacts the scope of the Project;
 - j. Incorporate Scope Phase clarifications into the scope of the Project, if clarifications are required upon the discovery of Hurricane Katrina and/or Rita damage;
 - k. If required by the Owner, submit up to five (5) drawing sets and specifications of all Scope Phase documents, as verified by Owner, and (1) one CD in .pdf format, within the number of days stipulated for the Programming/Scope Phase in Article VI.
3. After the Owner's approval, only the Owner shall have the authority to alter the completed design scope. Any alteration(s) authorized by the Owner shall be made in writing. If alterations to the design scope result in increasing the Scope of Work, the Owner will consider additional services.
4. The Owner will review the Scope Phase documents and present review comments that may require design modifications. The Consultant shall incorporate all Owner comments and adjust cost estimate as required in accordance with established design schedule.

C. Schematic Design Phase

- 1. Upon completion of the Programming/Scope Phase and the Owner's written approval, the Consultant shall commence the Schematic Design Phase.
- 2. During the Schematic Design Phase, the Consultant shall:
 - a. Prepare the Schematic Design documents for the Owner's review and approval in such format and detail, and consisting of drawings and other documents illustrating the scale, relationship of the Project components, and site layout for the review and approval of the Owner based on the approved completed Design Scope, AFC, site location, and time schedule;
 - b. Meet with City's regulatory agencies for compliance;
 - c. Prepare the Schematic Design documents consisting of preliminary drawings, project manuals, and other documents to fix and describe the size and character of all work, including work required by codes, recommended alternates, and other essential elements as may be appropriate;

- d. Prepare preliminary project manuals outlined by Project section in CSI format, conforming to the Owner's requirements, and consisting of outline specifications that describe materials and systems anticipated for use on the Project;
- e. Prepare and submit presentation documents in electronic and printed form at the completion of the Schematic Design Phase to illustrate preliminary site usage and preliminary space usage;
- f. Provide an estimate of the cost of the Work as part of the Schematic Design documents.
 - i. All costs shall be current as of the date of submission and shall show unit quantities and costs of all components and systems, and a general contractor's cost, overhead, and profit.
 - ii. Costs for alternates and mitigation proposals shall be shown as separate items employing the same estimating methods and procedures as used for the other subheadings in the estimate of the cost of the Work.
 - iii. The estimate of the cost of the Work shall be in CSI format conforming to the Owner's requirements.
- g. Immediately inform the Owner in writing, should at any time the estimate of the cost of the Work exceed the AFC;
- h. If directed by the Owner in the event the cost of Work exceeds the AFC, make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the cost of the Work to meet AFC requirements at no additional cost to the Owner. If it is determined that the cost increase is due to scopes of work added by the Owner the Consultant may be entitled to an adjustment in fee per Article V, Section A(1)(c) of this agreement;
- i. Verify and document existing site conditions to the extent required to prepare complete and accurate documents including, but not limited to all systems, equipment, and utilities. The Owner shall provide the Consultant with copies of the Owner's records of the site, if available, but at no time will the Consultant be relieved of documenting existing site conditions;
- j. When an environmental review by the Owner is necessary, incorporate those requirements made necessary as a consequence of any environmental review in the preliminary plan for the Project;
- k. Consult with the Owner to establish Project requirements and confirm those requirements in writing;

- l. Be responsible for designing the Project such that the amount available for construction is not exceeded subject to the provisions of Article II(F)(3);
 - m. If required, provide a preliminary analysis of energy conservation and stormwater management measures and maintenance plan in accordance with the City of New Orleans Comprehensive Zoning Ordinance, Article 23 requirements to be employed on the Project for the Owner's review and approval;
 - n. Submit three (3) full-size printed drawings sets and specifications, one (1) half-size set of drawings and one (1) CD/DVD, of all Schematic Design Documents in .pdf format within the time frame stipulated in Article VI; and
 - o. Provide one (1) set of electronic files in .pdf format with layering capabilities that interface with CAD drafting standards representing every sheet in the Schematic Design Documents.
- 3. The Consultant's deliverable package shall contain all information as required per the Schematic Design Phase Checklist annexed hereto as Exhibit "B."
 - 4. The Owner will review the Schematic Design Documents and present review comments that may require design modifications. The Consultant shall incorporate all Owner comments and adjust cost estimate as required in accordance within established design schedule and at no additional cost to the Owner.

D. Design Development Phase

- 1. Upon written authorization by the Owner of the approved Schematic Design Documents, the Consultant shall commence the Design Development Phase.
- 2. During the Design Development Phase, the Consultant shall:
 - a. Prepare the Design Development Documents consisting of drawings and more detailed specifications to fix and describe the size and character of the Project, including but not limited to, architectural, civil, structural, mechanical, electrical, landscaping design, and all other systems, materials and essentials as may be required and/or appropriate for the Project;
 - b. Refine the specifications, in CSI format conforming to the Owner's requirements, detailing sections and describing materials and equipment anticipated for the Project;
 - c. Revise and update the estimate of the cost of the Work as part of the Design Development documents.
 - i. All costs shall be current as of the date of submission and shall show unit quantities and costs of all components and systems, and general contractor's cost, overhead and profit.

- ii. Costs for alternates and mitigation proposals shall be shown as separate items employing the same estimating methods and procedures as used for the other subheadings in the estimate of the Cost of the Work.
 - iii. The estimate shall be in CSI format conforming to the Owner's requirements and included as part of the Design Development documents.
 - d. Submit a cost estimate variance report in CSI format that the Schematic Design Development and Design Development cost estimates and notes variance in any items all with a remarks column that explains the variances. The cost estimate should be based on accurate data bases which reflect current market conditions.
 - e. Prepare and submit presentation documents in electronic and printed form at the completion of the Design Development Phase to illustrate floor plans and building elevations;
 - f. Submit the following within the time frame stipulated in Article VI:
 - 1. Three (3) full-size printed drawings sets and specifications;
 - 2. One (1) half-size set of drawings;
 - 3. One (1) CD/DVD of all Design Development Documents in .pdf format; and
 - 4. One (1) set of electronic files in .pdf format with layering capabilities that interface with CAD drafting standards representing every sheet in the Design Development Documents.
 - g. Immediately inform the Owner, in writing, should at any time the estimate of the Cost of the Work exceed the amount AFC;
 - h. If directed by the Owner in the event the cost of Work exceeds the AFC, make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the cost of the Work to meet AFC requirements at no additional cost to the Owner. If it is determined that the cost increase is due to scopes of work added by the Owner the Consultant may be entitled to an adjustment in fee per Article V, Section A(1)(c) of this agreement;
 - i. If required, submit a more detailed energy conservation and storm water management plan that further outlines and demonstrates how project components meet required project goals and objectives; and
 - j. As required for community and/or regulatory review, prepare 2 and 3 dimensional presentation documents and submitted in electronic and printed form as required to illustrate architectural interior and exterior perspectives and landscaping design.
3. The Consultant's deliverable package shall contain all information required per the Design Checklist annexed hereto as Exhibit "C."

4. The Owner will review the Design Development Documents and present review comments that may require design modifications. The Consultant shall incorporate all Owner comments and adjust cost estimate as required in accordance within established design schedule and at no additional cost to the Owner.
5. Neither the Consultant nor the Owner has control over: the costs of labor, materials or equipment, the Contractor's methods of determining bid prices; or competitive bidding, market or negotiating conditions.
6. The Consultant cannot and does not warrant or represent that the bids or negotiated prices will not vary from the Owner's budget or from any estimate of the Cost of the Work prepared by or on behalf of the Consultant.

E. Construction Documents Phase

1. Upon written authorization by the Owner and approval of the Design Development Documents, the Consultant shall commence the Construction Documents Phase.
2. During the Construction Documents Phase, the Consultant shall:
 - a. Prepare, from the approved Design Development Documents, Construction Documents consisting of drawings and project manuals setting forth the requirements for construction of the Project;
 - b. Include in the Construction Documents package all plans and specifications setting forth the requirements of the Project, City of New Orleans Division 0 General Conditions, and all applicable documents as required for approval by federal, state and local authorities having jurisdiction over the Project;
 - c. Modify any City of New Orleans Division 1 or Supplemental Conditions clauses as required to eliminate any language conflicting with the City Division 0 General Conditions;
 - d. Coordinate alternate bid work with the Owner and include in the construction documents;
 - e. On behalf of the Owner, file documents with governmental authorities having jurisdiction over the Project;
 - f. Consult with the Owner and include Bid Alternates in the scope of work for the Project, as required;
 - g. Update the estimate of the cost of the Work.

- i. All costs shall be current as of the date of submission and shall show unit quantities and costs of all components and systems, and general contractor's cost, overhead and profit.
 - ii. Costs for alternates and mitigation proposals shall be shown as separate items employing the same estimating methods and procedures as used for the other subheadings in the estimate of the cost of the Work.
 - iii. The estimate shall be in CSI format conforming to the Owner's requirements.
- h. Submit a cost estimate variance report in CSI format that compares Design Development Documents and Construction Documents cost estimates and notes variance in any items all with a remarks column that explains the variances;
- i. Immediately inform the Owner, in writing, should at any time the estimate of the cost of the Work exceed the amount AFC and make appropriate recommendation(s);
- j. If directed by the Owner in the event the cost of Work exceeds the AFC, make appropriate recommendations to the Owner to adjust the Project's size, quality or budget for the cost of the Work to meet AFC requirements at no additional cost to the Owner. If it is determined that the cost increase is due to scopes of work added by the Owner, the Consultant may be entitled to an adjustment in fee per Article V, Section A(1)(c) of this agreement;
- k. Following document review and the Owner's written approval of the ninety-five percent (95%) documents, proceed with the completion of one hundred percent (100%) Construction Documents.
- l. Electronically submit the following documents within the timeframe stipulated in Article VI to the Department of Safety & Permits for an application for a building permit:
 - i. Five (5) full-size printed drawings sets and specifications
 - ii. Two (2) half-size set of drawings
 - iii. Seven (7) specification sets
 - iv. One (1) CD/DVD of all 100% Construction Documents in .pdf format, including drawings, project manuals, and the estimate of the cost of the Work.

All submitted printed plan sets must bear seals and signatures of the applicable design disciplines.

- m. Deliver the appropriate number of sets of Bid Documents with seals and signatures of the applicable design disciplines directly to the State Fire Marshal and other authorities as directed by the Owner and as necessary for review and approval for issuance of a building permit. The Owner shall reimburse Consultant for all costs for these reviews and reproduction;

- n. Provide one (1) set of electronic CAD files representing every sheet in the Construction Documents and comply with current CAD drafting standards as agreed to by the Owner and the Consultant;
 - o. Unless otherwise instructed in writing by the Owner, make all necessary alterations at Consultant's sole cost and expense without reproduction reimbursement, if the Construction Documents are found to be incomplete, inaccurate, non-compliant with code requirements, or in need of modification by permitting or reviewing authorities; and
 - p. As required for community and/or regulatory review, prepare 2 and 3 dimensional presentation documents and in electronic and printed form to illustrate architectural interior and exterior perspectives and landscaping design.
3. The Consultants' deliverable package shall contain all required information per the Construction Documents Checklist annexed hereto as Exhibit "D."
 4. The Owner will review the Construction Documents and present review comments that may require design modifications. The Consultant shall incorporate all Owner comments and adjust the cost estimate as required to meet the AFC at no additional cost to the Owner and in accordance with the established design schedule.

F. Bidding Phase

1. If the Owner approves the Consultant's Construction Documents, the Owner may solicit public bids for the Work in the Bidding Phase. The Owner shall handle the following bid procedures:
 - a. Bid advertisement
 - b. Issuance of addenda
 - c. Bid receipt and opening
 - d. Official abstract of bid tabulations
 - e. Notice of intent to award a contract
 - f. Receipt of required post-bid information
 - g. Award of the Construction Contract
 - h. Set date and provide notice of pre-construction conference
2. During the Bidding Phase the Consultant shall:
 - a. Provide responses to contractor inquiries and provide documentation, as required;
 - b. Participate in the pre-bid conference and provide minutes of the meeting;
 - c. Submit to the Owner for distribution written responses to bidders' questions;

- d. Interpret the intent of the Bid Documents and prepare and issue clarifications within one (1) day of receipt of inquiry, or as directed by Owner, by addendum to be issued through the Owner to all known bidders and plan holders;
 - e. Attend the bid opening; and
 - f. Review bid submissions and post bid documentation as required.
3. If the lowest bona fide bid exceeds the amount AFC, the Owner shall:
- a. Authorize re-bidding of the Project within a reasonable time without additional compensation to the Consultant;
 - b. Authorize the Consultant, without additional compensation, to modify the Construction Documents as necessary to comply with the Owner's amount available for construction;
 - c. Give written approval of an increase in the Owner's budget for the Cost of the Work without
 - d. Additional compensation to the Consultant; and/or
 - e. Abandon the Project.

G. Construction Phase

1. The Construction Phase will commence with the award of the Construction Contract(s) for the entire Project, or any part thereof, and will terminate at the commencement of the Closeout Phase of the Project.
2. The Owner shall provide the Consultant with access to the site when work is in progress.
3. During the Construction Phase the Consultant shall:
 - a. Inform the City of its designated person to perform construction administration services;
 - b. Provide continued advice and consultation;
 - c. Act as an agent for the Owner and issue all communications to the Contractor from the Owner;
 - d. Acquire progress schedule within ten (10) days prior to the Notice to Proceed or pre-construction meeting whichever comes first;

- e. Provide the Owner with copies of the proposed construction progress schedule for approval;
- f. Review the Contractor's proposed construction schedule and advise the Owner of contract compliance with schedule requirements per the contract specifications;
- g. Review the proposed construction progress schedule with the Contractor prior to the beginning of Work;
- h. Make a minimum of one site visit per week to review the progress and quality of the work and to determine the work when fully completed will be in accordance with the Construction Documents and the Construction Progress Schedule;
- i. Keep the Owner informed of the progress and quality of the work performed, report known deviations from the Contract Documents and the most recently approved construction schedule;
- j. Assist in inspection of work and provide report of all observed defects in material, equipment and workmanship;
- k. Submit weekly written reports, with photographs. Photographs should:
 - i. Be taken from the same angle or site position each week in order to document project progression in conjunction with specific project related photographs;
 - ii. Include a panoramic picture that shows the complete building and site; and
 - iii. Contain information that identifies the date, location, and work being performed or defect requiring correction.
- l. Immediately notify the Owner, in writing, of any work that the Consultant observes does not conform to the Construction Documents;
- m. Have the authority to reject work not in conformance with the Contract Documents unless otherwise noted by the Owner;
- n. Have authority to require special inspection or testing of any work in accordance with the provisions of the Construction Documents, including the Construction Contract, whether such is work fabricated, installed, or completed if, in its reasonable opinion, the Consultant considers it necessary or advisable to ensure the proper implementation of the intent of the Construction Contract.

The Owner shall be notified in advance of any special inspection or testing required by the Consultant;

- o. Review all testing laboratory reports and advise the Owner if any of the materials tested do not meet the requirements of the Construction Documents or the Construction Contract;
- p. Review and take appropriate action regarding the Contractor's submittals to include shop drawings, product data, mock-ups, samples, and other submissions of the Contractor for conformance with the design concept of the Project and for compliance with the information given in the Construction Documents and Construction Contract;
- q. Review and return the submittal to the Contractor within fourteen (14) calendar days or as required to maintain the Contractor's critical path as noted in the approved construction schedule, with one of the following determinations: approved, approved as noted, revise and resubmit, rejected and resubmit. Review durations for resubmittals shall be engaged in a timely manner as determined by the critical path and the Owner;
- r. Render interpretations necessary for the proper execution of the work;
- s. Interpret and decide matters concerning performance of the requirements of the Contract Documents upon written request of the Owner. Interpretations and decisions of the Consultant will be consistent with the intent of and reasonably inferable from the Contract Documents and will be in writing or in the form of drawings;
- t. Review and respond to all Requests for Interpretation/Information ("**RFI**") within seven (7) calendar days, or as required to maintain the contractor's critical path;
- u. Provide Owner digital or printed copies of all correspondence, documentation, and other forms of conveyance of information from the Consultant to the Contractor at the time of transmittal from the Consultant to the Contractor;
- v. After receiving the Owner's written approval, prepare all change orders ("**Change Order(s)**") and Construction Change Directives. Consultant shall have authority to order minor changes in the work, which do not alter the scope of the Project, the Contract amount, and/or time. Such approval shall be with respect to the work item subsequently submitted by the Consultant, but the Contractor cannot be authorized to proceed until he receives a fully executed copy of the document or written authorization from the Owner;
- w. In an event of an emergency during construction that necessitates a field change, contact a representative of the Owner for approval. If unable to contact the Owner's representative, the Consultant is authorized to issue a field change;
- x. When Change Order work requires modifications to the original Construction Documents relative to code or life safety matters, submit drawings and specifications to the City's Permit Office and State Fire Marshal to obtain approvals prior to modifications being made;

The fees and costs in preparing any such drawings and specifications may be considered an Additional Service by the Owner;

- y. Participate in all inspections by the State Fire Marshal and process and submit applicable certificates and reports to the Owner;
- z. Inspect and certify that all stormwater management features have been completed as designed and approved in Accordance with Article 23 of the City of New Orleans Comprehensive Zoning Ordinance;
- aa. Evaluate any claims submitted by either the Owner or the Contractor and make recommendations to the Owner;
- bb. Review and approve Contractor's monthly Application for Payment and submit to Owner within five (5) business days;
- cc. Approve Contractor's payment based on observations at the site and verification that Contractor: has a current and approved project schedule, is maintaining on site record drawings (as-built), and has submitted all daily field reports;
- dd. Determine the amount due the Contractor and certify payments in such amounts (individually and collectively, the "**Certificate(s) of Payment**"). A Certificate of Payment shall constitute a representation by the Consultant to the Owner that:
 - i. To the best of the Consultant's knowledge, information, and belief the work has progressed to the point indicated;
 - ii. The quality of the work is in accordance with the Construction Documents, including the Construction Contract, subject to an evaluation of the work for conformance with the Construction Documents, including the Construction Contract, upon Substantial Completion, as defined therein;
 - iii. The results of any subsequent tests required by the Construction Documents, including the Construction Contract, that are correctable prior to completion, and any specific qualifications stated in the Certificate for Payment; and
 - iv. Contractor is entitled to payment in the amount certified.

Unless otherwise specifically provided, issuance of a Certificate for Payment by the Consultant does not represent that it has made any examination to ascertain how and for what purpose the Contractor has used the monies paid on account of the Contract Sum.

The Consultant shall then have five (5) calendar days to submit monthly Contractor Applications for Payment to the City for processing.

- ee. Upon notification from the Contractor of a request for Substantial Completion:
 - i. Examine the project to determine if all contract work is complete in accordance with plans and specifications; and
 - ii. Prepare a valued punch list for the completed work noting any defects or corrections required.
 - ff. If the value of the punch list is greater than one (1) percent of the contract value, issue the punch list to the Contractor but withhold the issuance of the Certificate of Substantial Completion until the Contractor performs corrective work sufficient to reduce the punch list to a value at or below one (1) percent of the contract value; and
 - gg. Once the punch list value is at or below one (1) percent of the contract value, prepare a Certificate of Substantial Completion with updated valued punch list and submit to the Owner for review, approval and signature.
4. The Consultant shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work, nor shall the Consultant be responsible for the Contractor's failure to perform the work in accordance with the Construction Documents.
 5. The Consultant shall not have control over or charge of, and shall not be responsible for, acts or omissions of the Contractor or of any other persons or entities performing portions of the work.
 6. The Consultant shall not be responsible for malfeasance, neglect, or failure of any contractors or suppliers to meet their schedules for completion.

H. Closeout Phase

1. The Closeout Phase will commence after signature of the Certificate of Substantial Completion by the Owner.
2. During the Closeout Phase, the Consultant shall:
 - a. Receive and submit to the Owner all required closeout documentation from the Contractor as required per the Construction Contract Documents within forty-five (45) days of the issuance of Substantial Completion including:

- i. Record drawings - one (1) hard copy set and one (1) set of electronic files in .pdf format with layering capabilities that interface with CAD drafting standards representing every sheet in the record drawings; and
 - ii. Digital copies of all project documentation including emails, meeting summaries, all correspondences, logs, etc.
- b. Upon notification by the Contractor, conduct a punch list walk-through to confirm, review, and approve completion of “punch-list” items.
 - c. If all items on the punch list are not complete, revise the original punch list to show completed and remaining items to be complete.
 - d. After forty-five (45) days from the issuance of the Substantial Completion Certificate, perform a punch list walk through and revise the original punch list to show completed and remaining items, if any, and their associated values.
 - i. If the punch list is not complete at that time, the Owner reserves the right to assess a credit against the Contractor for the value of the remaining punch list items as determined by the Consultant and direct the Consultant to prepare a final invoice to the Contractor.
 - ii. If the Owner chooses not to assess a credit and have the Contractor complete the remaining punch list items, the Consultant will inform the Contractor that actual damages will be assessed against the project on a daily basis until the punch list is declared complete.
- i. Maintain and submit to the Owner a detailed account of all work and hours associated with the completion of the punch list at the rates specified in the Contract Documents as Additional Services to be withheld by the Owner from the unpaid funds remaining in the Construction Contract sum.
 - ii. Submit a CD containing digital files of all project documentation for the City’s record at the end of the Closeout Phase. The files should be organized in subfolders that describe each category of documentation and include but not be limited to: invoices, change orders, RFI’s, letters, memorandum, submittals, transmittals, drawings and specifications, schedules, photographs, meeting minutes, etc.

I. Warranty Phase

During the Warranty Phase, the Consultant shall:

- a. Follow up on items to be corrected during the warranty period;

- b. Arrange for and conduct an on-site review and report of the Project sixty (60) days prior to expiration of the one (1) year warranty period; and
- c. Inform the Owner, user agency, and Contractor of any items to be corrected and shall inspect the Project as required until the work is completed.

Except those requirements identified as an Additional Service, completion of the above phases will constitute completion of the Consultant's Basic Services for compensation purposes.

J. Standard Meetings

Consultant shall:

1. During the Design Phases, attend bi-weekly design review and coordination meetings to review the Project requirements and update the Owner on the progress of the Project and other matters;
2. During the Design and Construction phases, attend project progress meetings.
3. Prepare meeting minutes to include:
 - i. Original contractual completion date;
 - ii. Revised contractual completion date by change order (with number of change order(s));
 - iii. Current projected completion date (per the contractors' schedule);
 - iv. Total float days;
 - v. Percentage completed;
 - vi. Construction activities status (activities in progress, activities started and activities completed);
 - vii. Outstanding actions should note responsible parties and deadlines for actions;
 - viii. Actions carried over completion; and
 - ix. Other relevant discussions, decisions and actions.
4. Participate in community and agency Design Phase presentation meetings scheduled and coordinated by the Owner's project manager, as required;
5. Attend and participate in citizen participation meetings as coordinated by the Office of Neighborhood Engagement of the City of New Orleans to become familiar with the views of the neighborhood, as required;
6. Attend internal hearings including, but not limited to Design Advisory Committee meetings, Conditional Use Hearings, Environmental Approval meetings, executive level approval meetings, City Planning Commission meetings, or meetings with federal or state agencies.

K. Community Engagement In Design

1. *Engagement in design.* Community and stakeholder engagement is integral to the design process, and the Consultant will work closely with the Department of Public Works (DPW), the Office of Resilience & Sustainability (ORS), and its partners to incorporate creative and impactful engagement activities throughout the design timeline. The design process should engage residents early and should be iterative in order to meaningfully incorporate stakeholder and community feedback. In order to achieve these expanded community and stakeholder engagement goals, projects in the Gentilly Resilience District will follow the below framework for outreach within the design process. The lead for each stage is noted in parenthesis. The Consultant is expected to work with the City to develop outreach activities in accordance with this framework and to support activities with developing materials, design renderings, handouts, and taking meeting minutes as needed.

a. Project Scoping and Pre-Design

- Identify all key stakeholders and begin to reach out (*Lead: ORS*)
- Identify and convene key internal partner departments based on key project goals, conditions, and locations (*Lead: ORS & DPW*)
- Begin broader outreach that may further inform project scope and goals (*Lead: ORS*)
 - May include pop-up or door-to-door conversations, surveys, citizen science, and storytelling activities
 - ORS will leverage NDR partners and other existing partnerships to conduct this effort

b. Conceptual & Schematic Design (0-30%)

- Develop a project-specific process map for community outreach activities, goals, and key stakeholders. (*Lead: Consultant*)
- Undertake research into the social patterns, history, key assets and challenges, and urban design typologies of the neighborhood to inform design (*Lead: Consultant*)
- Utilize tools like the Climate Smart Cities mapping portal and the Adaptation Support Tool to engage residents and internal and external stakeholders in initial project design alternatives (*Lead: Consultant, with support from ORS & DPW*)
- Propose and design other creative methods for initial project feedback from residents and key stakeholder groups to feed into the initial design (*Lead: Consultant, with support from ORS & DPW*)

c. 30% Milestone – Public Meeting

- Consider meeting models that best engage residents in learning about resilience concepts and the technical details and alternatives of the project and provide opportunities to share meaningful and productive feedback. This may include providing an opportunity to walk

the project site, small group workshops, or formal presentations. *(Lead: CPA & ORS to introduce and facilitate, Consultant to present project details)*

- Get the word out about meetings via targeted mailings, door knocking, Next Door, neighborhood organizations, and other key neighborhood leaders. *(Lead: ORS & DPW)*
- Demonstrate how earlier feedback was incorporated into plans. *(Lead: Consultant)*

d. Design Development (30-60%)

- Consider tactical or temporary installations on project sites to allow residents and stakeholders to experience proposed design alternatives *(Lead: Design Consultant, with support from ORS & DPW)*
- Utilize creative outreach tactics (pop-up education, tours, neighborhood association visits, print collateral, and social media) to share project details with residents who could not attend public meeting *(Lead: ORS, with support from Design Consultant)*

e. 60% Milestone – Public Meeting

- Highlight the changes that have been made since 30% Design and how the design has incorporated community and stakeholder feedback and new technical findings. *(Lead: PM & ORS to introduce and facilitate, Consultant to present project details)*
- Get the word out about meetings via targeted mailings, door knocking, Next Door, neighborhood organizations, and other key neighborhood leaders.

f. Final Design & Construction Document (60-90%)

- Consult with targeted key stakeholder groups to discuss and finalize specific project details *(Lead: CPA, with support from Consultant & ORS)*
- Utilize creative outreach tactics (pop-up education, tours, neighborhood association visits, print collateral, and social media) to share project details with residents who could not attend public meeting *(Lead: ORS, with support from Consultant)*

g. 90% Milestone – Public Meeting

- Highlight the changes that have been made since 60% Design and how the design has incorporated key stakeholder feedback. Explain in a clear and accessible manner the technical design details and specifications of the project and how they work. *(Lead: DPW & ORS to introduce and facilitate, Design Consultant to present project details)*
- Get the word out about meetings via targeted mailings, door knocking, Next Door, neighborhood organizations, and other key neighborhood leaders.

h. Pre-Construction Public Meeting

- Go over key project details, timeline and location of construction, and community impact. *(Lead: DPW)*

i. Construction

- Host groundbreaking event with key stakeholders, community partners, consultants, and public sector representatives. *(Lead: ORS & DPW)*
- Develop creative signage at construction site to show what is happening and what the project will look like when complete. *(Lead: ORS, with support from Consultant and Planning Partners)*

Attendance at meetings beyond those identified Article J and Article K may require Additional Services.

L. Additional Services

1. If the Owner provides written authorization for any of the following Additional Services by Amendment hereto, the Consultant shall be compensated as hereinafter provided:
 - a. Design services related to future facilities, systems, and equipment not intended to be constructed as part of the Project;
 - b. Revisions to drawings, specifications, or other documents when such revisions are inconsistent with previous written approvals or instructions and/or due to causes beyond the control of the Consultant;
 - c. Consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in the provisions of the Basic Services as may be required in connection with the replacement of such work;
 - d. Professional services made necessary by the default of the Contractor or by major defects in the work of the Contractor in the performance of the Construction Contract;
 - e. Services or extensive follow-ups of deficiencies other than the one-year warranty review and report, after issuance by the Owner of the final Certificate of Payment;
 - f. Services other than architectural, civil, structural, mechanical, electrical, landscape design, which are not part of Basic Services to accomplish the goal of this Project;
 - b. Acting as a witness or expert witness at any mediation, arbitration or legal proceeding related to this Project, except when the Consultant is a party thereof;
 - c. Preparing drawings and specifications in connection with Change Orders, unless the Change Order results solely from a negligent error and/or omission of the Consultant;
 - j. Preparation for and attendance at meetings beyond those required in Article II(J) of this Agreement; and/or

- k. Services associated with LEED commissioning or similar rating systems.

ARTICLE III - REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants to the City that:

- A.** The Consultant, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
- B.** The Consultant has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
- C.** The Consultant is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Consultant, its employees, or its subcontractors in the performance of this Agreement;
- D.** The Consultant is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Consultant's performance of this Agreement;
- E.** The Consultant has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;
- F.** The Consultant is not in breach of any federal, state, or local statute or regulation applicable to the Consultant or its operations;
- G.** Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Consultant's most favored customer for the same or substantially similar services;
- H.** The Consultant shall exercise reasonable, professional care in its efforts to comply with the requirements of all applicable local, state, and federal laws, codes, regulations in effect as of the Effective Date.
- I.** The Consultant has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

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

ARTICLE IV - OWNER'S RESPONSIBILITIES

- A.** The Owner shall provide full information regarding its requirements for the Project, including the Owner's budget for the cost of the Work.
- B.** The Owner shall assign an in-house Project Management representative authorized to act on its behalf with respect to the Project. The Owner or its representative shall examine documents submitted by the Consultant and shall render decisions pertaining thereto promptly to avoid unreasonable delay in the progress of the Consultant's services.
- C.** The Owner shall furnish the services of a geotechnical engineer or other Consultants when such services are recommended by the Consultant, including reports, test borings, test pits, soil bearing values, percolation tests, and water pollution tests and other necessary operations for determining subsoil, air, and water conditions, with appropriate professional interpretations thereof.
- D.** The Owner reserves the right to conduct auditing services as may be required to ascertain how or for what purposes the Consultant has used the monies paid to it under the Construction Contract.
- E.** If the Owner observes, or otherwise becomes aware of, any fault or defect in the Project that does not conform to the requirements of the Construction Documents, including the Construction Contract, the Owner shall give prompt written notice thereof to the Consultant.
- F.** The Owner may furnish surveys, legal limitations, proof of ownership, topographic data, and utility locations for, and a legal description of the site of the Project.
- G.** The Owner shall furnish tests, inspections and reports pertaining to the site, if available. Owner shall also provide hazardous materials report, Phase I environmental report and wetlands determination. Additionally, the Owner shall provide the services of an independent materials testing laboratory.
- H.** The Consultant shall have the right to rely on the accuracy and completeness of the information provided by Owner as set out above.

ARTICLE V - COMPENSATION

A. Basic Services

1. Fees for Basic Services performed under this Agreement, unless otherwise noted by the Owner, shall be calculated using the State of Louisiana FP&C logarithmic formula based on the following:
 - a. At the time of execution of the Agreement, the Initial Budget as established by the Owner using the estimated AFC is \$13,064,166.00. Based on the State of Louisiana FP&C logarithmic formula for the year **2017** with applicable multipliers applied as appropriate to the project, the fee for Basic Services is \$1,092,916.00.
 - b. Included in this agreement are additional services for the Community Engagement, Topographic Survey Geotechnical Services, Community Engagement Support, BCA Reports, Hydraulic Modeling, Environmental Services and Resident Inspection. The fee for these services total \$548,082.00.
 - c. At the completion of each design phase, if the Consultant's estimate of probable construction costs exceeds the established project budget and the Owner determines that the project budget needs to be increased, the fees for Basic Services may at the discretion of the Owner be adjusted based on the Consultant's submitted and approved probable cost of construction.
 - d. In the event that the most responsive bid for construction exceeds the Consultant's Construction Documents phase estimate of the cost of the work, the fees for Basic Services may, at the discretion of the Owner, be subject to adjustment based on the following:
 - i. The Scope of Work has not been revised.
 - ii. The Owner obtains cost reasonableness concurrence of cost revisions from the agency providing funding (i.e. FEMA, HUD, CDBG, etc.)
Additional funding is appropriated to the AFC to increase the AFC to the amount of the most responsive bid.
 - e. In the event that the most responsive bid for construction is less than the Consultant's Construction Documents phase estimate of the cost of the Work, the fees for Basic Services may be subject to adjustment based on the following:
 - i. The Scope of Work has not been revised;
 - ii. The Owner obtains cost reasonableness concurrence of cost revisions from the agency providing funding (i.e. FEMA, HUD, CDBG, etc.); and
 - iii. Funding deductions are calculated to adjust the fees for the revised construction cost and the corresponding of the fees for Basic Services.

- f. During the Construction Phase, the fees for Basic Services may, at the discretion of the Owner, be adjusted based on revised cost of construction that exhibit changes to the value of the project due to adjustments to the scope of work approved by the Owner.
 - g. Upon Substantial Completion of the construction and the Owner's discretion, the fees for Basic Services may be adjusted based on:
 - i. Approved change orders that increase the construction costs due to unforeseen conditions or Owner directives;
 - ii. Additional Services as defined in this Agreement and approved by the Owner; and
 - iii. Deductions due to Consultant's errors and/or omissions.
2. The Owner and the Consultant agree in accordance with the terms and conditions of this Agreement that, should the scope of the Project materially change, the compensation to the Consultant shall be adjusted by a written and duly authorized amendment hereto.
3. Payments for Basic Services shall be made monthly in proportion to the services performed so that the compensation at the completion of each Phase as applicable, except when the compensation is on the basis of a multiple of Direct Personnel Expenses, shall equal the following percentages of the total basic compensation:

Phase	%	% complete
(a) Programming /Scoping Phase	5	5
(b) Schematic Design Phase	10	15
(c) Design Development Phase	15	30
(d) Construction Documents Phase	30	60
(e) Bidding Phase	3	63
(f) Construction Admin. Phase	30	93
(g) Closeout Phase	5	98
(h) Warranty Phase	2	100

4. The Owner will make payments of the Consultant's monthly invoice of detailed statements for all categories of services rendered under this Agreement and for all authorized reimbursable expenses incurred within in a timely manner as established by the City's "Req-to-Check" goals and standards for processing and paying City invoices.
5. Partial payments to the Consultant for services rendered will be made monthly by the Owner based upon the percentage of completion of services for each Phase as shown in the reports of Project progress submitted to the Owner by the Consultant. The reports of

progress shall show in detail the status of the services, be subdivided into appropriate phases with the estimated percentage for each phase, and be on a form and with a division of items as approved by the Owner. The invoice shall also show the total of previous payments on account of this Agreement and the amount due and payable as of the date of the current invoice. If applicable, the City will also require that invoices identify costs for work related to Hurricane Katrina damages and costs for work required by the City, if applicable.

6. Three (3) originals of all invoices shall be submitted to the Owner. The Consultant's Project Number and, if applicable, FEMA Project Worksheet ("PW") number shall appear on all invoices for Basic Services.
7. The Consultant's accounting records of all authorized Reimbursable Expenses, authorized Additional Services, and approved services performed on the basis of a multiple of direct personnel expense shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative at a mutually convenient time.
8. Fee calculations shall include the value of alternate(s) authorized by the Owner through the Bidding Phase even if the alternate(s) are not accepted for construction.
9. Document reproduction costs for each phase are included under Basic Services, except as specifically excluded herein.
10. Fees for services in connection with the preparation of documents for construction change orders, providing interior design and services required for, or in connection with, the selection of furniture and furnishings, and for any services not included in this document shall be at a rate agreed upon by the Consultant and the Owner. Prior to the execution of these services, the Consultant shall submit a proposal of projected costs and fees for the Owner's review and approval.

B. Additional Services

Payment to the Consultant for Additional Services shall be made on the basis of the Consultant's and the Consultant's subconsultant's current hourly billing rates offered to preferred clients, which rates shall be submitted to and approved in writing by the City prior to the execution of this Agreement. Such preferred hourly billing rates shall not exceed those listed below in the following rate schedule. No payments shall be made for any of the Consultant's or Consultant's subconsultant's secretarial or administrative personnel. No additional surcharges shall be added to the Owner approved Additional Services hourly billing rates, not for overhead, nor for profit, nor for anything else.

Principal:	\$ 200	Maximum Hourly Rate
Project Architect:	\$ 125	Maximum Hourly Rate
Architect:	\$ 100	Maximum Hourly Rate

Landscape Architect	\$ 100	Maximum Hourly Rate
Civil Engineer:	\$ 160	Maximum Hourly Rate
Structural Engineer:	\$ 160	Maximum Hourly Rate
Mechanical Engineer:	\$ 140	Maximum Hourly Rate
Electrical Engineer:	\$ 140	Maximum Hourly Rate
Other Technical Personnel:	\$ 95	Maximum Hourly Rate
CAD Draftsman:	\$ 85	Maximum Hourly Rate

C. REIMBURSABLE EXPENSES

Reimbursable expenses (“**Reimbursable Expenses**”) are in addition to compensation for Basic Services and Additional Services and include actual expenditures made by the Consultant, its employees, or its professional consultants in the interest of the Project for the expenses listed in Subparagraphs 1 through 6, herein. Reimbursable Expenses must be authorized, in writing, by the Owner. Reimbursable Expenses include:

1. Direct expenses of authorized transportation and living subsistence when traveling in connection with the Project for services beyond Basic Services;
2. Net reproduction expenses of drawings and project manuals other than those to be provided under each Phase as part of Basic Services, including net reproduction costs of full-size sets of reproducible record documents and an electronic file in the format direct by the Owner;
3. Net fees paid by the Consultant for securing approval of authorities having jurisdiction over the Project;
4. On-site resident monitoring, if approved in writing by the Owner;
5. Costs of site surveys, soil borings, testing, or other special services when such work is authorized by the Owner to be made part of this Agreement rather than paid directly by the Owner; and
6. Authorized reimbursable expenses which are not indicated as “direct” or “net” will be billed at a multiple of ONE AND ONE TENTH (1.10) times the amount billed to the Consultant.

D. Direct Personnel Expenses

1. Direct personnel expenses (“Direct Personnel Expenses”) of employees engaged on the Project by the Consultant applies to architects, engineers, designers, job captains, draftsmen, project manual writers, and typists in consultation, research, and design; in

producing drawings, project manuals, and other documents pertaining to the Project; and in services performed during the Construction Phase at the site.

2. Direct Personnel Expenses include cost of salaries and mandatory and customary benefits, such as statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar benefits

ARTICLE VI – CONTRACT TIME

1. **Initial Term.** The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.
2. **Programming/Scope Phase.** The services to be performed during the Scope Phase shall promptly commence upon receipt of written notification to proceed by the Owner (the “**Notice to Proceed**”). Work on the Programming/Scope Phase shall be completed within 30 calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.
3. **Schematic Design Phase.** The services to be performed during the Schematic Design Phase shall be completed within **60** calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.
4. **Design Development Phase.** The services to be performed during the Design Development Phase shall be completed within 90 calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.
5. **Construction Documents Phase.** The services to be performed during the Construction Documents Phase shall be completed within 120 calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.

Should the Consultant fail to complete services under Subsection E above, within the stipulated time, the Consultant shall be liable for stipulated damages in an amount of \$500.00 per day. The failure of the Consultant to provide construction documents within the specified time shall deem the Consultant to be in default.

6. **Appropriation and/or 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.

ARTICLE VII - TERMINATION OR SUSPENSION

- A. The terms of the Agreement shall be binding upon the Parties until the services has

been completed and accepted by the Owner and all payments required to be made to the Consultant have been made. This Agreement may be terminated in writing under any or all of the following conditions:

1. By mutual agreement and consent of the Parties;
 2. By the Owner upon the completion of any Phase;
 3. By the Owner due to the departure for whatever reason of any principal member or members of the Consultant's firm;
 4. By the Owner for convenience by giving the Consultant written notice of said intention to terminate at least thirty (30) days prior to the date of termination; or
 5. By the Owner for cause, effective immediately upon sending written notice to the Consultant. "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.
- B.** Upon termination, the Consultant shall deliver to the Owner all plans and records of Work compiled up to the date of termination and the Owner shall pay in full for Work accomplished up to the date of termination, including any retained percentage earned to date.
- C.** Failure of the Consultant to provide the services to be performed during the Scope Phase, the Schematic Design Phase, or the Design Development Phase within the times stipulated will be deemed as a breach of this Agreement and will subject this Agreement to cancellation by the Owner upon Consultant's receipt of seven (7) days written notice. The Owner will not be liable to the Consultant for payment on any phase of work that has not been completed and delivered to the Owner prior to the Agreement being canceled.
- D.** Upon termination of this Agreement, the Owner shall be free to use any or all plans, project manuals, or documents, for which compensation has been paid in full, as it desires without further additional compensation to the Consultant. The Consultant shall not be liable for any re-use of plans, designs, specifications, or other construction documents by the Owner if the Consultant is not involved in the re-use project.
- E.** Should this Agreement be terminated for any reason other than satisfactory completion

of all services and obligations described herein, neither party shall be obligated to fulfill any remaining provisions of this Agreement at any future date.

- F. In the event of termination by the Owner due to failure of the Consultant to perform satisfactorily, the Consultant shall receive no additional compensation beyond that already due and any Work done shall become the property of the Owner.
- G. In the event of the death of any of the principals of the corporation or loss of any key employees engaged in the rendering of design services for this project, the Consultant shall provide the Owner with evidence of Consultant's ability to continue to render unimpaired design services both as to quality and required schedule for completion.
- H. The Consultant shall not suspend services at any time under the Agreement unless directed in writing by the Owner or as agreed upon by the Consultant and the Owner. Suspension of services shall be grounds for termination.
- I. Should the project be reactivated, the new base fixed fee will be computed on the basis of a revised construction budget. The new base fixed fee may be reduced, based on previous fees paid, but in no case shall the new base fixed fee be reduced by more than the fees paid prior to the termination or suspension.

ARTICLE VIII - RECORDS RETENTION AND ACCESS

- A. The Consultant will grant the City, the State of Louisiana, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representative(s) access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
- B. The Consultant will retain all required records for three years after the State of Louisiana or the City makes final payments and all other pending matters related to the Agreement are closed.

ARTICLE IX - OWNERSHIP OF DOCUMENTS

A full set of final Bid Documents and CD of layouts and flow charts shall be the property of the Owner and shall be delivered to the Owner upon completion of the Project. Upon final payment, all data collected and all products of work prepared, created or modified by Consultant in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Consultant's personnel and administrative records and any tools, systems, and information used by the Consultant to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City

and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Consultant's consent and for no additional consideration to the Consultant. Any re-use of the documents by the Owner will be in accordance with as the laws of the State of Louisiana.

ARTICLE X - INDEMNIFICATION

A. To the fullest extent permitted by law, the Consultant will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Consultant, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of work 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. Notwithstanding any provision to the contrary, the Consultant shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE XI - INSURANCE

A. The following insurance coverages shall be purchased and maintained in the Consultant's name and shall apply on a primary basis and shall be non-contributory by the Owner. The total limit of insurance must be equal to or greater than the minimum acceptable limits

indicated below. If any policies contain a deductible or self-insured retention, then the evidence of insurance for those policies shall disclose the deductible/retention amount.

1. The Consultant shall purchase in its name and maintain insurance with a company or companies having at least an AM Best rating of A:VII (7) or acceptable to and approved by the Owner, and licensed to do business in the State of Louisiana. Such insurance as will protect them from claims which may arise out of or result from the Consultant's services under the Agreement, whether such services be himself or by any Sub-consultant or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the them may be liable.
2. It is mandatory that within ten (10) days after the notification of the award of the Project, the Consultant shall furnish to Owner the Professional Liability policy and Certificates of Insurance as required in this Agreement.
3. If any of the insurance companies providing any insurance coverage furnished by the Consultant is declared bankrupt, becomes insolvent, its right to do business in Louisiana is terminated or it ceases to meet the requirements of this Agreement, the Consultant shall, within thirty (30) days thereafter, substitute another insurance company or companies acceptable to the Owner. The Owner reserves the right to mandate cessation of all services until the receipt of acceptable replacement insurance.
4. The Consultant shall furnish the Owner satisfactory evidence that he has obtained in his name and has in force and in effect, and shall keep in force and effect for the duration of the Project, (except for Professional Liability insurance which shall be maintained for a minimum of three (3) years after Substantial Completion or acceptance of the project, whichever is later, including all extensions of coverage as outlined herein) insurance policies protecting the Consultant and/or the Owner against claims arising out of this Agreement.

B. Required Insurance Coverages:

1. Commercial General Liability (CGL): Insurance Services Office 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 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.
 - a. \$2,000,000 Aggregate for projects valued under \$5,000,000;
 - b. \$4,000,000 Aggregate for projects valued from \$5,000,000 to \$10,000,000;
 - c. \$5,000,000 Aggregate for projects valued from \$10,000,001 to \$25,000,000;
 - d. \$10,000,000 Aggregate for projects valued over \$25,000,000.

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 Consultant has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$500,000 Combined Single Limit per accident for bodily injury and property damage. Higher limits may apply according to the particular project.
3. Workers' Compensation: as required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions): with limits no less than \$1,000,000 per claim. Higher limits of coverage may be required for agreements for Architectural, Engineering, consultant, or other professional services according to specific project needs or contract value.
5. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:
 - a. *Additional Insured Status:* Consultant will provide, and maintain current, 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.
 - b. *Primary Coverage:* For any claims related to this Agreement, 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 Consultant's coverage.
 - c. *Claims Made Policies:* The retroactive date must be shown and must be before the date of the Agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Consultant must purchase "extended reporting" coverage for minimum of five (5) years after the termination of this agreement.
 - d. *Waiver of Subrogation:* Consultant and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.

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

ARTICLE XII – COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

The Consultant shall comply with applicable federal, state, and local laws and ordinances, as shall all others employed by the Consultant in carrying out the provisions of this Agreement. As applicable, the Consultant will also comply with the following, each incorporated herein by reference:

- A. 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);
- B. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- C. 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);
- D. 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);
- E. Mandatory standards and policies relating to the 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);
- F. 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); and

All provisions of the Code of the City of New Orleans and Chapter 2, Article XIII, Section 2-1120, as adopted by City Ordinance No. 22,888 M.C.S. (relative to the operations and the authority of the City Inspector General).

ARTICLE XIII - NON-SOLICITATION STATEMENT

The Consultant warrants 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 the subject contract and that it 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 the subject contract.

ARTICLE XIV - SUBCONSULTANTS

The City may require information regarding ownership interests in the subconsultant prior to approval of the subconsultant's retention. The Consultant shall incorporate by reference in all subcontracts the provisions of this Article and shall require all subconsultants to comply with such provisions. The Consultant's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

ARTICLE XV - NON-DISCRIMINATION

- A. **Equal Employment Opportunity.** 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.
- B. **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.
- C. **Incorporation into Subcontracts.** The Consultant will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

The City may terminate this Agreement for cause if the Consultant fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE XVI - INDEPENDENT CONTRACTOR

A. **Independent Contractor Status.** The Consultant is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.

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

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

ARTICLE XVII - CONFLICT OF INTEREST

In the interest of ensuring that efforts of the Consultant do not conflict with the interests of the City, and in recognition of the Consultant's responsibility to the City, the Consultant agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Consultant. It is incumbent upon the Consultant to notify the City and provide full disclosure of the possible effects of such employment on the Consultant's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Consultant shall rest with the City Attorney.

ARTICLE XVIII - REQUEST FOR INFORMATION

All requests for information from individuals and agencies or any media outlet should be directed to the City's designated Project Manager who will refer them to the Mayor's Office of Communications.

ARTICLE XIX - ASSIGNABILITY

The Consultant shall not assign any interest in this agreement and shall not transfer any interest in the same without prior written consent of the City.

ARTICLE XX - JURISDICTION

The Consultant hereby consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of the Consultant.

ARTICLE XXI - CHOICE OF LAW

This agreement shall be construed and enforced according to the laws of the State of Louisiana, excepting its conflict of laws provisions.

ARTICLE XXII - AUDIT AND INSPECTION

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

ARTICLE XXIII - DISADVANTAGED BUSINESS ENTERPRISE PROGRAM ("DBE")

- 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 Consultant'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.
 - a. The Consultant shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Consultant.
 - b. The Consultant shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
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 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their 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 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. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - 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:

- a. 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

- b. 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.

ARTICLE XXIV – INTENTIONALLY OMITTED

ARTICLE XXV CONVICTED FELON STATEMENT

The Consultant swears that it complies with Section 2-8 (c) of the Code of the City of New Orleans. 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.

ARTICLE XXVI - OWNERSHIP INTEREST DISCLOSURE

The Consultant shall 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.

ARTICLE XXVII - SUB CONSULTANT REPORTING

The Consultant shall provide a list of 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 sub consultants in connection with the Consultant's work for the City. In regard to any sub consultant 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 (30) days of the retaining said sub consultant. If the Consultant fails to submit the required lists and notices, 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 lists and notices are submitted.

ARTICLE XXIII - 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 sub consultants 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.

ARTICLE XXIX - NOTICES

Except as otherwise provided, this Agreement contains no requirements pertaining to reporting, patent rights, copyrights, or rights in data.

ARTICLE XXX - REMEDIES AND SANCTIONS AGAINST 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.

ARTICLE XXXI – DECLARED DISASTER

A. *Declaration.* During the declaration of an emergency by federal, state, and/or local government, the Consultant shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Consultant will vary and may need to be adjusted as needs are identified. The Consultant may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. *Task Order. Notification and Personnel.* Prior or during the declaration of an emergency, the City will notify the Consultant via task order if the City requires the Consultant's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

C. *Purchase Order.* Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for

services, or may issue a modified purchase order if changes are made to the initial purchase order.

D. The Consultant will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

ARTICLE XXXII - PERFORMANCE MEASURES

A. **Factors.** 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).

B. **Failure to Perform.** 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 contractor.

ARTICLE XXXIII - NOTICE

A. **In General.** Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the City:

Director
Capital Projects Administration
City of New Orleans
1300 Perdido Street, Suite 6E15
New Orleans, LA 70112

&

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

2. To the Consultant:

Jennifer Snape, P.E.
Batture, LLC

500 Crystal Street
New Orleans, LA 70124

- B. Effectiveness.** Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.
- C. Notification of Change.** Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE XXXIV - ADDITIONAL PROVISIONS

- A. Modification.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.
- B. Conflicting Employment.** 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.
- C. Construction of Agreement.** 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 shall 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 shall include the neutral and other gender.
- D. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.
- E. Limitations of the City's Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.
- F. 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.

- G. **Non-Exclusivity.** This Agreement is non-exclusive and the Consultant may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement 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.
- H. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.
- I. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.
- J. **Remedies Cumulative.** No remedy set forth in the 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.
- 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. **Special Conditions for HUD Contracts.** The "HUD Compliance Provisions for Professional Services Contracts," attached as Exhibit "E" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to the Consultant that the City intends to seek reimbursement from the HUD Program in connection with the work to be performed under this Agreement.
- M. **Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.
- N. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.
- O. **City's Right to Approve Personnel.** The City reserves the right to approve or reasonable disapprove all engineers, workers, and other field personnel assigned to the Project.

- P. ***Order of Documents.*** In the event of any conflict between the provisions of this Agreement and any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement, RFQ, RFP, HUD provisions, Consultant's response to RFP, Consultant's response to RFQ.

ARTICLE XXXV - EXHIBITS

The following exhibits will be and are incorporated into this Agreement:

- EXHIBIT "A" - SCOPE OF PROJECT**
- EXHIBIT "B" - SCHEMATIC DESIGN CHECKLIST**
- EXHIBIT "C" - DESIGN DEVELOPMENT PHASE CHECKLIST**
- EXHIBIT "D" - CONSTRUCTION DOCUMENT CHECKLIST**
- EXHIBIT "E" - HUD COMPLIANCE PROVISIONS**

ARTICLE XXXVI - 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 email 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.

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

By: 

Printed Name:

MITCHELL J. LANORIEU

Title:

Mayor

4/26/18

FORM AND LEGALITY APPROVED:

Law Department

By: _____

Printed Name: _____



BATTURE LLC

BY: 

JENNIFER SNAPE, P.E.

46-5677826

FEDERAL TAX I.D. OR SOCIAL SECURITY NO.

[EXHIBITS A, B, C, D, and E CONTAINED ON FOLLOWING PAGES]

EXHIBIT “A” - SCOPE OF PROJECT

I. PROJECT OVERVIEW

Background. The City of New Orleans is undertaking an unprecedented network of integrated initiatives across Gentilly that will reduce flood risk, slow land subsidence, spur economic opportunity, improve health, encourage neighborhood revitalization, and adapt our city to a changing natural environment. This concentrated effort will establish the city’s first-ever resilience district and transform Gentilly into a national model for retrofitting post-war suburban neighborhoods into resilient, safe, and equitable communities of opportunity.

This work is supported by the City of New Orleans’ award from the Department of Housing and Urban Development’s (HUD’s) National Disaster Resilience Competition (NDRC). The Competition awarded almost \$1 billion in funding for disaster recovery and long-term community resilience through a two-phase competition process. New Orleans was one of only 13 jurisdictions out of 67 eligible applicants to be awarded funding from NDRC and the City’s \$141.3 million award was the second largest nationally.

The Gentilly Resilience District includes innovative water management projects that will reduce risk from flooding and subsidence by creating spaces to capture rainwater in the urban landscape. These projects will include green infrastructure features that use vegetation, soils, and natural processes to manage water and create healthier urban environments. These projects will work to connect physical resilience with social resilience by providing spaces for recreation, increasing environmental awareness, improving quality of life, and promoting environmental justice. Projects will take place in streets, in neutral grounds, in parks, on schoolyards, on open lots, and on residential properties. While each project will separately reduce risk from flooding and subsidence and provide co-benefits, collectively they will create a network of solutions with exponential benefits that transform the way New Orleanians live with water.

Project Background. The Gentilly Resilience District takes a comprehensive and integrated approach to water management that includes large-scale storage in major boulevards and parklands, which will transform Gentilly into a model for safely living with water in a delta city. Within this larger system, networks of smaller-scale green infrastructure retrofits to neighborhood streets, parks, publicly owned vacant lots, and other open spaces will work to capture rainwater where it falls—reducing localized street flooding, tempering subsidence, improving water quality, and creating public amenities close to homes and schools.

The St. Anthony Neighborhood Resilience Project seeks to establish a new standard for neighborhood streets and neighborhood parks that incorporates stormwater management as a key component. With this project, the City has an opportunity to improve upon existing strategies

implemented across New Orleans and test new strategies for block-level environmental adaptation that can provide a model for neighborhood blocks across the city.

The St. Anthony neighborhood is a low-lying community within the Gentilly Resilience District bounded by the London Avenue Canal to the west, Leon C. Simon Drive to the north, Elysian Fields to the east, and Mirabeau Avenue to the south. Build after World War II, the pre-Katrina housing stock was primarily slab-on grade construction. Catastrophic flooding following Katrina and subsequent rebuilding has caused shifts in the neighborhood typology and demographics. Today, homes in the neighborhood are a mix of slab on grade and elevated new construction, interspersed with vacant lots. The neighborhood is 80% Black, mixed-income, with a mix of homeowners and renters and a high percentage of single-parent households. The 2015 *HousingNOLA* strategy categorizes St. Anthony as an Emerald neighborhood, with higher rates of vacant lots and homes and limited housing market activity. The neighborhood consists of a mix of D and E market values (on an A through H scale of strongest to weakest housing markets) based on the 2015 Market Value Analysis conducted by The Reinvestment Fund.

II. PROJECT SCOPE AND GOALS

The City has identified Wingate Drive and Wildair Drive from Robert E. Lee Boulevard to Filmore Avenue, Filmore Playground at 5500 Wildair Drive, and Gatto Playground at 1929 Wildair Drive, as priority intervention locations for this project. The City may consider additional locations within the neighborhood boundaries for interventions that will advance the project goals below.

The design and outreach of this project will be closely coordinated with the Gentilly Resilience District Blue & Green Corridors and the New Orleans Redevelopment Authority's (NORA's) Community Adaptation Program which provides low to moderate income homeowners in Gentilly with stormwater management interventions in their yards.

The anticipated scope of work serves the following major goals:

- I. Improve stormwater management and reduce flood risk and subsidence.

This project will create a network of small green infrastructure improvements that will capture water where it falls, reduce runoff flowing into city's drainage system, infiltrate stormwater, and reduce flooding. Interventions should be informed by and show reductions to both modeled flooding and community-based data. The consultant should also utilize the City's Adaptation Support Tool and Climate-Smart Cities mapping tool developed in collaboration with Deltares and Trust for Public Land to engage residents and key stakeholders in decision-making on the most appropriate stormwater measures.

 - a. Example measures may include: street and curb bioswales and bump-outs, permeable sidewalks, new street trees, subsurface water storage, high performance recreation fields, and rain gardens

2. Empower residents to participate in adapting their block and neighborhood parks to manage water and build resilience.
This may include creative outreach strategies for engaging residents directly in the design of interventions for their block, identifying ways for neighborhood street interventions to tie into stormwater measures homeowners can take in their yards through the NORA Community Adaptation Program or their own efforts, identifying primary health concerns and what environmental changes are needed to improve health, and outlining creative long-term stewardship approaches.
3. Enhance social cohesion and community well-being.
The process and outcome of the design for this project should strengthen bonds among neighbors and improve health and quality of life for residents.
4. Develop a replicable model for block-by-block strategies for stormwater management and community resilience across the city.
This project has an opportunity to improve upon already implemented projects and to test new and innovative materials, strategies for design, and community engagement practices that can serve as a model for best practices across the city.

EXHIBIT "B" PROJECT SCOPING CHECKLIST

General Objectives of Phase

- Drawings and other documents indicating the scale and relationships of Project components in conformance with program
- Project images / renderings clearly depicting design intent
- Representative plan element(s) graphically complete
- Structural grid and representative exterior modules fixed
- Project performance criteria established
- Schematic Design estimate of the cost of work

DELIVERABLES FOR PHASE

Drawings

- In general drawings indicate the scale and relationship of Project components
- All plans have spaces generally defined
- Representative area plans generally graphically fixed
- Preliminary Civil and Landscape drawings
 - Title sheet showing layout map, project limits, design speed, and traffic volume
 - Plan and profile sheets showing existing topography
 - Proposed vertical profile for any roadway reconstruction
 - Baseline layout with control points and proposed horizontal alignment
 - Typical roadway sections with pavement design data
- Structural plans, foundation defined, columns sized and located, lateral design defined

Project Manual

- General statement of purpose of Schematic Design Package
- Project description
- Outline Specifications including general description of systems and finishes sufficient to meet the General Objectives of Phase
- Project criteria established
- Attachments and additional information as project requires

EXHIBIT "C" PRELIMINARY ENGINEERING PHASE CHECKLIST

General Objectives of Phase

- Drawings and other documents to fix and describe the size and character of the Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate
-

- Predominate production phase expanding upon representative work of Schematic Design
- Foundation or Superstructure permit if called for in the agreement
- Primary consultant coordination effort well underway
- Specialty consultant coordination begun
- Draft of Project Manual
- Initial GMP pricing and/or select early bid package
- Project performance criteria refined/confirmed
- Updated cost estimate.

DELIVERABLES FOR PHASE

Drawings

- Civil plans, landscape plans and architectural site plans are generally complete
 - Geometric details submitted for review
 - Plan and profile sheets updated with all proposed drainage, water and sewer replacements detailed
 - Cross sections detailed with subgrade and finished grade elevations, projected subsurface pipes, and right of way
 - Pavement marking and signing details
- Drainage design report submitted for review
- Plans generally complete
- Partial elevations drawn with dimensions, notes and sections referenced
- Typical sections drawn
- Representative larger scale section details drawn
- Structural plans generally complete; columns, beams, slabs, lateral design elements scheduled and detailed
- Coordination is well underway

Project Manual

- General statement of purpose of Design Development Package
- Outline Specification expanded or edited down as draft full sections are included
- Draft of select full specification sections
- GMP or early bid packages - the following sections may be required for preliminary bidding; 1) foundation system, 2) structure, 3) major building envelope systems, and 4) elevators.

QA/QC Documents

- Summary of Owner's Schematic Design review comments, Consultant's response, and QA verification of changes

EXHIBIT "D" FINAL ENGINEERING CHECKLIST

The checklist is intended as a guideline to assist the Design Team to develop a comprehensive and coordinated set of construction documents. The checklist should not be considered to be all-inclusive. It is the responsibility of the Consultant to provide all information as necessary and required for a complete and fully operational project.

General Information

- A key plan, when necessary to identify areas of the floor plan when the plan is separated.
- Drawing sheets should be of a size appropriate to efficiently accommodate the necessary drawing information and minimize white space.
- Main plans for all disciplines are to be at the same scale and oriented in the same direction. North should be oriented to the top of the page unless the size of the plan is too large. North to the right sheet edge is the alternative.
- Title blocks should follow the example of the Standard Title Block Form 112.
- Provide legends for abbreviations, materials and symbols.
- Titles on the drawings and on the specifications shall **exactly** match the title on the Project Number/Data Request.
- Each technical drawing sheet shall be sealed, signed, and dated by the responsible design professional.

Cover Sheet

- Project title and project number
- Owner/state agency name.
- Project location.
- DCC's street address, telephone number and fax number.
- Project architect/engineer's name, street address, telephone number, and fax number.
- Primary consultants' names and disciplines.
- Drawing sheet index.
- Vicinity and/or campus maps showing project limits
- Traffic data and design speed.
- A title block that matches the title block on the other drawings should appear on the cover sheet.

Site Plans

- Site plan(s) shall be drawn to a scale not smaller than 1" = 50'-0" and provide a graphic scale.
- Survey information.
- Clearly differentiate new features from existing.
- Sidewalks, including dimensions.
- Driveways including dimensions, curbs, directional graphics and signage.
- Parking areas, including dimensions, curbs, striping, area lighting, bollards, parking bumpers and signage.
- Curb cuts, ramps and stairs including dimensions.
- Building floor elevations shall be noted as both the actual elevation and the referenced elevation.
- Contours of existing and finish grades shall be shown at 1'-0" intervals, include spot elevations where needed.

- All horizontal control dimensions.
- Drainage.
- Landscaping.
- Final grade elevations at all corners of the building and at such points as building entrances, landings, walks and drives.
- Structures to be demolished.
- Site utility information may be combined with other site plan information if it can be clearly represented without distortion of other site information. Otherwise provide site utility information separately.
- Existing utilities to be removed or abandoned.
- Construction limits and staging area.
- Contractor access and parking.
- When applicable, indicate protected temporary egress through the site construction area.

STRUCTURAL

- Drawings shall contain all dimensions and details necessary to layout and construct the structure.
- Identify the code used for design.
- Details shall identify all typical and special conditions that occur in all components of the structure.
- The foundation plans shall be drawn at the same scale as the general plans.
- Provide large-scale details, sections, schedules and notations to indicate the size, shape, materials, reinforcing and elevations of footings, piers, grade beams and walls and footing drain system.
- Foundation plans may be combined with slab on grade and basement plans if clarity is maintained.
- Framing plans shall be drawn at the same scale as the architectural plans.
- Schedules shall identify material, size, shape of member and identifying mark.
- Note the design live loads used in the preparation of the structural members.
- Show column grid lines and verify that the locations match the plans.
- Identify loading including, floor / roof live loads, snow loads and dead loads.
- Identify species and grade of wood in wood construction.
- Indicate basic wind speed (3-second gust), miles per hour and wind exposure per applicable code.
- Indicate seismic design category and site class and the following:
 - Seismic importance factor and occupancy category.
 - Mapped spectral response accelerations.
 - Site Class
 - Spectral response coefficients
 - Seismic design category
 - Basic seismic-force resisting systems
 - Design base shear
 - Seismic response coefficients
 - Response modification factors
 - Analysis procedure used.

ENGINEERING

ROADWAY / DRAINAGE FEATURES

- Differentiate existing topography from proposed improvements. Refer to “Layout Procedures and AutoCAD Drafting Standards”, *Louisiana City of New Orleans Department of Public Works Roadway Design Guide* (DPW RDG), latest edition.
- Typical section drawings depicting right of way, lane widths, sidewalks, cross slopes, parabolic crown, type of material in each layer, and all dimensions. Where dimensions vary, indicate range of values.
- Horizontal alignment and vertical profile information, including the survey base line and its relation to the property line, indicating all PI's, PC's, PT's and curve data (Vert. Curves: PVC - PVI - PVT) (Horiz. Curve: PC - PRC - PCC - PT) together with the necessary reference points.
- Topography of not only the physical features of the terrain, but also the location and description of all objects and obstructions which must be considered in the design and construction of the projects. Physical features of each object shall be identified with size, shape, type, location, elevation, depth, invert, etc.
- Callout or identify with hatching all infrastructure to be removed or demolished, with salvage instructions.
- All roadway improvements, including pavement, signage, curbing, driveways, sidewalks.
- Sufficient geometric detail, including curb type and radii; lane widths; baseline heading and stationing; driveway widths and stations; sidewalk widths, distance and offsets; and temporary benchmark type, station and offset with three-way point ties.
- Stormwater management features detailed with station, type, size, diameter, length, slope, depth and invert and specifications.
- Maintenance plan for stormwater management features and specifications.
- Cross sections at the intersection of all ROW lines, at points of break in the profile, and at not more than 25' between stations. Refer to DPW RDG for required scale and data to be depicted.

FINAL SPECIFICATION

- State that specific brands or catalog numbers listed in the specifications are intended only to establish performance, quality, type and physical characteristics.
- Whenever possible, a minimum of three manufacturers shall be listed as approved equal.
- Required performance criteria for all materials and assemblies should be included along with installation procedures (unless reference is made to follow manufacturers' procedures), coordination procedures and cleanup methods.
- Balancing of all air-handling, hydronic and exhaust systems, when applicable, shall be prescribed in the mechanical specification in detail, including contractor requirements.
- Special inspections, as required by the applicable building code, shall be included in applicable sections.**
- All devices such as balancing dampers, splitter dampers, volume extractors, balancing valves, thermometers, pressure gauges, instrument-flow fittings and instant access panels required for balancing shall be specified.
- The final specifications shall require a minimum of four complete sets of operations and maintenance manuals covering each item of equipment. These manuals shall be bound separately for the mechanical and electrical and any portion, which is under separate contract. The manuals shall include interconnection diagrams for mechanical and electrical equipment, complete schematic wiring diagrams of all electrical and electronic

equipment or subsystems or components of mechanical or similar equipment which are adequate for troubleshooting or repair purposes.

- The final specifications shall require the contractor to provide a minimum of one complete run-through with operating agency of all new and modified equipment and systems. This allows the operating agency personnel to receive "hands-on" experience before the contractor leaves the project.
- Specification Header shall include the project title, project number, the month & year to match the date on the drawings. Provide a blank line below the header information to separate the header from the technical specification. See sample below.
- Specification footer shall include the section number and title. Provide a blank line above the footer information to separate the footer from the technical specification. See sample below.

Exhibit "E"

HUD COMPLIANCE PROVISIONS FOR DIRECT GRANTEE CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

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

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

- A. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Contractor's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and

accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.

- F. In the event of the Contractor's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- G. The Contractor will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a Contractor or vendor as a result of such direction by the Department, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

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

A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);
 - (b) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South America or other Spanish Culture or origin, regardless of race);

- (c) Asian and Pacific Islander (all persons having origins in any of the original people of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
 - (d) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- B. When the Contractor, or any contractor, at anytime, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract, in excess of \$10,000, the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this contract resulted.
- C. If the Contractor is participating (pursuant to 41 CFR 60 4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in compliance with the provisions of any such Hometown Plan. Each Contractor or Contractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or contractors toward a goal in an approved Plan does not excuse any covered Contractor's or contractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- D. The Contractor shall implement the specific affirmative action standards provided in paragraphs G(1) through G(16) of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction Contractors performing contracts in geographical areas where they do not have a federal or federally-assisted construction contract shall apply the minority and female goals established for the geographic area where the contract is being performed. Goals are published periodically in the Federal Register in notice form and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- E. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

- F. In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.
- G. The Contractor shall take specific affirmative action to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- (1) Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each construction project. The Contractor shall specifically ensure that all foremen, superintendents and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
 - (2) Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
 - (3) Maintain a current file of the names, addresses, and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefore, along with whatever additional actions the Contractor may have taken.
 - (4) Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement have not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
 - (5) Develop on-the-job training opportunities and/or participate in training programs for the area which expressly includes minorities and women,

including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under G(2) above.

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

- (11) Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60.3.
- (12) Conduct, at least annually, an inventory and evaluation of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- (13) Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- (14) Ensure that all facilities and company activities are nonsegregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- (15) Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction Contractors and suppliers, including circulation of solicitation to minority and female Contractor associations and other business associations.
- (16) Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

H. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Contractor's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation shall not be a defense for the Contractor's non-compliance.

I. A single goal for minorities and a separate single goal for women has been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).

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

3. **NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION**
(applicable to contracts and subcontracts exceeding \$10,000)

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Contractor's construction work (whether or not it

is federal or federally assisted) performed in the covered area. If the Contractor performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

With regard to this second area, the Contractor also is subject to the goals for both its federally involved and non-federally involved construction. The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60.4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60.4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60.4. Compliance with the goals will be measured against the total work hours performed.

C. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.

D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any):

4. **CERTIFICATION OF NONSEGREGATED FACILITIES**
(applicable to contracts and subcontracts exceeding \$10,000)

By the submission of this bid, the bidder, offeror, applicant or Contractor certifies that he/she does not maintain or provide for his/her establishments, and that he/she does not permit employees to perform their services at any location, under his/her control, where segregated facilities are maintained. He/she certifies further that he/she will not maintain or provide for employees any segregated facilities at any of his/her establishments, and he/she will not permit employees to perform their services at any location under his/her control where segregated facilities are maintained. The bidder, offeror, applicant or Contractor agrees that a breach of this certification is a violation of the equal opportunity clause of this contract.

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains,

recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

He/she further agrees that (except where he/she has obtained for specific time periods) he/she will obtain identical certification from proposed contractors prior to the award of subcontracts exceeding \$10,000 which are not exempt from the provisions of the equal opportunity clause; that he/she will retain such certifications in his/her files; and that he/she will forward the following notice to such proposed contractors (except where proposed contractors have submitted identical certifications for specific time periods).

5. **CIVIL RIGHTS**

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

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

The Contractor shall comply with the provisions of Section 109 of the Housing and Community Development Act of 1974. No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under this title. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

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

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

- C. The Contractor agrees to send to each labor organization or representative of workers with which the Contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Contractor's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
 - D. The Contractor agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the Contractor is in violation of the regulations in 24 CFR part 135. The Contractor will not subcontract with any Contractor where the Contractor has notice or knowledge that the Contractor has been found in violation of the regulations in 24 CFR part 135.
 - E. The Contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the Contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Contractor's obligations under 24 CFR part 135.
 - F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future 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).
8. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**
(applicable to contracts and subcontracts exceeding \$10,000)
- A. The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Contractor agrees to take affirmative action to employ, advance in employment and otherwise treat qualified

handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

- B. The Contractor agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Contractor's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- D. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Contractor will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the 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 Contractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

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

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

10. **AGE DISCRIMINATION ACT OF 1975**

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

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

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

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

In addition to the foregoing requirements, all nonexempt Contractors and contractors shall furnish to the owner, the following:

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

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

A. **Lead-Based Paint Hazards**

The construction or rehabilitation of residential structures is subject to the HUD Lead-Based Paint regulations, 24 CFR Part 35. The Contractor and contractors shall comply with the provisions for the elimination of lead-based paint hazards under Subpart B of said regulations. The Owner will be responsible for the inspections and certifications required under Section 35.14 (f) thereof.

B. **Use of Explosives**

When the use of explosives is necessary for the prosecution of the work, the Contractor shall observe all local, state and federal laws in purchasing and handling explosives. The

Contractor shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats.

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

C. **Danger Signals and Safety Devices (Modify as Required)**

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

13. **FLOOD DISASTER PROTECTION**

This contract is subject to the requirements of the Flood Disaster Protection Act of 1973 (P.L. 93 234). Nothing included as a part of this contract is approved for acquisition or construction purposes as defined under Section 3(a) of said Act, for use in an area identified by the Secretary of HUD as having special flood hazards which is located in a community not then in compliance with the requirements for participation in the National Flood Insurance Program pursuant to Section 201(d) of said Act; and the use of any assistance provided under this contract for such acquisition for construction in such identified areas in communities then participating in the National Flood Insurance Program shall be subject to the mandatory purchase of flood insurance requirements or Section 102(a) of said Act.

Any contract or agreement for the sale, lease, or other transfer of land acquired, cleared or improved with assistance provided under this Contract shall contain, if such land is located in an area identified by the Secretary as having special flood hazards and in which the sale of flood insurance has been made available under the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4001 et seq., provisions obligating the transferee and its successors or assigns to obtain and maintain, during the ownership of such land, such flood insurance as required with respect to financial assistance for acquisition or construction purposes under Section 102(a) of Flood Disaster Protection Act of 1973.

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

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

15. **INSPECTION**

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

16. **REPORTING REQUIREMENTS**

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

17. **CONFLICT OF INTEREST**

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

18. **ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED**

(applicable to contracts and subcontracts of \$10,000 and under)

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

- A. The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Contractor shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising;

layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

- B. The Contractor shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by Contracting Officer setting forth the provisions of this non-discrimination clause. The Contractor shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.
- C. Contractors shall incorporate foregoing requirements in all subcontracts.

19. **PATENTS**

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

20. **COPYRIGHT**

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

21. **TERMINATION FOR CAUSE**

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

22. TERMINATION FOR CONVENIENCE

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

23. ENERGY EFFICIENCY

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

24. SUBCONTRACTS

- A. The Contractor shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Contractor shall be as fully responsible to the Owner for the acts and omissions of the Contractor's contractors, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Contractor.
- C. The Contractor shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind contractor to the Contractor by the terms of the contract documents insofar as applicable to the work of contractors and to give the Contractor the same power as regards terminating any subcontract that the Owner may exercise over the Contractor under any provision of the contract documents.
- D. Nothing contained in this contract shall create any contractual relation between any Contractor and the Owner.

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

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

26. **PROTECTION OF LIVES AND HEALTH**

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

27. **BREACH OF CONTRACT TERMS**

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

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

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced 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.

29. **CHANGES**

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

30. **PERSONNEL**

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

All the services required hereunder will be performed by the Contractor or under its supervision, and all personnel engaged in the work shall be fully qualified and shall be authorized or permitted under State and local law to perform such services.

No person who is serving sentence in a penal or correctional institution shall be employed on work under this Contract.

31. **ANTI-KICKBACK RULES**

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

32. **ASSIGNABILITY**

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

33. **INTEREST OF CONTRACTOR**

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

34. **POLITICAL 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.

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

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

36. **DISCRIMINATION DUE TO BELIEFS**

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

37. **CONFIDENTIAL FINDINGS**

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

38. **LOBBYING**

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

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.

39. **FEDERAL LABOR STANDARDS PROVISIONS**

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

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

Applicability

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

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

Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under 29 CFR 5.5(a)(1)(ii) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its contractors at the site of the work in a prominent and accessible, place where it can be easily seen by the workers.

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

- (1)** The work to be performed by the classification requested is not performed by a classification in the wage determination; and
- (2)** The classification is utilized in the area by the construction industry; and
- (3)** The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within 30 days of receipt and so advise HUD or its designee

or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

(c) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and HUD or its designee do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), HUD or its designee shall refer the questions, including the views of all interested parties and the recommendation of HUD or its designee, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

(d) The wage rate (including fringe benefits where appropriate) determined pursuant to subparagraphs (1) (ii) (b) or (c) of this paragraph, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

2. Withholding. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime Contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees and helpers, employed by the Contractor or any contractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee or helper, employed or working on the site of the work, all or part of the wages required by the contract, HUD or its designee may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased. HUD or its designee may, after written notice to the Contractor, disburse such amounts withheld for and on account of the Contractor or Contractor to the respective employees to whom they are due. The Comptroller General shall make such disbursements in the case of direct Davis-Bacon Act contracts.

3. (i) Payrolls and basic records. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in Section 1 (b) (2) (B) of the Davis-bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5 (a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs. (Approved by the Office of Management and Budget under OMB Control Numbers 1215-0140 and 1215-0017.)

(ii) (a) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to HUD or its designee if the agency is a party to the contract, but if the agency is not such a party, the Contractor will submit the payrolls to the applicant sponsor, or owner, as the case may be, for transmission to HUD or its designee. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a) (3) (i). This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime Contractor is responsible for the submission of copies of payrolls by all contractors. (Approved by the Office of Management and Budget under OMB Control Number 1215-0149.)

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Contractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) That the payroll for the payroll period contains the information required to be maintained under 29 CFR 5.5 (a)(3)(i) and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in 29 CFR Part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(c) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by subparagraph A.3.(ii)(b).

(d) The falsification of any of the above certifications may subject the Contractor or Contractor to civil or criminal prosecution under Section 1001 of Title 18 and Section 231 of Title 31 of the United States Code.

(iii) The Contractor or contractor shall make the records required under subparagraph A.3.(i) available for inspection, copying, or transcription by authorized representatives of HUD or its designee or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or Contractor fails to submit the required records or to make them available, HUD or its designee may, after written notice to the Contractor, sponsor, applicant or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or contractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event

the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees. Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate that is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity. The utilization of apprentices, trainees and journeymen under 29 CFR Part 5 shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

5. Compliance with Copeland Act requirements. The Contractor shall comply with the requirements of 29 CFR Part 3 which are incorporated by reference in this contract

6. Subcontracts. The Contractor or Contractor will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the contractors to include these clauses in any lower tier subcontracts. The prime Contractor shall be responsible for the compliance by any Contractor or lower tier Contractor with all the contract clauses in this paragraph.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract and for debarment as a Contractor and a Contractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act Requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR Parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR Parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its contractors) and HUD or its designee, the U.S. Department of Labor, or the employees or their representatives.

10. (i) Certification of Eligibility. By entering into this contract the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of Section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1) or to be awarded HUD contracts or participate in HUD programs pursuant to 24 CFR Part 24.

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1 01 0, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

11. Complaints, Proceedings, or Testimony by Employees. No laborer or mechanic to whom the wage, salary, or other labor standards provisions of this Contract are applicable shall be discharged or in any other manner discriminated against by the Contractor or any contractor because such employee has filed any complaint or instituted or caused to be instituted any proceeding or has testified or is about to testify in any proceeding under or relating to the labor standards applicable under this Contract to his employer.

B. Contract Work Hours and Safety Standards Act. The provisions of this paragraph B are applicable only where the amount of the prime contract exceeds \$100,000. As used in this paragraph, the terms "laborers" and "mechanics" include watchmen and guards.

(1) Overtime requirements. No Contractor or Contractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in subparagraph (1) of this paragraph, the Contractor and any Contractor

responsible therefore shall be liable for the unpaid wages. In addition, such Contractor and Contractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in subparagraph (1) of this paragraph, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of 40 hours without payment of the overtime wages required by the clause set forth in sub paragraph (1) of this paragraph.

(3) Withholding for unpaid wages and liquidated damages. HUD or its designee shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or contractor under any such contract or any other Federal contract with the same prime contract, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act which is held by the same prime Contractor such sums as may be determined to be necessary to satisfy any liabilities of such Contractor or contractor for unpaid wages and liquidated damages as provided in the clause set forth in subparagraph (2) of this paragraph.

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

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

(1) No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.

(2) The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, 40 USC 3701 et seq.

(3) The Contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each contractor. The Contractor shall take such action with respect to any subcontract as the Secretary of Housing and Urban Development or the Secretary of Labor shall direct as a means of enforcing such provisions.

40. SOLID WASTE DISPOSAL ACT

The Grantee shall comply with Section 6002 if the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR

part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

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

(b) The term *procurement actions* includes:

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

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

(c)(1) This guideline does not apply to purchases of designated items which are unrelated to or incidental to Federal funding, i.e., not the direct result of a contract or agreement with, or a grant, loan, or funds disbursement to, a procuring agency.

41. CONFIDENTIALITY

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

42. REPAYMENT OF FUNDS

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

43. DUPLICATION OF BENEFITS

The Contractor shall not carry out any of the activities under this Agreement in a manner that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). The Contractor must comply with HUD’s requirements for duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal Register notice requires compliance with the following

HUD guidance documents: (1) the guidance published by HUD in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060); and (2) the guidance document entitled “HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recover (DR) Assistance,” issued on July 25, 2013.

44. LIMITED ENGLISH PROFICIENCY (LEP)

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