

K23-178

**PROFESSIONAL SERVICES AGREEMENT  
BETWEEN  
THE CITY OF NEW ORLEANS  
AND  
DANA BROWN & ASSOCIATES, INC.  
RFQ #1495  
DWYER CANAL PUBLIC SPACE IMPROVEMENTS 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 LaToya Cantrell, Mayor (“**Owner**” or the “**City**”), and Dana Brown & Associates, Inc represented by Dana Nunez Brown, President (the “**Contractor**”). The City and the Contractor 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 September 14, 2021, the City issued Request for Qualifications No. 1495 seeking qualified persons to provide professional design, engineering, and construction management services for resilience, stormwater management, and /or green infrastructure (the “**RFQ**”);

**WHEREAS**, the Contractor submitted qualifications dated October 14, 2021; and

**WHEREAS**, the Contractor submitted a proposal dated July 28, 2022, and the City selected the Contractor to perform the professional services described in the RFP;

**NOW THEREFORE**, the City and the Contractor 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 Contractor's basic services (“**Basic Services**”) shall consist of the following eight phases: Programming/Scope, Schematic Design, Design Development, Construction Documents, Bidding, Closeout, Construction, 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. Contractor’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, Contractor 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 Contractor shall begin the Programming/Scope Phase of the Project.
2. During the Programming/Scope Phase, the Contractor 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. Contractor 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 Contractors, 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, which can be authorized only through an amendment to this Agreement executed by both parties.
  4. The Owner will review the Scope Phase documents and present review comments that may require design modifications. The Contractor 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 Contractor shall commence the Schematic Design Phase.
2. During the Schematic Design Phase, the Contractor 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 Contractor 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 Contractor with copies of the Owner's records of the site, if available, but at no time will the Contractor 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 Contractor'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 Contractor 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 Contractor shall commence the Design Development Phase.
2. During the Design Development Phase, the Contractor 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 exceeds 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 Contractor 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 Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor.

**E. Construction Documents Phase**

1. Upon written authorization by the Owner and approval of the Design Development Documents, the Contractor shall commence the Construction Documents Phase.
2. During the Construction Documents Phase, the Contractor 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 exceeds 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 Contractor 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 Contractor 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 Contractor;
  - o. Unless otherwise instructed in writing by the Owner, make all necessary alterations at Contractor'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 Contractors' 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 Contractor 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 Contractor'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 Contractor 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 Contractor;
  - b. Authorize the Contractor, 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 Contractor; 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 Contractor with access to the site when work is in progress.
- 3. During the Construction Phase the Contractor 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 Contractor 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 Contractor 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 Contractor;

- 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 Contractor 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 Contractor to the Contractor at the time of transmittal from the Contractor to the Contractor;
- v. After receiving the Owner's written approval, prepare all change orders ("Change Order(s)") and Construction Change Directives. Contractor 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 Contractor, 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 Contractor 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 Contractor to the Owner that:
  - i. To the best of the Contractor'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 Contractor 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 Contractor 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 Contractor 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 Contractor be responsible for the Contractor's failure to perform the work in accordance with the Construction Documents.
5. The Contractor 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 Contractor 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 Contractor 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 Contractor and direct the Contractor 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 Contractor will inform the Contractor that actual damages will be assessed against the project on a daily basis until the punch list is declared complete.
  - iii. 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.
  - iv. 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 Contractor 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 Contractor's Basic Services for compensation purposes.

**J. Meetings**

Contractor 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 Contractor will work closely with the Capital Projects Administration (CPA), 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 Contractor 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
- Identify and convene key internal partner departments based on key project goals, conditions, and locations
- Begin broader outreach that may further inform project scope and goals
  - May include pop-up or door-to-door conversations, surveys, citizen science, and storytelling activities
  - Owner 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.
- Undertake research into the social patterns, history, key assets and challenges, and urban design typologies of the neighborhood to inform design
- 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
- Propose and design other creative methods for initial project feedback from residents and key stakeholder groups to feed into the initial design

**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.
- Get the word out about meetings via targeted mailings, door knocking, Next Door, neighborhood organizations, and other key neighborhood leaders.
- Demonstrate how earlier feedback was incorporated into plans.

d. **Design Development (30-60%)**

- Consider tactical or temporary installations on project sites to allow residents and stakeholders to experience proposed design alternatives.
- 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.

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.
- 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.
- 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.

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.
- 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.

i. **Construction**

- Host groundbreaking event with key stakeholders, community partners, Contractors, and public sector representatives.
- Develop creative signage at construction site to show what is happening and what the project will look like when complete.

### **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 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.
- D. 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.
- E. 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.
- F. 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.
- G. 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 **\$2,539,611.00**. Based on the State of Louisiana FP&C logarithmic formula for the year **2021** with applicable multipliers applied as appropriate to the project, the fee for Basic Services is **\$225,090.69**.
  - b. 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.
  - c. 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, CDBG, etc.)

Additional funding is appropriated to the AFC to increase the AFC to the amount of the most responsive bid.

- d. 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:
    1. The Scope of Work has not been revised;
    2. The Owner obtains cost reasonableness concurrence of cost revisions from the agency providing funding (i.e. FEMA, CDBG, etc.); and
    3. Funding deductions are calculated to adjust the fees for the revised construction cost and the corresponding of the fees for Basic Services.
  - e. 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.
  - f. 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.
5. Payment. Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City's supplier portal.
6. 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.
7. **Invoices.**
  - a. The Consultant must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include, at a minimum, the following information:

- 1) Name of Consultant;
  - 2) Date of Invoice;
  - 3) Invoice Number;
  - 4) Contract or Purchase Order Number issued by the City (i.e. K#);
  - 5) Name of the City Department to be invoiced (i.e. City Civil Service);
  - 6) Description of the Services completed; and
  - 7) An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.
- b. Invoices will be processed in accordance with this Article 5 of the Agreement.
  - c. All invoices must be signed by an authorized representative of the Consultant under penalty of perjury attesting to the validity and accuracy of the invoice.
  - d. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.
8. Three (3) originals of all invoices shall be submitted to the Owner. Prior to submission under Article V(7) and (8), the Consultant shall submit invoices to the City for pre-approval. The City reserves the right to require other reasonable accommodations from Consultant regarding invoices, provided the City requests these changes in writing. The Consultant's Project Number and, if applicable, FEMA Project Worksheet ("PW") number shall appear on all invoices for Basic Services.
  9. 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.
  10. 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.
  11. Document reproduction costs for each phase are included under Basic Services, except as specifically excluded herein.
  12. 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**

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DNE
 Included in this agreement are additional services for Community Engagement, ~~Hydrologic Modeling, and Benefit Cost Analysis Reports.~~ <sup>Operations & Maintenance Plan.</sup> The fee for these services totals ~~\$239,375.00.~~ <sup>\$173,566.00</sup>

Services	Subtotal
Community Outreach	\$77,200.00
Operations and Maintenance Plan	\$33,710.00
Survey	\$51,026.00
Geotechnical Services	\$11,630.00
<b>Additional Services Total</b>	<b>\$173,566.00</b>

**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.
7. An allowance of \$20,000.00 is provided for reimbursable expenses authorized in writing by the Owner.

**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.

- E. Maximum Amount.** The maximum aggregate amount payable by the City for all services performed under this Agreement is \$418,656.69. This amount is inclusive of all services and cannot be increased except by a validly executed amendment. The City’s obligation to compensate the Consultant under this Agreement will not exceed the maximum aggregate amount payable at any time.

**ARTICLE VI – CONTRACT TIME**

- A. 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.
- B. 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 61 calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.
- C. Schematic Design Phase.** The services to be performed during the Schematic Design Phase shall be completed within 123 calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.
- D. Design Development Phase.** The services to be performed during the Design Development Phase shall be completed within 151 calendar days from the date of receipt by the Consultant of the Notice to Proceed for this phase.

- E. Construction Documents Phase.** The services to be performed during the Construction Documents Phase shall be completed within *122* 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.

- F. 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 five 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

11.1 Except as otherwise noted, at all times during this Contract or the performance of work required by this Contract, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Contract. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's obligations and/or scope of work under the Contract.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown below, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City:

Minimum Requirements:

### 11.2 Workers' Compensation & Employers Liability

a. Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000.

### 11.3 Commercial General Liability

a. Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, products/completed operations and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.

### 11.4 Automobile Liability

a. Insurance with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles. If transporting any pollutants, as defined by the policy, the policy is to include applicable Pollution coverage.

### 11.5 Professional (Errors & Omission) Liability

Insurance appropriate to the Contractors profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.

Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.

### 11.6 Umbrella Liability

a. Umbrella/Excess policies must “Follow form” of the underlying policies and scheduling.

### 11.7 General Provision and Requirements

a. Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.

b. The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work. Contractor shall be responsible for any losses, expenses, damages, claims and/or suits and cost of any kind which exceed the Contractors limits of liability that arise from the performance of work under the Contract.

### Certificates of Insurance Additional Insured Status:

- i. The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as “Additional Insureds” on the CGL and AL policies with respect to liability arising out of the performance of this Contract.
- ii. Additional Insured status can be provided in the form of an endorsement to the Contractors 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).
- iii. Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Subcontractors liability shall be covered by the Contractor. 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.

- iv. The Additional Insured box shall be marked “Y” or Commercial General Liability and Auto Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers and Liability.

General Requirements:

- i. Primary Coverage: For any claims, liability, demands and/or suits related to this contract or Contractors performance and furnishing or the work, whether it is performed by the Contractor, and Sub-contractor, partner, supplier or by anyone directly or indirectly employed by any of them to perform or furnish any of the work. Contractors insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractors coverage. At no time shall the Contractor allow any Sub-contractor to perform work without the required types and limits of required insurance coverage.
- ii. The carriers/companies issuing the policies of insurance shall not have any recourse against the City for payment of any premiums, deductibles, and retentions or for assessments under any form of policy. These shall be borne by and be the sole responsibility of the Contractor.
- iii. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the Contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this Contract.
- iv. Waiver of Subrogation: The Contractor 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 Contract.
- v. Notice of Cancellation: Each insurance policy required above shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.
- vi. 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.
- vii. If the City has any objection to the coverage afforded by or any other provisions of the insurance required to be purchased and maintained by the Contractor in accordance with the insurance requirements, the City shall notify the Contractor in writing within thirty (30) days after receipt of the Certificates. The Contractor shall provide a written response to the City’s objection within ten (10) days from the date of the notice.
- viii. Upon failure of the Contractor or their sub-contractor to purchase, furnish, deliver or maintain such insurance as provided herein, the Contract, at the discretion of the City,

may be forthwith declared suspended, discontinued, or terminated. Failure of the Contractor to purchase and maintain insurance shall not relieve the Contractor from any liability under the Contract, nor shall the insurance requirements be constructed to conflict with the obligations of the Contractor concerning indemnification.

- ix. Notice: The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112- Ref.: CEA) the following documents, within 10 calendar days of the City's request - Copies of all policies of insurance, including all policies, forms, and endorsements.

Miscellaneous: Without notice from the City, the Contractor will:

- i. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Contract.
- ii. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Contract is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Contract.

Special Risks or Circumstances:

- i. The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

## **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, the Consultant (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Consultant's employees are treated during

employment without regard to their race, color, religion, sex, 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, sex, 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.

**D.** 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 - LIVING WAGES

A. **Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

B. **Compliance.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

C. **Living Wage.** In accordance with the Living Wage Ordinance, Living Wage shall be as follows:

1. \$11.19 per hour for any work performed on or before December 31, 2021;
2. \$13.25 per hour for any work performed on or before December 31, 2022;
3. \$15.00 per hour for any work performed on or before December 31, 2023; and
4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

D. **Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Living Wage shall be annually adjusted for inflation, as defined by the Consumer Price Index calculated by the U.S. Bureau of Labor Statistics as applied to the South Region, except that in no instance shall the Living Wage be adjusted downward. The first adjustment shall become effective on January 1, 2024 using the Consumer Price Index figures provided for the preceding year, and thereafter on an annual basis.

E. **Subcontract Requirements.** As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall

notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

**F. Reporting.** On or before January 31<sup>st</sup> and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development  
Living Wage - Compliance  
1340 Poydras Street – Suite 1800  
New Orleans, Louisiana 70112

**G. Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

**H. Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

## **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 - SUBCONSULTANT 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 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:

Stormwater and Green Infrastructure Director  
Project Delivery Unit  
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 Contractor:

Dana Nunez Brown, FASLA, AICP, LEED AP  
President  
Dana Brown & Associates, Inc.  
1836 Valence Street  
New Orleans, LA 70115

**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 – FORCE MAJEURE

**A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City, provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

**C. Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
  - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
  - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

#### ARTICLE XXXV - 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. **Cost Recovery.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Consultant shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Consultant fails to meet its contractual obligations.
- K. **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.

- L. **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.
- M. **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.
- N. **Compliance with City’s Hiring Requirements - Ban the Box.**
- i. The Consultant agrees to adhere to the City’s hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Consultant must provide a sworn statement attesting to its compliance with the City’s hiring requirements or stating why deviation from the hiring requirements is necessary.
  - ii. Failure to maintain compliance with the City’s hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Consultant notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Consultant remains noncompliant, the City may move to suspend payments to Consultant, void the Agreement, or take any such legal action permitted by law or this Agreement.
  - iii. This section will not apply to any agreements excluded from the City’s hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.
  - iv. 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.
- O. **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.

- P. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.
- Q. **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.

#### ARTICLE XXXVI - 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 FOR PROFESSIONAL SERVICES CONTRACTS**

#### ARTICLE XXXVII - 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.

**[SIGNATURES CONTAINED ON NEXT PAGE]**

**[The remainder of this page is intentionally left blank]**

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

CITY OF NEW ORLEANS  
BY: [Signature]  
LATOYA CANTRELL, MAYOR

Executed on this 6<sup>th</sup> of April, 2023

FORM AND LEGALITY APPROVED:

Law Department  
By: [Signature]  
Printed Name: Tracy H. W.

DANA BROWN & ASSOCIATES, INC.

BY: [Signature]  
DANA NUNEZ BROWN, FASLA, AICP, LEED AP; PRESIDENT

[Redacted]  
FEDERAL TAX I.D

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

## EXHIBIT “A” - SCOPE OF PROJECT

The geographic focus of this project is primarily along the Dwyer Canal from Providence Place to France Road but may also include other adjacent and related areas of the Pontchartrain Park and Gentilly Woods neighborhoods. The already designed FEMA HMGP-funded improvements to the Dwyer Canal include excavation of the canal to improve drainage as well as tree plantings, groundcover plantings, and bioswales. The purpose of this HUD NDR-funded project is to enhance these stormwater management improvements with additional public space amenities that further serve the neighborhood.

The anticipated scope of work serves the following major goals:

1. Improve walkability, connectivity, and recreational opportunities within and across the Pontchartrain Park and Gentilly Woods neighborhoods. Initial plans include a pedestrian bridge across the Dwyer Canal, walking and biking paths along the edge of the canal, and additional improvements such as seating, lighting, and litter receptacles. NORA properties that have been designated as stormwater lots under the FEMA HMGP-funded project situated along the Dwyer Canal may provide further public access points. The City may also consider public space improvements in other parts of the Gentilly Woods and Pontchartrain Park neighborhoods that enhance the planned stormwater interventions.
2. Provide spaces for social cohesion and expressions of neighborhood identity. Residents from both sides of the Dwyer Canal have helped drive from the start the vision for the Pontilly stormwater project. This project should build on the community’s vision for the Dwyer Canal and provide ongoing opportunities to strengthen bonds among neighbors. The design may also consider, through incorporating elements like art and signage, ways to highlight the history and stories of the neighborhoods.
3. Promote environmental learning. Creative elements like art and signage may also highlight and explain how different green infrastructure features improve drainage and reduce flooding and subsidence, identify different plant and animal species, and/or contextualize this project within the city’s water systems.
4. Beautify the Dwyer Canal and adjacent neighborhoods. While the FEMA HMGP-funded project includes some planting of trees and other vegetation, this project may consider additional plantings and other elements that serve to further beautify the Dwyer Canal and surrounding neighborhoods.

## EXHIBIT "B" SCHEMATIC DESIGN 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
- 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
- MEP/FP systems defined, major mechanical spaces fixed in plans, representative plan area coordinated, initial riser diagrams

## EXHIBIT "C" DESIGN DEVELOPMENT 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
- Stormwater management features and maintenance plan
- 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
- Plans generally complete
- Partial elevations drawn with dimensions, notes and sections referenced
- Representative larger scale section details drawn
- MEP/FP plans generally complete, equipment scheduled, riser diagrams generally complete
- All other specialty consultants' plans generally complete, equipment scheduled (if applicable), riser diagrams (if applicable) generally complete
- Outline Specification expanded or edited down as draft full sections are included
- Draft of select full specification sections
- Coordination is well underway

## EXHIBIT “D” CONSTRUCTION DOCUMENT 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.
- Building name and number.
- 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.
- 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.
- Contours of existing and finish grades shall be shown at 1'-0" intervals, include spot elevations where needed.
- All horizontal control dimensions.
- Drainage.
- Landscaping.
- 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 building.
- Identify the building code used for design.
- Details shall identify all typical and special conditions that occur in all components of the structure.
- 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.
- 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 architectural floor 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**

MEP plans should be separate HVAC, plumbing and electrical plans with the exception of small projects at the discretion of the Owner. All MEP plans shall be drawn to the same scale and orientation as the architectural plans.

### **Utilities Site Plan**

- A utilities site plan shall be provided unless this data is included on the architectural site plan. Indicate surface features such as buildings, drives, parking, sidewalks, trees, etc.
- Symbols Legend
- Graphic scale
- Permanent and temporary utilities and include elevations for each
- Identify utility crossing points and separation or sleeve requirements
- Overhead electrical and height of conductors
- Flow lines and invert information on manholes
- All fire hydrant locations

### **Electrical Plans**

- Symbols Legend.
- Graphic Scale
- Temporary power locations if temporary power is not provided by the contractor.
- Locations and sizes of all main-feeder and branch circuit conduits.
- All conductors and sizing.
- Circuits noted by numbers.
- Special outlets/receptacles and their voltage amperage ratings.
- Locations of all GFCI or AFCI devices or circuits.
- Light fixtures including emergency and exit lighting
- Light fixture schedules
- Locations and details of switchboards, panel boards and other electrical equipment

- Locations and sizes of disconnect motor connections.
- Show code required exits for electrical rooms with equipment over 1200 Amps
- Locations, of, speakers, clocks, telephones, security and other special systems.
- The electrical riser diagrams shall extend to and include all panel boards.
- Graphically indicate required code clearance areas of electrical equipment.
- The total building connected load and calculated load demand in kilowatts for new services

### STORMWATER MANAGEMENT

- Stormwater management features and specifications
- Maintenance plan for stormwater management features and specifications.

### 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.
- Special inspections, as required by the applicable building code, shall be included in applicable sections.**
- 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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49. DOMESTIC PREFERENCES FOR PROCUREMENTS

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

During the performance of this Agreement, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, 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, sexual orientation, gender identity, 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 by the contracting officer setting forth the provisions of this nondiscrimination clause.

- (2) 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 for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, 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, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the provisions of paragraphs (1) through (8) 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, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided*, however, that in the event the contractor becomes involved in, or is threatened with, litigation

with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests 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**  
(applicable to projects with more than \$200,000 in funding from housing and community development financial assistance programs, or more than \$100,000 in assistance from Lead Hazard Control and Healthy Homes programs)

Title 24 Part 75 of the Code of Federal Regulations establishes the requirements to be followed to ensure the objectives of Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) are met. The purpose of Section 3 is to ensure that economic opportunities, most importantly employment, generated by certain HUD financial assistance shall be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing or residents of the community in which the Federal assistance is spent.

A. **Employment and Training**

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure that employment and training opportunities arising in connection with Section 3 projects are provided to Section 3 workers within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for opportunities and training described in paragraph (a)(1) of this section should be given to:

- (i) Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) Participants in YouthBuild programs.

**B. Contracting**

(1) To the greatest extent feasible, and consistent with existing Federal, state, and local laws and regulations, recipients covered by this subpart shall ensure contracts for work awarded in connection with Section 3 projects are provided to business concerns that provide economic opportunities to Section 3 workers residing within the metropolitan area (or nonmetropolitan county) in which the project is located.

(2) Where feasible, priority for contracting opportunities described in paragraph (b)(1) of this section should be given to:

- (i) Section 3 business concerns that provide economic opportunities to Section 3 workers residing within the service area or the neighborhood of the project, and
- (ii) YouthBuild programs.

**C. Contract Provisions**

(1) Recipients must include language applying Section 3 requirements in any subrecipient agreement or contract for a Section 3 project.

(2) Recipients of Section 3 funding must require subrecipients, contractors, and subcontractors to meet the requirements of § 75.19, regardless of whether Section 3 language is included in recipient or subrecipient agreements, program regulatory agreements, or contracts.

**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 therefrom, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

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

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

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

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

19. **PATENTS**

- A. The Contractor shall hold and save the Owner and its officers, agents, servants, and employees harmless from liability of any nature or kind, including cost and expenses for, or on account of any patented or unpatented invention, process, article, or appliance manufactured or used in the performance of the contract including its use by the Owner, unless otherwise specifically stipulated in the Contract Document.

- B. License or Royalty Fees: License and/or Royalty Fees for the use of a process which is authorized by the Owner of the project must be reasonable, and paid to the holder of the patent, or his authorized license, direct by the Owner and not by or through the Contractor.
- C. If the Contractor uses any design device or materials covered by letters, patent or copyright, he shall provide for such use by suitable agreement with the owner of such patented or copy-righted design device or material. It is mutually agreed and understood, that without exception the contract prices shall include all royalties or costs arising from the use of such design, device or materials, in any way involved in the work. The Contractor and/or his Sureties shall indemnify and save harmless the Owner of the project from any and all claims for infringement by reason of the use of such patented or copy-righted design, device or materials or any trademark or copy-right in connection with work agreed to be performed under this contract, and shall indemnify the Owner for any cost, expense, or damage which it may be obliged to pay by reason of such infringement at any time during the prosecution of the work or after completion of the work.

20. **COPYRIGHT**

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

21. **TERMINATION FOR CAUSE**

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

22. **TERMINATION FOR CONVENIENCE**

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

23. **ENERGY EFFICIENCY**

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

24. **SUBCONTRACTS**

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

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

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

26. **PROTECTION OF LIVES AND HEALTH**

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

27. **BREACH OF CONTRACT TERMS**

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

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

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced 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 I(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 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

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

(b) The term *procurement actions* includes:

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

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

(c)(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.

#### **45. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**

If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the recipient or Contractor wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that “funding agreement,” the recipient or Contractor must comply with the requirements of 37 CFR Part 401, “Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements,” and any implementing regulations issued by the awarding agency.

#### **46. BYRD ANTI-LOBBYING AMENDMENT**

Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

#### **47. PROCUREMENT OF RECOVERED MATERIALS.**

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines. 2 CFR § 200.323

#### **48. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT.**

Recipients and Subrecipients are prohibited from obligating or expending loan or grant funds to:

(1) Procure or obtain; (2) Extend or renew a contract to procure or obtain; or (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115-232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

(i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).

(ii) Telecommunications or video surveillance services provided by such entities or using such equipment.

(iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country. 2 CFR § 200.216.

#### **49. DOMESTIC PREFERENCES FOR PROCUREMENTS.**

As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.

(b) For purposes of this section:

(1) “Produced in the United States” means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

(2) “Manufactured products” means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber. 2 CFR § 200.322.