

K18-603

**COOPERATIVE ENDEAVOR AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**DELTARES USA, INC.**

**NATIONAL DISASTER RESILIENCE COMPETITION PARTNER AGREEMENT**

**THIS COOPERATIVE ENDEAVOR AGREEMENT** (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “**City**”), and Deltares USA, Inc., represented by Edwin Welles, President, (“**Deltares**” or “**Contractor**”). The City and Deltares may sometimes be collectively referred to as the “**Parties.**” The Agreement is effective the 24th day of April, 2018 (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, the City is a political subdivision of the State of Louisiana;

**WHEREAS**, Deltares is a non-profit independent institute for applied research in the field of water and subsoil resources whose address is 8601 Georgia Avenue, Suite 508, Silver Spring, MD 20910; and

**WHEREAS**, pursuant to Article 7, Section 14(C) of the Louisiana Constitution of 1974, and related statutes, and Section 9-314 of the Home Rule Charter of the City of New Orleans, the City may enter into cooperative endeavors with the State of Louisiana, its political subdivisions and corporations, the United States and its agencies, and any public or private corporation, association, or individual with regard to cooperative financing and other economic development activities, the procurement and development of immovable property, joint planning and implementation of public works, the joint use of facilities, joint research and program implementation activities, joint funding initiatives, and other similar activities in support of public education, community development, housing rehabilitation, economic growth, and other public purposes;

**WHEREAS**, the City was awarded \$141,260,569 in National Disaster Resilience funds (“**NDR program**”) made available by the Disaster Relief Appropriations Act, 2013 (Public Law 113-2, approved January 29, 2013) (“**Appropriations Act**”) and awarded under the National Disaster Resilience Competition as CDBG National Disaster Resilience (“**CDBG-NDR**”) grants from the United States Department of Housing and Urban Development (“**HUD**”) and has selected Deltares to be a “Partner” under the NDR program to receive certain funds in order to implement the program as set forth below; and

**WHEREAS**, the City and Deltares desire to accomplish a valuable public purpose of (1) designing and implementing a sustainable surface and groundwater monitoring network to support subsidence reduction efforts and urban and water planning; (2) identifying existing knowledge gaps related to the City’s soil and groundwater system, and analyzing the potential impacts the current state of those systems on surface and subsurface infrastructure; (3) conducting operational research related to the applicability of new sustainable drainage systems and best management practices for rainwater harvesting and stormwater treatment; and (4) designing and developing real-time control systems for tangible City environmental mechanisms and structures (e.g. pumps, gates) using weather and urban water forecasting to support optimal water management in New

Orleans.

**WHEREAS**, the City will provide Deltares with National Disaster Resilience grant funding in exchange for the aforementioned services.

**NOW THEREFORE**, the City and Deltares each having the authority to do so, agree as follows:

### **ARTICLE I – DELTARES’ OBLIGATIONS**

Deltares shall provide the following services listed below in accordance with Deltares’s Partner Agreement with the City dated October 22, 2015 (attached as Exhibit B), Proposal entitled “Towards Resilient Groundwater and Subsurface Management in New Orleans” dated November 30, 2017 (Attached as Exhibit C), and Proposal entitled “Constructing a Surface/Groundwater and Subsidence Monitoring Network for the City of New Orleans dated November 16, 2017 (Attached as Exhibit D).

**A. Water Monitoring Sensor Specification Services** – Deltares will provide the following water monitoring sensor specification services:

1. Identifying appropriate parameters to measure and gauge, in consultation with the City. These may include: precipitation, water levels, water quality parameters, and subsidence of the soil surface.
2. Identifying appropriate instrumentation for installation for monitoring surface and groundwater parameters.
3. Producing a final report that shall include but is not limited to the following elements:
  - a. comprehensive guidelines about the different types of sensors that might become part of a comprehensive water monitoring network
  - b. guidelines about data collection time intervals. Installation methods, and appropriate sensor density
  - c. databasing strategy for how data will be packaged for delivery and necessary metadata and QA/QC procedures
  - d. information on the characteristics of existing monitoring efforts and suggestions to best enable this information to be brought into a comprehensive database.

**B. Water Monitoring Databasing Services** - Deltares will provide the following water monitoring databasing services:

1. Installing and set up a server to store water monitoring data; defining accessibility so that it can be queried by the City, the Sewerage and Water Board of New Orleans (the “**Board**”), and other key partners; and ensuring it is databased with appropriate metadata to allow for its utilization.
2. Providing a report on server system setup and guidelines for storing the data and a demonstration and written guidelines for City and Board personnel for accessing and utilizing the data.

**C. Water Monitoring Network Design and Installation Services** - Deltares will provide the following water monitoring network design and installation services:

1. Holding inception meeting with the City;
2. Organizing and holding strategy meeting with identified stakeholders to identify:
  - a. Water monitoring objectives
  - b. Monitoring metrics and methods and short and long-term storage and use of data;
  - c. Reporting methods;
  - d. Preliminary monitoring network design;
  - e. Best practices to address practical issues arising from implementation of a water monitoring network;
3. Providing cost-benefit analysis of implementation of water monitoring network sites as compared to damage reduction benefits;
4. Designing final water monitoring strategy with possible inclusion of other environmental and ecological monitoring activities;
5. Supporting installation of preliminary water monitoring network, including exact field locations;
6. Installing at minimum 20 shallow observation wells and sensors at pumping stations, surface and groundwater observation wells;
7. Collecting and compiling initial 6 months of monitoring data; and
8. Preparing initial 6-month monitoring report and establishing annual reporting process thereafter.

**D. Subsidence Vulnerability Mapping Services** - Deltares will provide the following subsidence vulnerability mapping services:

1. Collecting and analyzing existing and planned geographical borehole descriptions and populating and storing data in City-accessible database;
2. Designing geographical borehole campaign resulting from data collected in Section D(1);
3. Arranging permissions and logistics to perform geographical borehole services at identified locations;
4. Conducting borehole campaign in collaboration with Tulane University following the U.S. Department of Agriculture (“USDA”) soil classification system, with specific attention being given to long-term average highest and lowest groundwater levels based upon existing hydro-morphological soil characteristics. Borehole campaign services shall include, but are not limited to:
  - a. Coring at minimum 63 boreholes of a depth of 6-15 feet;

- b. Collecting 5 soil samples from each coring (total 315 samples) of most organic sequences, with organic content being determined by Tulane University soil laboratory; and
  - c. Measuring absolute elevation of every borehole using differential GPS- systems as well as groundwater level after coring
5. Developing a Phreatic Groundwater Level Map, Organic Matter Content Map, and a Subsidence Vulnerability Map using Geographic Information Systems and utilizing both existing and newly-collected borehole data. The Subsidence Vulnerability Map shall be based upon 6 geological cross-sections, with existing soil, elevation and drainage maps to extrapolate data between cross-sections;
  6. Predicting current and future subsidence rates under normal circumstances and alternative scenarios, including but not limited to raised shallow groundwater levels and other groundwater management best practices;
  7. Presenting subsidence and borehole campaign results at workshop with all relevant stakeholders, including analyzing all data and identifying and explaining ways to utilize the data and Subsidence Vulnerability Map.

**E. Integrated Groundwater and Subsidence Modeling Services** - Deltares will provide the following integrated groundwater and subsidence modeling services:

1. Holding inception meeting with the City;
2. Organizing identified stakeholder participation;
3. Collecting existing groundwater and subsidence data from the City and identified stakeholders and other entities, including but not limited to:
  - a. Detailed surface elevation map;
  - b. Detailed land use map;
  - c. Depth, location, age and current state of stormwater drainage and sewer pipes;
  - d. Depth, location, age and current state of drinking water transport pipes;
  - e. Surrounding borehole and soundings data;
  - f. Rainfall and evaporation data;
  - g. Surface water levels and canal depths; and
  - h. Depth and location of sheet pilings and underground constructions.
4. Conducting geological and sedimentology analyses in cooperation with the U.S. Geological Survey (“USGS”), the U.S. Environmental Protection Agency (“EPA”), the Board, and Tulane University;
5. Analyzing relevant subsidence data and determining geotechnical parameters in cooperation with USGS, the National Aeronautics and Space Administration (“NASA”) and local consultants;
6. Designing and building citywide subsidence digital model between the Mississippi River and Lake Pontchartrain, for the purpose of scientific research with focus on

NDR-funded Gentilly Resilience District project area, providing data including but not limited to:

- a. 3-D subsurface model using iMOD;
- b. Groundwater –surface water-subsurface drainage interaction;
- c. Rainfall intensity and groundwater level relationship;
- d. Integrated groundwater, surface water, subsurface drainage and rainfall data to analyze both deep and shallow groundwater extraction;
- e. GIS and decreased subsidence velocity data;
- f. Infrastructure foundation depth data; and
- g. NASA elevation data to verify model using “thousand extensometer” approach; and
- h. licensing for use of iMOD software. iMOD and any other Deltares or Deltares Netherlands standard software as well as any amendments thereto made under this Agreement shall only be subject to the applicable standard license agreement. This Agreement and its terms and conditions shall not apply to iMOD and other Deltares and Deltares Netherlands standard software or to any amendments thereto made in the execution of this Agreement.

7. Presenting data and model to identified stakeholders and incorporating stakeholder input into finalized analysis and modeling.

**F. Knowledge Gap Services** - Deltares will provide the following knowledge gap services:

1. Conducting background research to identify all current knowledge related to subsidence, geology, hydrological boundaries, surface infrastructure and subsurface infrastructure in New Orleans;
2. Holding one-day stakeholder meeting at commence of project to discuss experience of 4 project organizations (The Water Institute, Louisiana Universities Marine Consortium, Tulane University and Deltares) and review of literature survey;
3. Drafting white paper outlining all current knowledge and future research and analysis needed to fill in identified knowledge gaps discovered during Sections F(1)-(2) of this Agreement.

**G. Green Infrastructure Applied Research Services** - Deltares will provide the following green infrastructure applied research services:

1. Mapping and classifying all existing public and private green infrastructure systems (e.g. rain gardens, permeable pavement) in New Orleans, including but not limited to collecting of data related to soil types, design, ecology, water and soil quality, estimated water quality effectiveness, building costs and maintenance costs;
2. Organize stakeholder workshop to discuss design, effectiveness, costs and public perception related to design and implementation of new green infrastructure systems;
3. Selecting and monitoring at least 10 existing rain gardens, collecting and analyzing data included but not limited to shallow groundwater levels, surface water levels, surface and groundwater inflow and outflow volumes, rainfall intensity, barometric

pressure, local soil and shallow geology conditions and water and soil quality conditions;

4. Organizing a minimum of 5 permeable pavement tests utilizing “infiltrimeters” to determine amount and rate of rainfall infiltration during different type of rain storms;
5. Compiling data and literature and developing proposed design rules for the City to calculate, development and implement cost-effective water storage strategies and tactics; and
6. Organizing and holding stakeholder workshop to discuss all such data, reporting protocols, publication opportunities and public outreach efforts.

**H. Real-Time Control Services** - Deltares will provide the following real-time control services:

1. Conducting needs assessment and feasibility study to address the components, organization and performance of the City’s current urban water management system via technical documentation, stakeholder interviews, field visits and data analysis;
2. Developing citywide pilot software application demonstration designed to streamline interactions between various stakeholders who all possess operational roles with respect to citywide urban water management. The pilot program demonstration shall include at a minimum, ways to import and process numerous monitoring data feeds and weather forecasts, running water management system model, running basic optimization algorithm to suggest potential optimal operation strategies under various characteristic conditions;
3. Preparing project report analyzing collected data and proposing plan of action to implement best practices based upon collected data; and
4. Organizing stakeholder workshop to present project outcome and proposed plan of action and next steps; and
5. Licensing for the software for the pilot-demonstration software application, expected to be Delft-FEWS software. Delft-FEWS software or any alternative software as well as any amendments thereto made under this Agreement shall only be subject to the applicable standard license agreement. This Agreement and its terms and conditions shall not apply to Delft-FEWS or the alternative software or to any amendments thereto made in the execution of this Agreement.

**I. Deliverables** – In addition to those listed above, Deltares will provide the following deliverables:

**Water Monitoring Sensor Specification Services**

1. Specifications report that outlines instrumentation, deployment, and databasing guidelines.

**Water Monitoring Databasing Services**

1. Server system for storing water monitoring data installed, fully operational, and accessible to the City and its partners; and
2. Report on server system setup and guidelines for storing, accessing, and utilizing the data.

### **Water Monitoring Network Design and Installation Services**

1. Operational integrated groundwater monitoring network supported by all relevant stakeholders;
2. Groundwater monitoring process, installation and support;
3. Initial 6-month report and first annual report of all groundwater monitoring data;
4. Annual data analyses and reporting framework; and
5. “Lessons Learned” and “Best Practices” stakeholder workshop with focus on groundwater monitoring capacity building with local enterprises.

### **Subsidence Vulnerability Mapping Services**

1. Dataset of all existing and planned borehole descriptions;
2. Groundwater level map depicting shallow drainage depth with explanatory text;
3. Organic matter content map of shallow surface water with explanatory text;
4. Potential subsidence vulnerability resulting from oxidation of organic matter under normal and alternative conditions with explanatory text;
5. Stakeholder workshop explaining and promoting Subsidence Vulnerability Map and related maps; and
6. Minimum of at least 1 popular scientific magazine/website paper or publication.

### **Integrated Groundwater and Subsidence Modeling Services**

1. Well described time-dependent groundwater model for the City, capable of supporting scientific research into the effects of future groundwater management strategies and efforts, including but not limited to:
  - a. Current and future estimates of surface coverage of groundwater levels and hydraulic heads based on a minimum of 5 identified scenarios;
  - b. Outline of areas with high subsidence rates;
  - c. Analysis of relationship between deep-rooted subsidence processes and shallow-rooted subsidence process using “thousand extensometer” method;
  - d. Estimates of subsidence reduction by a minimum of 3 subsidence mitigation scenarios;
  - e. Current and future infiltration and groundwater discharge fluxes;
  - f. Groundwater flow directions;
  - g. Shallow groundwater salinization patterns and rates with respect to salinization risks;
  - h. Estimates of optimal safe groundwater levels with minimal or no groundwater flooding risk;
  - i. Impact of surface water levels on groundwater levels;
  - j. Relationship between draining or leaking underground infrastructure and ground water levels, including estimated impact of underground infrastructure

- repairs; and
  - k. Estimates of effect of construction of multiple rain gardens on groundwater levels.
2. Established protocol for continuous improvement of groundwater model incorporating results of integral groundwater monitoring network(s).

### **Knowledge Gap Services**

1. White paper including at a minimum the following chapters:
  - a. Introduction (5 pages);
  - b. Regional Hydrology/Geologic Context/Climate (10 pages);
  - c. Subsidence, including basic processes, subsidence in coast generally, detailed geology of City/polders; groundwater usage and subsidence implications and measuring subsidence (15 pages);
  - d. Surface Infrastructure, including description of basic concepts and pumping rates and history (5 pages);
  - e. Water Quality, based upon existing sources and including inorganic contaminants (5 pages); and
  - f. Path Forward, including 5-Year Plan, Actions and Knowledge Development.

### **Green Infrastructure Applied Research Services**

1. Performance analysis of existing Green Infrastructure (GI) features, including detailed monitoring at 10 GI sites; and
2. User-friendly performance quantification tool.

### **Real-Time Control Services**

1. Needs assessment and feasibility study report, taking into account the current situation and future developments;
2. Citywide pilot software application for demonstration purposes;
3. Project report including a proposed plan of action for next steps; and
4. Stakeholder workshop to present project outcome and potential next steps.

## **ARTICLE II – STANDARD OF CARE**

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

## **ARTICLE III – REPRESENTATION AND WARRANTIES**



A. Deltares represents and warrants that:

1. Deltares has not employed or retained any entity or person, other than a bona fide employee working solely for Deltares, to solicit or secure this Agreement nor has Deltares paid or agreed to pay any entity or person, other than a bona fide employee, any gift, commission, percentage, brokerage or any other such fee for the purpose of assisting Contractor in securing this Agreement. Deltares acknowledges its understanding that any gifts made or fees paid in contravention of this representation and warranty shall be considered bribery pursuant to City Code Section 70-509 and shall subject the offender to criminal penalties in addition to suspension from participation in City contracting for a period of not less than three years. The execution of this Agreement by Deltares's duly authorized representative shall be deemed a sworn statement by Deltares of its compliance with this representation and warranty, as required by City Code Section 46-51;
2. Deltares, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding upon and enforceable against Deltares in accordance with its terms;
3. Deltares is not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way its performance of any obligations hereunder;
4. Deltares has the requisite expertise, qualifications, staff, materials and equipment in place and available to enable it to fully perform the Services and Deltares, along with its employees, as required, and all sub-Contractors, if any and as required, possess all necessary permits, licenses, consents, registrations and/or certifications required under federal, state and/or local law to perform the Services;
5. As of the Effective Date of this Agreement, Deltares has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations or its ability to fulfill its obligations under this Agreement;
6. Deltares is not in breach of any federal, state or local statute or regulation applicable to Contractor or its operations;
7. Deltares's work shall be accurate and free from any material errors, except for software modeling and real time control software application set-up which are subject to specific set-up and testing criteria as set-out below in this paragraph. Deltares's duties as set forth in this Agreement shall at no time be in any way diminished by reason of any approval by City nor shall Deltares be released from liability by reason of such approval by City—it being understood that City, at all times, is ultimately relying upon Deltares's skill and knowledge in performing the Services. In the processes identified in this Agreement leading to 'software modeling' and 'real time control software application' set-up Parties will identify criteria for testing and acceptance of software modeling' and 'real time control software application' development activities - both for initial set-up and later maintenance to system and software – and test steps and expected outcomes. The design and construction of these tests may take the form of detailed Use Cases. As the development and maintenance activities proceed, client may modify these tests by mutual consent with Deltares. These tests shall be used to

determine the acceptability of the ‘software modeling’ and ‘real time control software application’ and shall be the sole standards for determining the acceptability of the model and software. Required corrective actions shall be limited to insuring the defined tests perform properly;

8. Deltares is bonded, if required by law, and fully and adequately insured to for the injury of its employees and any others incurring loss or injury as a result of the actions of Deltares or its employees or sub-Contractors in the performance of its obligations under this Agreement; and
9. Deltares has read and fully understands the terms, covenants and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition.

**B. Reliance on Representations, Warranties and Covenants.** All representations, warranties, covenants and agreements made in this Agreement are intended to material and shall be conclusively deemed to have been relied upon by the receiving party.

#### **ARTICLE V - THE CITY’S OBLIGATIONS**

**A. Administration.** The City will administer this Agreement through the Office of Resilience & Sustainability.

**B. Access to Information.** The City shall provide Deltares with all material and information reasonably necessary to allow Deltares to perform its obligations under this Agreement.

#### **ARTICLE VI – CITY’S COMPLIANCE WITH PROCUREMENT LAWS, POLICIES AND PROCEDURES FOR FEDERALLY-FUNDED**

**A.** Deltares acknowledges that the City must comply with all applicable federal, state, and local laws, and policies and procedures to procure federally-funded services, goods, or material and supplies subject to this Agreement.

**B.** Deltares further acknowledges and agrees that the City maintains the option to decide either to procure or to continue an existing agreement for any of the services, goods, or materials and supplies to be provided under this Agreement.

#### **ARTICLE VII – COMPENSATION**

**A. Budget.** The City will pay Deltares in accordance with the budget attached to this Agreement under Exhibit E. Specifically, Contractor shall invoice the City for payment upon completion of each task as specified in Exhibit E.

**B. Maximum Amount Payable.** The maximum amount payable by the City under this Agreement is \$1,127,749.00.

**C. Other Costs.** Compensation shall be inclusive of all personnel costs, fringe benefits, equipment costs, travel costs, supply costs, publication costs, and indirect costs identified as those not directly incurred as a result of providing the services listed in this Agreement and deemed ineligible for federal modified total direct costs for on-campus research.

**D. Detailed Invoices.** As a prerequisite to payment, Deltares will provide to the assigned CDBG-NDR Project Manager upon completion of each task as specified in Exhibit E four (4) original invoices approved for payment by Deltares, four (4) copies of supporting documentation, four (4) copies of proof of payment and/or the general ledger, one (1) original copy of the budget

tracking statement, and one (1) electronic copy of the budget tracking statement, payment/general ledger, invoice and supporting documentation.

**E. Detailed Deliverable Reports.** As a prerequisite to payment, Deltares agrees to provide the assigned CDBG-NDR Project Manager upon completion of each task as specified in Exhibit E one (1) hard copy and one (1) electronic copy, PDF file preferred, of their deliverable report to be submitted with requests for reimbursement. The deliverable reports shall provide clear detail and documentation of the completed deliverable and generally report on Deltares's progress towards the schedule and deliverables in Exhibit E.

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

**G. Budget Revision.** Deltares understands and agrees to not exceed any approved budget line item **prior to** receiving, in writing, an approved budget revision from the City authorizing the excess. Deltares shall complete and submit a budget revision request for all budget revisions. **Budget revisions shall not increase the overall budgeted amount of the project.**

**H. Budget Amendment.** Any increase to the overall budgeted amount to a project will require an amendment to the contract and approved grant application. Deltares will complete and submit a written request for an increase. Deltares shall receive written approval from the City prior to incurring additional expenses. Except as a result of budget amendment to increase a project budget, in no case shall the Program Administration and Delivery budget **be increased to exceed a maximum amount of \$1,127,749.00 under this contract agreement.**

**I. Payment Terms.** Deltares agrees that payment for deliverables, in accordance with the indicated payment methods, does not constitute a final decision by the City about the allowability of that cost and does not constitute a waiver of any violation by Deltares of the terms of this agreement. Allowable costs shall be in compliance with 2 CFR Part 200 Uniform Administrative Requirements, Cost Principals, and Audit Requirements for Federal Awards.

Payment to Deltares's contractors and vendor are contingent on compliance with the procurement requirements provided for in 2 CFR 200.317 - 326, as applicable.

If the City determines that Deltares is not entitled to receive any part of the federal funds requested, Deltares will be notified in writing. Close-out of this project will not alter Deltares's obligation to return any funds due to the City as a result of later refunds, corrections or other transactions. Project close-out will not affect the City's right to disallow costs and recover funds on the basis of a later review or audit. Upon notice by the City to the Contractor of specific amounts due, Deltares shall promptly remit any excess payment of amounts or disallowed costs to the City.

**E. No Payment for Services Beyond Scope of Agreement.** Except as may be provided by laws governing emergency procedures, officers and employees of City are not authorized to request Deltares to provide additional services that would result in the performance of services beyond the scopes set forth in Article I of this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such additional services and/or

expenditures. City shall not be required to reimburse Deltares for any services that are provided by Deltares that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto. In addition, the City shall not be required to reimburse Deltares for any services and cost incurred that are not approved by the State OCD in the form of an approved grant application.

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

#### **ARTICLE VIII - DURATION AND TERMINATION**

**A. Term.** The term of this agreement shall be for 1 year from the Effective Date through April 24, 2019.

**B. Completion of Work and Subsequent Agreement.** Prior to the end of this Agreement, the City will review progress made by Deltares against the agreed upon scope of services to identify any remaining and/or additional tasks to achieve completion of the work. As a result of this review, the Parties will negotiate a subsequent agreement to achieve completion of the work.

**C.** The Parties understand and agree that all services contained within or potential services related to this Agreement must be completed by the end of the term of the CDBG-NDR grant agreement between HUD and the City.

**D. Schedule.**

- a. Deltares will submit a proposed progress schedule to the City upon advance notice and request from the City. As a minimum, the schedules must include a description of the work completed during the reporting period, an update of the remaining work to be complete in the form of an estimate of the fee necessary to complete the balance of the work, explanation of any extra work completed beyond the scope of services along with documentation authorizing such services.
- b. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement **to the extent reasonably can be required considering Deltares available capacity**, including, without limitation, any proposed progress schedule and any requests for modifications.
- c. The City may assess Deltares **\$1,000.00** per calendar day for each milestone that is not completed by the deadline in the approved schedule, without further notice to Deltares, to the extent the delay is caused solely by unreasonable acts or omissions of Deltares. Deltares may request extension to any milestone, said extension will not be unreasonably denied, withheld or delayed. The City may deduct this amount from payments due to

Deltares for services rendered under this Agreement up to a maximum amount for each phase equivalent to 10% of the total fee for that associated task.

**E. Termination for Convenience.** The City may terminate this Agreement at any time during the term of the Agreement by giving Deltares written notice of the termination at least 30 calendar days before the intended date of termination.

**F. Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to Deltares. "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 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.

**G. Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

#### **ARTICLE IX - INDEMNITY**

**A.** To the fullest extent permitted by law, Deltares 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 negligent act or omission or the operation of Deltares, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to Deltares in connection with the performance of work under this Agreement. This indemnity shall not include any claims related to the use of DelftFEWS, iMOD or any other proprietary Deltares or Deltares Netherlands software by or on behalf of Indemnified Parties and those third party claims resulting from the use by or on behalf of Indemnified Parties, of the resulting models and operational system.

**B.** To the fullest extent permitted by law, the City will indemnify, defend, and hold harmless Deltares, its subcontractors, employees, officials and insurers, (collectively, the "**Indemnified Deltares Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Deltares Parties related to the negligent use of DelftFEWS, iMOD or any other proprietary Deltares or Deltares Netherlands software by or on behalf of Indemnified Parties and those third party claims resulting from the negligent use by or on behalf of Indemnified Parties, of the models and operational system resulting from the execution of this Agreement. For the purpose of this clause negligent use includes use for operational use or other non-scientific purposes. The City shall have the foregoing indemnity and/or liability obligations only if Deltares provides the City with: (i) a prompt written request for indemnification and defense in such claim or action; (ii) after admission of indemnification and liability, sole control and authority over the defense and settlement thereof; and (iii) all available information, assistance,

and authority reasonably necessary to settle and defend any such claim or action. The City shall not be responsible and shall not compensate Deltares for any attorneys' fees or other expenses or costs that Deltares incurs before and after Deltares' request for indemnification and defense.

**C. Limitation.** Deltares'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 Deltares nor any of its agents or employees contributed to such gross negligence or willful misconduct.

**D. Independent Duty.** Deltares 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: (1) the allegations are or may be groundless, false, or fraudulent; or (2) Deltares is ultimately absolved from liability.

## **ARTICLE X - INSURANCE**

Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, Deltares will maintain the following insurance in full force and effect for the duration of the work under this Agreement:

### **A. Minimum Requirements:**

The following insurance coverages shall be purchased and maintained in Deltares's name and shall apply on a primary basis and shall be non-contributory by the Owner. The total limit of insurance must be equal to or greater than the minimum acceptable limits indicated below. If any policies contain a deductible or self-insured retention, then the evidence of insurance for those policies shall disclose the deductible/retention amount.

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

**B. Required Insurance Coverages:**

1. Commercial General Liability (“CGL”): Insurance Services Office Form CG 00 01 or similar acceptable to the City, covering CGL on an “occurrence” basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
  - a. \$2,000,000 Aggregate for projects valued under \$5,000,000;
  - b. \$4,000,000 Aggregate for projects valued from \$5,000,000 to \$10,000,000;
  - c. \$5,000,000 Aggregate for projects valued from \$10,000,001 to \$25,000,000;
  - d. \$10,000,000 Aggregate for projects valued over \$25,000,000.
2. Automobile Liability: ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1, or Symbols 7, 8, 9), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$500,000 Combined Single Limit per accident for bodily injury and property damage. Higher limits may apply according to the particular project.
3. Workers’ Compensation: as required by the State of Louisiana, with Statutory Limits, and Employer’s Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions): with limits no less than \$1,000,000 per claim. Higher limits of coverage may be required for agreements for Architectural, Engineering, Contractor, or other professional services according to specific project needs or contract value.
  - a. **Other Insurance Provisions.** The insurance policies are to contain, or be endorsed to contain, the following provisions:
    - i. **Additional Insured Status.** Deltares will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to Deltares’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used). The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.
    - ii. **Primary Coverage.** For any claims related to this contract, Deltares’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees,

and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to Deltares's coverage.

- 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 5 years after the termination of this agreement
- iv. **Waiver of Subrogation.** Deltares 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 provide that coverage shall not be canceled, except with prior notice to the City of no less than 60 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.

#### **C. Other Requirements:**

1. Deltares 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.: **Gentilly Resilience District Monitoring and Analysis**) within 10 calendar days of the execution date by the City and at any other time at the City's request the following documents:
  - a. Proof of coverage for each policy of insurance required by this Agreement;
  - b. Copy of the fully executed Agreement;
  - c. Copies of all policies of insurance, including all policies, forms, and endorsements; and
  - d. Statements disclosing any policy aggregate limit.
2. Without notice from the City, Deltares will:
  - a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
  - b. Substitute insurance coverage acceptable to the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
  - c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.
3. **Assistance to Those with Limited English Proficiency.** Deltares 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.

#### **ARTICLE XI - PERFORMANCE MEASURES**

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

#### **ARTICLE XII – LIVING WAGES**

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

#### **ARTICLE XIII - NON-DISCRIMINATION**

**A. Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, Deltares (1) will not be discriminate against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that Deltares’s employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, Deltares 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 Deltares in any of Deltares’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 Deltares. Deltares 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.** Deltares 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 Deltares fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

#### **ARTICLE XIV - INDEPENDENT CONTRACTOR**

**A. Independent Contractor Status.** Deltares 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 Deltares, 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 Deltares will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** Deltares, 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 Deltares 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) Deltares 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 Deltares are outside the normal course and scope of the City's usual business; and (c) Deltares has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

**D. Waiver of Benefits.** Deltares, 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 XV - NOTICE**

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

**1. To the City:**

Director  
Office of Resilience and Sustainability  
City of New Orleans  
1300 Perdido Street  
New Orleans, LA 70112  
&  
City Attorney

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

2. To Deltares:

Edwin Welles, Executive Director  
Deltares USA, Inc.  
8601 Georgia Avenue, Suite 508  
Silver Spring, MD 20910

**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 XVI - ADDITIONAL PROVISIONS**

**A. Amendment.** 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. Assignment.** This Agreement and any part of Deltares's interest in it are not assignable or transferable without the City's prior written consent.

**C. Audit and Other Oversight.** Deltares will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires Deltares to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, Deltares agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**D. Audit and Inspection.** Deltares 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 Deltares, its employees, agents, assigns, successors and subcontractors, during normal business hours at Deltares' office or place of business. If no such location is available, Deltares will make the documents available at a time and location that is convenient for the City.

**E. Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

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

**G. Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the 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 the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or Deltares 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.

**H. Convicted Felon Statement.** Deltares complies with City Code § 2-8(c) and no principal, member, or officer of Deltares has, within the preceding 5 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.

**I. Employee Verification.** Deltares swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to Deltares a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in Deltares being ineligible for any public contract for a period of 3 years from the date the violation is discovered. Deltares further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. Deltares will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if Deltares fails to provide such the requested affidavit or violates any provision of this paragraph.

**J. 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.

1. **Exhibits.** The following exhibits will be and are incorporated into this Agreement:

- Exhibit A “HUD Compliance Provisions for Direct Grantee – Subrecipient Agreements and Professional Services Contracts”;
- Exhibit B “Partnership Agreement between City of New Orleans and Deltares, USA, Inc. dated October 22, 2015;
- Exhibit C “Proposal: Towards Resilient Groundwater & Subsurface Management in New Orleans” dated November 30, 2017
- Exhibit D “Proposal: Constructing a Surface/Groundwater and Subsidence Monitoring Network for the City of New Orleans” dated November 16, 2017
- Exhibit E “Budget”

**K. Jurisdiction.** Deltares consents and yields to the jurisdiction of the State Civil Courts of

the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of Deltares.

**L. 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.

**M. No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

**N. Non-Exclusivity.** This Agreement is non-exclusive and Deltares 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.

**O. Non-Solicitation Statement.** Deltares has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. Deltares has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

**P. 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.

**Q. Ownership Interest Disclosure.** Deltares will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in Deltares and stating that no other person holds an ownership interest in Deltares via a counter letter. For the purposes of this provision, 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 Deltares fails to submit the required affidavit, the City may, after 30 days' written notice to Deltares, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**R. Ownership of Records.** Deltares shall maintain ownership of all data collected and all products of work prepared, created or modified by Deltares 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 Deltares's personnel and administrative records and any tools, systems, and information used by Deltares 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"). Deltares shall also maintain 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 Deltares's name. However, Deltares acknowledges that the purpose of the Project is for the benefit of the City of New Orleans, and therefore Deltares shall grant the City a no-cost perpetual license to utilize all Work Product in a manner to further the purpose of the Project, provided that the City takes all reasonable precautions to protect Deltares's intellectual

property and proprietary interests of the Work Product, subject to all applicable public records laws. Deltares' and Deltares Netherlands standard software as well as any amendments thereto made under this Agreement shall only be subject to the applicable standard license agreement. This Agreement and its terms and conditions shall not apply to the Deltares' and Deltares Netherlands standard software or to any amendments thereto made in the execution of this Agreement." The Contactor shall also be able present or publish materials deriving from its Work Product at its sole discretion, provided that Deltares provide the City with an advance copy for review and feedback at least thirty (30) days prior to presentation or publication.

**S. Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Deltares, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Deltares pursuant to this Agreement without regard to Deltares's otherwise satisfactory performance of the Agreement.

**T. 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.

**U. Records and Reporting.** Deltares will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through 5 years. If this Agreement is terminated for any reason, Deltares will deliver to the City all plans and records of work compiled through the date of termination.

**V. 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.

**W. 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.

**X. Special Conditions for HUD NDR Contracts.** The "HUD Compliance Provisions for Direct Grantee – Subrecipient Agreements and Professional Services Contracts," attached as Exhibit "A" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to Deltares that the City intends to seek reimbursement from the NDR Program in connection with the work to be performed under this Agreement.

**Y. Subcontractor Reporting.** Deltares will provide a list of all natural or artificial persons who are retained by Deltares at the time of the Agreement's execution and who are expected to

perform work as subcontractors in connection with Deltares's work for the City. For any subcontractor proposed to be retained by Deltares to perform work on the Agreement with the City, Deltares must provide notice to the City within 30 days of retaining that subcontractor. If Deltares fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to Deltares, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**Z. 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.

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

#### **ARTICLE XVII - ELECTRONIC SIGNATURE AND DELIVERY**

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

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

**[SIGNATURES CONTAINED ON NEXT PAGE]**

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

**CITY OF NEW ORLEANS**

BY: \_\_\_\_\_

**MITCHELL J. LANDRIEU, MAYOR**

Executed on this 26<sup>th</sup> of April, 2018.

**Law Department**

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

**DELTARES USA, INC.**

BY: \_\_\_\_\_

**EDWIN WELLES EXECUTIVE DIRECTOR**

26-3402690

**FEDERAL TAX I.D.**

**[EXHIBITS A – E CONTAINED ON FOLLOWING PAGES]**