

CITY OF NEW ORLEANS



REQUEST FOR PROPOSALS

FOR

E Bike Rebate Program Administrator

RFP NO. 4397

RELEASE DATE: May 16, 2025

SUBMISSION DEADLINE: June 16, 2025 5:00PM CST

KEY REMINDERS TO PROSPECTIVE RESPONDENTS

- 1. READ THE SOLICITATION IN ITS ENTIRETY.**
- 2. CONTACT THE DESIGNATED PURCHASING OFFICIAL ONLY.**
- 3. CHECK THE SUPPLIER PORTAL PERIODICALLY.**
- 4. TAKE ADVANTAGE OF THE QUESTION AND ANSWER PERIOD.**
- 5. PROVIDE COMPLETE ANSWERS AND DESCRIPTIONS.**
- 6. REVIEW THE RFP AND YOUR RESPONSE BEFORE SUBMITTING.**
- 7. SUBMIT YOUR PROPOSAL ON TIME.**

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SECTION 1 – DEFINITIONS

“*BRASS*” means Budget, Requisition, and Accounting Services System.

“*City*” means the City of New Orleans.

“*Close Event*” means the date and time at which BRASS prohibits Respondents from submitting a response to the solicitation.

“*DBE*” means Disadvantage Business Enterprise.

“*Event*” means the solicitation (RFQ, RFP, ITB, ITQ) that the Bureau of Purchasing created to release it on the Supplier Portal of BRASS.

“*OSD*” means the City’s Office of Supplier Diversity.

“*Open Event*” means the date and time at which the Event is released to the public in the Supplier Portal of BRASS.

“*Purchasing Conference Room*” means the room adjacent to the Bureau of Purchasing located on the 4th floor of City Hall at 1300 Perdido Street, New Orleans, Louisiana 70112.

“*Respondent*”, “*Respondents*” or “*a respondent*” means a person or entity who responds to the RFP.

“*RFP*” means the present request for proposals.

“*SBE*” means Small Business

s Enterprise as defined by the U.S. Small Business Administration.

“*SLDBE*” means State and Local Disadvantage Business Enterprise.

SECTION 2 – OVERVIEW

2.1 Introduction

The Mayor’s Office of Resilience and Sustainability (ORS) is pleased to announce this RFP for a Program Administrator for the New Orleans E-Bike Incentive Program. ORS partners with city departments, agencies, and community groups to advise on policy and project priorities related to environmental stewardship and climate resilience. Using the city’s resilience strategy, Resilient New Orleans, and the Climate Action Plan as guides, we do work across multiple sectors: Economic, Environmental, Infrastructure, and Social.

2.2 Background

The City of New Orleans is creating the E-Bike Incentive Program in support of its goal to increase the share of citywide trips made by alternative modes of transportation. In 2024, the Environmental Protection Agency awarded the City a Climate Pollution Reduction Grant, which is funding the Program. The program will issue at least 3,000 rebates valued at \$3 million in total to City of New Orleans residents to use to purchase e-bicycles from local retailers. The City intends to reserve the majority of available funds for low-income residents. The City anticipates that the project shall be for a term of 5 years (60 months).

The City seeks an Administrator who will be responsible for designing the incentive program, setting up an application portal, registering and providing support to participants (both e-bike vendors and customers), processing rebate payments, providing customer support, and reporting progress.

Respondents should have a track record for successfully administering rebate programs. Qualified firms are invited to submit a proposal to carry out the following tasks in fulfillment of the project.

2.3 Purpose

The City seeks proposals from qualified firms and/or individuals to administer an e-bike incentive program that will distribute at least 3,000 rebates to City of New Orleans residents over a three- to five-year period.

2.4 Statement of Needs

You must refer to Attachment A.

2.5 Performance Evaluation

The City will memorialize performance evaluation criteria in the executed contract.

SECTION 3 – DBE

3.1 In General

The requirements of the City's DBE Program apply to the RFP.

See section of the RFP on Attachments for more information and the applicable form(s).

3.2 DBE Goal

A DBE contract goal of 35 percent has been established for this RFP.

3.3 DBE Interest

The Bureau of Purchasing and OSD seek to offer the opportunity to DBE and SLDBE, SBEs, and other certified minority, women, disabled veteran owned businesses to submit their interest in participating to the RFP as a prospective subcontractor to a respondent or to jointly propose as a prospective partner with a respondent, or both.

DBE and other certified diversity entities must complete a questionnaire to express their interest. Follow the below link to submit your interest:

- <https://forms.office.com/Pages/ResponsePage.aspx?id=hfTLCLccAkgaIQ3ZtFuf90s12RkxNB5KnaGW8hYN33NUQlo4WkhHWE5YQ1ICQjZHUUZBOEhMMzg1UC4u>

If a pre-submittal conference is scheduled, OSD will present the results of the questionnaire for the RFP during the conference.

IMPORTANT: Submit your interest on or before the deadline identified under Section 4.1. Otherwise, OSD will not be able to present it during the pre-submittal conference.

The Bureau of Purchasing will post said results via an addendum to the RFP following the said conference or, in the absence of a conference, several days after the deadline identified under Section 4.1.

3.4 DBE Opportunities

The City expects Respondents to ensure that every effort is made to meet DBE utilization goals.

OSD offers the opportunity to Respondents to submit subcontracting opportunities on its DBE Opportunities Page. Said page can be found at:

- <https://www.nola.gov/economic-development/supplier-diversity/opportunities/>

3.5 Point of Contact

You shall direct questions related to DBE compliance prior to the Submission Deadline to:

- By email: Supplierdiversity@nola.gov
- In writing or in-person: Office of Supplier Diversity
1340 Poydras Street, Suite 1800,
New Orleans, LA 70112

SECTION 4 – ANTICIPATED TIMETABLE

4.1 Dates

Release/Open Event (Cone of Silence Begins)	<i>May 16, 2025</i>
Deadline for DBE Interest	<i>May 26, 2025</i>
Pre-Submittal Conference	<i>June 02, 2025</i>
Deadline for Submitting Questions	<i>June 05, 2025, 5:00 PM CST</i>
Submission Deadline/Close Event	<i>June 16, 2025, 5:00 PM CST</i>
Evaluation by Selection Committee	<i>On or about June 27, 2025</i>
Notification	<i>Within 1 to 2 business days from the date of the evaluation</i>

4.2 Meetings

The pre-submittal conference meeting and the selection committee meeting are public meetings. The Bureau of Purchasing encourages Respondents to attend said meetings.

The pre-submittal conference will be held via teleconference call. The Designated Purchasing Official will post the dial in information via the Event in BRASS under “Meetings.”

4.3 City Calendar

The Bureau of Purchasing posts the dates and times of the public meetings connected to the RFP on the calendar of the City.

The Bureau of Purchasing encourages Respondents to subscribe to the calendar.

The City calendar can be found at:

- [Calendar - City of New Orleans \(nola.gov\)](#)

4.4 Selection Committee Meeting

The Bureau of Purchasing makes every effort to maintain the above date of the selection committee meeting.

However, from time to time, the Bureau of Purchasing may need to reschedule the said meeting for reasons which include, but not limited to, request(s) from committee member(s) to have additional time for review, an unexpected calendar conflict of one or more committee member, an unforeseen emergency, etc.

4.5 Questions

You must submit substantive questions to the Designated Purchasing Official via the “Q & A Forum” in the Event no later than the deadline set forth in Section 4.1.

The Bureau of Purchasing does not guarantee that your question(s) submitted via email to the Designated Purchasing Official will be answered.

The Designated Purchasing Official will issue a response to questions by written addendum to the RFP. Your question(s) submitted after the deadline may not be reviewed for inclusion in an addendum to the RFP.

The Designated Purchasing Official will not respond to substantive questions submitted verbally either by telephone or in person or both outside of the scheduled meetings.

4.6 Cone of Silence

From the release of the RFP until the award, there is a prohibition on communication by respondents (or anyone on their behalf) with the City’s staff, the mayor and staff, council members and staff, members of the selection committee members and elected officials.

The Bureau of Purchasing calls this prohibition the “Cone of Silence.”

This does not apply to oral communications at pre-submittal conferences, oral presentations before selection committees, contract negotiations, or communications in writing at any time with any city employee or elected official regarding matters not concerning this RFP.

In those instances, in which a Prospective Respondent is also an incumbent contractor, the City’s staff and the incumbent contractor may contact each other with respect to the existing contract only.

Under no circumstances may the City’s staff and the incumbent contractor and/or its representative(s) discuss the RFP.

BREAKING THE CONE OF SILENCE, IF PROVEN, MAY RESULT IN A DISQUALIFICATION OF YOUR RESPONSE.

SECTION 5 – RESPONSIVENESS AND SELECTION COMMITTEE

5.1 Responsiveness

Following the submission deadline, the Designated Purchasing Official will:

- Opens the timely submitted proposals, and then
- Reviews and determines if the respondent completed and submitted the required forms.

You are invited to read Section 8.7 for failure to comply with the deadline or the required documents.

If there are responsive respondents, the Designated Purchasing Official will provide a copy of the proposals to the selection committee.

5.2 Selection Committee – Composition

The Chief Procurement Officer must establish selection committees with relevant subject-matter expertise in reviewing and evaluating responses to the RFP.

As per the applicable executive order, the selection committee will consist of the following individuals:

- The Chief Administrative Officer, or designee,
- The Chief Financial Officer, or designee,
- The manager of the User Entity requesting the service, or designee,
- The employee who will manage and monitor the contract, and
- A professional from within local government who possesses expertise in the relevant field.

5.3 Selection Committee – Grading

The members on the selection committee shall either complete the numerical grading or use the wholly qualitative evaluation criteria.

5.4 Selection Committee – Non-Voting Member

The Selection Committee, through a majority vote, may add one non-voting member to the committee who has expertise in the relevant field.

SECTION 6 – EVALUATION

6.1 In General

The selection committee will evaluate responses based on the technical criteria established under this section.

You may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of your response, as judged by the selection committee in accordance with the technical criteria.

During the review of any submission at any time (including in the event of a shortlist), the selection committee may:

- Conduct reference checks relevant to the solicitation to verify all information, and rely on or consider any relevant information from such cited references or from any other sources in the evaluation of the submissions,
- Seek clarification of a submission or additional information from any or all respondents and consider same in the evaluation of submissions,
- Waive any requests or requirements if such waiver is in the best interest of the City, and
- Request interviews/presentations with any, some or all respondents to clarify any questions or considerations based on the information included in submission.

6.2 Technical Criteria for the RFP

The Selection Committee will use the following criteria to evaluate the proposals submitted by Respondents:

1. Qualifications, Experience, and Past Performance **0 - 50 Points**

- 1) What is the quality of the Respondent's performance on similar past consulting assignments or their achievements related to proposed work?
- 2) Has the Respondent demonstrated successful performance under previous City of New Orleans, state, or federal contracts?

3) Has the Respondent provided strong references and recommendations?

2. Technical Approach: 0 - 10 Points

- 1) Does the proposed technical approach meet the objectives of the Statement of Needs?
- 2) Is the proposed Workplan clear and specific regarding how Tasks will be carried out and by whom?
- 3) Are any changes to the Scope(s) adequately justified in the Workplan?
- 4) Is the proposed project schedule both reasonable and realistic?

3. Key Personnel: 0 - 10 Points

- 1) Do identified personnel assigned to the project possess appropriate qualifications and experience?

4. Proposal Quality and Responsiveness: 0 - 5 Points

- 1) Does the proposal demonstrate the ability to make a compelling presentation and communicate clearly?
- 2) Is the written proposal well-organized, focused, relevant, and free of typographical and grammatical errors?
- 3) Does the proposal demonstrate a thorough and thoughtful understanding of the scope of services?

5. DBE 0 - 15 Points

You will see below a table with additional information on this criterion.

POINTS	DESCRIPTION	POINT AWARD	AWARDING GUIDELINES
3pts may be awarded	DBE Goal: Proposal complies with contract DBE participation goal or will conduct good faith efforts to do so.	3pts	<ul style="list-style-type: none">Meets or exceeds the stated contract DBE goal or demonstrates why and how the respondent can only achieve a lower DBE goal
		2pts	<ul style="list-style-type: none">States they will meet a lower contract goal without demonstrating why or how.
		1pts	<ul style="list-style-type: none">No commitment - 0%, but demonstrates why & how DBE participation is not achievable.
		0pts	<ul style="list-style-type: none">No commitment -0% without explanation.

			<ul style="list-style-type: none"> • Prime has history of not paying their DBE subs in a timely manner. • Prime has a history of insufficient GFEs.
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6.3 Price Proposal

The selection committee will then evaluate and rank responsive proposals on price.

You may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of its price proposal, as judged by the selection committee in accordance with:

Pricing Proposal

0 – 10 Points

SECTION 7 – NOTIFICATION AND CONTRACT

7.1 Notification

Once the selection committee recommends a proposal, the Bureau of Purchasing notifies the selected firm by an intent to award letter. The unsuccessful firm(s) will be notified as well.

The Designated Purchasing Official will also award the Event in BRASS which only represents an administrative function.

The intent to award letter will contain the name and contact information of the representative of the department responsible for administering the future contract.

IMPORTANT: The intent to award letter is not a contract award notification. The contract award is subject to the successful satisfaction by the selected respondent of all additional requirements in the solicitation.

7.2 Composite Scoring Sheet

In addition to the notification, the Designated Purchasing Official will post an electronic copy of the sheet on the website of the Bureau of Purchasing under “RFP/RFQ Composite Scoring Sheets.”

The Bureau of Purchasing keeps a sheet available for public view for 30 days from the date of the selection committee meeting.

You can find the composite scoring sheets on the following webpage:

- <https://nola.gov/view-rfp-rfq-composite-scoring-sheets/>

After 30 days, any interested party must submit a request for public records to the City’s Attorney Office to obtain a copy of the tabulation.

You can submit your request at <https://www.nola.gov/city-attorney/public-records-requests/> .

7.3 Negotiation and Execution of Contract

After the issuance of the intent to award letter, the City may negotiate the final contract with the selected respondent.

Irrespective of the occurrence of contractual negotiations or not, the selected respondent must provide the representative of the department responsible for administering the future contract with required documentation (examples: tax clearance form, proof of signing authority, proof of good standing with the State of Louisiana, etc.).

The City Attorney's Office is responsible for presenting the successful respondent with a proposed written contract to execute.

Once executed by the City, the department responsible for the administration of the contract can authorize the beginning of the services.

The City will publish a copy of the fully executed contract on the City's Supplier Portal.

7.4 Contract Administration

The executed contract with the selected firm identifies the department responsible for administering it. Said department will be notably responsible for monitoring the performance of the contractor.

7.5 Contract Amendment and/or Time Extension

7.5.1 DBE Compliance

Prior to amending and/or extending the contract for time with the contracted firm, said firm must be compliant with its committed DBE plan.

Failure to comply can constitute cause for termination of the contract.

7.5.2 Performance Evaluation

Prior to amending and/or extending the contract for time with the contracted firm, said firm must perform in accordance with the scope of work set forth in the contract.

Failure to comply can constitute cause for termination of the contract.

SECTION 8 – SUBMISSION

8.1 In General

You may respond to this RFP:

- By responding to the Event in BRASS (preferred method).
- Or by submitting a physical copy to the Bureau of Purchasing in person or by courier.

8.1.1 Submission In Person or by Courier

If you choose to submit a physical copy of your response, your envelope must:

- a. Be addressed to the Designated Purchasing Official (see Section 8.2 for the contact information)
- b. Be marked with "[name of respondent] – RFP [number of present RFP]"
- c. Contain:
 - i. One printed signed hardcopy of the technical proposal in a separate sealed envelope marked "[name of respondent] – RFP [number of present RFP] – Technical Proposal", and
 - ii. One printed signed hardcopy of the price proposal in a separate sealed envelope marked "[name of respondent] – RFP [number of present RFP] – Price Proposal"

8.1.2 Submission In BRASS

This is the preferred method to submit your response.

If you choose to submit your proposal in response to the Event via BRASS, you must submit in PDF format the following 2 separate documents:

- Technical Proposal
 - Entitle the PDF as follows: “[name of respondent] - RFP [number of present RFP] – Technical Proposal”, and
- Price Proposal
 - Entitle the PDF as follows: “[name respondent] – RFP [insert number of present RFP] – Price Proposal”.

See Section 8.3 for their respective contents.

NOTE: If you encounter a problem submitting your response by in person, by courier or in the BRASS system, you must notify the Designated Purchasing Official immediately and coordinate with said official for an alternative method of submission (by email).

You must obtain written approval from the said official prior to submitting your response via an alternative method.

The City will not accept qualifications submitted by fax.

8.2 Designated Purchasing Official

You must direct response, correspondence, and other communications regarding the RFP to the following Designated Purchasing Official:

- Title (Mr., Mrs., Ms.), First and Last Name: Ms. Pia Magee
- Email address: pmagee@nola.gov
- Office Telephone Number: 504-658-1537
- For in-person or mailing: Attn: Pia Magee
City of New Orleans
Bureau of Purchasing
1300 Perdido Street, Suite 4W07,
New Orleans, Louisiana 70112.

8.3 Contents

The City requires that the submission be organized in the manner specified below to achieve a uniform review process and obtain the maximum degree of comparability.

The below table also serve the purpose of a checklist to ensure that you attach the necessary documents. You do not need to incorporate this checklist with your submission.

Tabs	Contents	Attach? Y or N
DOCUMENT NO. 1 - TECHNICAL PROPOSAL		
Cover Letter	Show the RFP number and subject, the name of your firm, address, email address, telephone number(s), name of contact person and date.	

Table of Contents	Include a clear identification of the material by tab and by page number.	
Consultant's Profile and Submittal Letter	<p>Submittal Letter signed by and authorized agent of the respondent.</p> <p>A proposal statement setting forth in detail how the proposal meets the proposal requirements and evaluation factors.</p> <p>Organizational structure and locations of business with ownership interests.</p>	
Qualifications, Experience, and Past Performance	<ul style="list-style-type: none"> • What is the quality of the Respondent's performance on similar past consulting assignments or their achievements related to proposed work? • Has the Respondent demonstrated successful performance under previous public-sector local, state, or federal contracts? • Has the Respondent provided strong references and recommendations? 	
Technical Approach	<ul style="list-style-type: none"> • Does the proposed technical approach meet the objectives of the Statement of Needs? • Is the proposed Workplan clear and specific regarding how Tasks will be carried out and by whom? • Are any changes to the Scope(s) adequately justified in the Workplan? • Is the proposed project schedule both reasonable and realistic? 	
Key Personnel	<ul style="list-style-type: none"> • Do identified personnel assigned to the project possess appropriate qualifications and experience? 	
Proposal Quality and Responsiveness	<ul style="list-style-type: none"> • Does the proposal demonstrate the ability to make a compelling presentation and communicate clearly? • Is the written proposal well-organized, focused, relevant, and free of typographical and grammatical errors? • Does the proposal demonstrate a thorough and thoughtful understanding of the scope of services? 	
DBE	Attach the applicable DBE form(s) provided under Attachment B to the RFP.	
Responsibility	Attach your response to the questionnaire provided under Attachment D to the RFP.	
References	Provide at least 2 entity references (preferably governmental entity) for which the firm has performed similar work of the same or similar magnitude to those requested in this solicitation, including the contact's name, entity, address,	

	<p>telephone number, e-mail address, and dollar amount and term of the contract.</p> <p>At least 2 letters of reference from previous clients are also required.</p>	
Insurance	<p>Attach evidence of required insurance in the amounts indicated.</p> <p>If available, a properly completed ACORD Form is preferable.</p>	
Addenda	<p>Include a statement on company letterhead that you reviewed the addenda (include number and date of the addendum) issued by the City for this RFP.</p>	
Exceptions	<p>Include any/all exceptions taken to the content of solicitation itself or any contract or legal agreement(s) or document(s) related to the solicitation.</p> <p>Any exceptions shall be reviewed by City for appropriateness and is only valid if accepted in writing by City.</p>	
Litigation	<p>Provide all judgments entered into against the respondent by any Federal, State, or Local Courts within the past 10 years; any criminal conviction ever issued against the respondent or its owners or principals, and all civil, criminal, and administrative proceedings pending against the Prospective Consultant at this time.</p>	
Forms	<p>Attach any other forms listed under Section 11.2.</p>	
DOCUMENT NO. 2 – PRICE PROPOSAL		
Price/Cost Sheet/Rate	<p>Provide the information as requested under Attachment A.</p>	

8.4 Receipt

THE DESIGNATED PURCHASING OFFICIAL MUST RECEIVE YOUR RESPONSE BEFORE THE DEADLINE INDICATED UNDER SECTION 4.1.

The City will NOT accept submissions received/delivered after the deadline.

The City will not credit delivery claims not clearly documented by original receipt.

8.5 Time Stamp in Person, by Courier or BRASS

If you intend to submit a response in BRASS, the time stamp of receipt is generated by BRASS.

Note that BRASS prohibits any submission on and after the date and time the RFP closes.

If you intend to submit a physical response, the date and time of receipt by the Designated Purchasing Official constitutes the time stamp of receipt.

The date and time of the delivery claimed by the courier does NOT constitute proof of receipt without documented proof of delivery.

IMPORTANT:

- The Bureau of Purchasing encourages Respondents submitting a response via BRASS to submit the response at least 3 hours before the deadline set forth in the RFP.
- The Bureau of Purchasing encourages Respondents submitting a physical copy via a courier to request proof of delivery from said courier.
- The Bureau of Purchasing encourages Respondents to confirm with the Designated Purchasing Official that the response was received timely. If there is a high volume of submissions, the confirmation may take 1 or 2 business days.

8.6 Alternative Method of Submission

An alternative method of submission can be approved by email to the Designated Purchasing Official.

If the Designated Purchasing Official approves an alternative method of submission, Respondent remains responsible for ensuring that the proposal is received prior to the submission deadline.

Note that the date and time the email is received by the Designated Purchasing Official constitutes the time stamp of receipt.

The date and time the email was sent by Respondent does NOT constitute a proof of receipt.

Failure to meet the submission deadline, irrespective of the mode of delivery, shall result in the rejection of the proposal.

8.7 Failing to Comply

The Designated Purchasing Official will notify Respondent in writing that the proposal is non-responsive if:

- Respondent failed to submit it timely, or
- Respondent failed to complete and submit a form or document provided and required by the City.

The Designated Purchasing Official will not distribute a non-responsive proposal to the selection committee.

Respondent will have 2 business days from the date of notification by the Designated Purchasing Official to appeal the decision of non-responsiveness.

Non-responsive respondent must submit the appeal to the Chief Procurement Officer via email with the number of the RFP and a detailed explanation.

The decision from the Chief Procurement Officer or designee will be final.

Failure to submit the appeal timely waives the right to obtain a decision from the Chief Procurement Officer or designee.

8.8 Disclaimer

Respondents are hereby advised that due to the nature of the internet, the City cannot guarantee that access to BRASS will be uninterrupted or that emails or other electronic transmissions will be sent to you or received by us.

The City is not responsible for any delays caused by the internet or any other means of submission chosen by Respondent or both.

SECTION 9 – GENERAL INFORMATION

9.1 Legal Authority

City Charter Section 6-308(5)(b) and Executive Order LC 20-01 authorize the City to issue a request for proposals to interested and qualified firms.

9.2 Ownership

Your response and/or documentation submitted therewith are city property for all purposes.

9.3 Effect

The RFP and any related discussions or evaluations by anyone create no rights or obligations whatsoever.

The City is not responsible for submissions and/or presentation costs.

The City may cancel or modify this solicitation at any time at will, with or without notice.

Anything to the contrary notwithstanding, the contract executed by the City and a qualified firm, if any, is the exclusive statement of rights and obligations extending from the RFP and the request for proposal connected with the contract.

9.4 Addendum

The Designated Purchasing Official posts addendum on the supplier portal of BRASS under the RFP. A copy of the addendum is saved in the “Attachment” tab of the event for the RFP.

Respondents shall not rely on any representation, statement, or explanation other than those made in this RFP or in any addendums issued.

Where there appears to be a conflict between the RFP and any addendum issued, the last addendum issued will prevail.

9.5 Agree to Contract Terms and Conditions

By responding to this RFP, you agree to the City’s required Contract Terms and Conditions set forth in this solicitation and therefore waives any future right to contest the required provisions.

9.6 Protest

The City’s protest policy applies to this solicitation.

The policy is available at: <https://www.nola.gov/getattachment/Purchasing/Forms/No-130-Procurement-Protest-Policy.pdf/> .

9.7 Debriefing

Respondent who was not qualified can request a post-award debriefing.

The debriefing shall not include point-by-point comparisons of the debriefed respondent's submission with the awarded or selected respondent(s).

The unsuccessful respondent must submit a request in writing to the Designated Purchasing Official within 15 calendar days from the date of the notification issued by the Bureau of Purchasing.

The Bureau of Purchasing will ensure that the debriefing is conducted within a reasonable time.

9.8 Code of Ethics

The City adheres to the Louisiana Code of Governmental Ethics, contained in the Louisiana Revised Statutes Annotated, R.S. 42:1101, *et seq.*

By submitting a qualification submission, prospective respondents warrant that there is no "conflict of interest" related to this solicitation that would violate applicable Louisiana Law.

Violation of the Louisiana Code of Governmental Ethics may result in rescission of contract, permit or licenses, and the imposition of fines and/or penalties, without contractual liability to the public in accordance with applicable law.

9.9 BRASS

The City launched BRASS in July 2019. BRASS replaces the legacy databases and is used by all City departments.

BRASS enables suppliers to register and to maintain information about their organization for the purpose of doing business with the City and receive notifications of business opportunities.

Registration is free. The City invites prospective suppliers to learn more at <https://nola.gov/purchasing/brass/>.

9.10 Direct Deposit Electronic Payment Program

The City will require that the successful firm enrolls in its direct deposit electronic payment program.

Instead of receiving paper checks, payments will be made electronically via Automated Clearing House ("ACH") and deposited directly into an account designated by the qualified respondent at its financial institution.

Enrolling in direct deposit payments supports the City's ongoing efforts to become a more efficient and effective government, deliver enhanced services and timely payments, and provide for a sustainable environment.

ACH payment will apply to the invoice that you submit through the City's Supplier Portal **AFTER** the Bureaus of Purchasing AND Treasury have completed the ACH activation. The activation process may take 4 to 10 calendar days.

9.11 Waiver of Administrative Informalities

The City shall reserve the right, at its sole discretion, to waive administrative informalities contained in any submission.

9.12 Errors and Omissions in Submission

The City reserves the right to seek clarification of any submission for the purpose of identifying and eliminating irregularities or informalities.

9.13 Familiarity with Laws

You shall familiarize yourself with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the solicitation.

These laws and/or ordinance will be deemed to be included in the contract, the same as though herein written in full.

9.14 Sample Agreement

The City supplies a sample professional services agreement on the website of the Bureau of Purchasing at: <https://nola.gov/next/purchasing/topics/policies,-procedures,-forms-and-templates/> .

The selected respondent(s) shall be expected to execute a contract that is substantially the same as the sample agreement.

You shall not submit your own standard contract terms and conditions as a response to this RFP.

9.15 Federal Contract Provisions

If the City uses or intends to use federal funds (for example: ARPA, FEMA, HUD, etc.) to pay for the services rendered by the selected respondent, you will be required to comply with the federal contract provisions attached to the RFP and/or the signed contract.

9.16 Organizational Conflicts of Interest

As per Section 9.8, the City is required to comply with all state and local laws that govern conflict of interest.

When a project is partly funded by grants administered by a Federal agency, the City must also comply with Federal procurement standards codified in 2 C.F.R. Part 200 (Uniform Rules) for that portion of the project utilizing Federal Funds.

2 C.F.R. § 200.318 requires the non-Federal entity (the City) to maintain written standards of conduct covering conflict of interest, including Organizational Conflict Of Interest (OCOI).

An OCOI means that because of other activities or relationships with other persons or entities, a person or entity:

1. Is unable or potentially unable to render impartial assistance or advice to the City; or
2. Is or might be otherwise impaired in its objectivity in performing the contract work; or
3. Has an unfair competitive advantage.

Disclosure, evaluation, neutralization, and management of these conflicts and of the appearance of conflicts, is in the interests of the public, the City, and the business community.

You are therefore encouraged to investigate and manage any potential OCOI well in advance of forming teams or considering participation with or as a prospective respondent on a solicitation.

For this RFP, you are required to:

1. EITHER certify that you conducted an internal review prior to submitting a proposal and that you do not have any organizational conflict of interest (you must then complete and submit Attachment C-1);
2. OR disclose all relevant facts concerning any past, present, or currently planned interests, activities, or relationships which may present an organizational conflict of interest (you must then complete and submit Attachment C-2).

If you submit an Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan (Attachment C-2), the Designated Purchasing Official will ask the sponsoring department to review and make a recommendation on whether the identified conflict precludes your proposal from being submitted to the selection committee.

The City reserves the right to require revisions to the avoidance/neutralization/mitigation plan that you submitted.

If the sponsoring department recommends disqualifying your proposal, the Designated Purchasing Official will notify you in writing that you are disqualified from further participation.

You will have 2 business days from the date of notification by the Designated Purchasing Official to appeal the decision of disqualification.

You must submit the appeal to the Chief Procurement Officer via email with the number of the RFP and a detailed explanation.

The decision from the Chief Procurement Officer or designee will be final.

Failure to submit the appeal timely waives the right to obtain a decision from the Chief Procurement Officer or designee.

You shall also refer to Section 8.7 when a prospective respondent fails to comply with the requirements of this section.

9.17 Determination of Responsibility

The City seeks to select a responsible respondent who:

- Has adequate financial resources for performance or can obtain such resources as required during performance.
- Has the necessary experience, organization, technical qualifications, skills, and facilities, or can obtain them.
- Can comply with the proposed or required time of delivery or performance schedule.
- Has a satisfactory record of integrity, judgment, and performance.
- Is otherwise qualified and eligible to receive an award under applicable laws and regulations.

You must ensure that your proposal contains sufficient information for the City to make its determination by presenting acceptable evidence of the above to perform the contracted services.

9.18 Confidential Information, Trade Secrets, and Proprietary Information

The designation of certain information as trade secrets and/or privileged or confidential proprietary information shall only apply to the technical portion of the proposal. The financial proposal will not be considered confidential under any circumstance. Any proposal copyrighted or marked as confidential or proprietary in its entirety may be rejected without further consideration or recourse.

For the purposes of this procurement, the provisions of the Louisiana Public Records Act (La. R.S. 44.1 et. seq.) shall be in effect. Pursuant to this Act, all proceedings, records, contracts, and other public documents relating to this procurement shall be open to public inspection.

You are reminded that while trade secrets and other proprietary information you submit in conjunction with this procurement may not be subject to public disclosure, you must claim such protections at the time of submission of your technical proposal. You should refer to the Louisiana Public Records Act for further clarification.

The City will not credit any blanket exemption claims lacking specific justification.

You shall clearly designate the part of the proposal that contains a trade secret and/or privileged or confidential proprietary information as “confidential” to claim protection, if any, from disclosure.

You shall mark the cover sheet of the proposal with the following legend, specifying the specific section(s) of the proposal sought to be restricted in accordance with the conditions of the legend:

“The data contained in pages _____ of the proposal have been submitted in confidence and contain trade secrets and/or privileged or confidential information and such data shall only be disclosed for evaluation purposes, provided that if a contract is awarded to this Respondent as a result of or in connection with the submission of this proposal, the City of New Orleans shall have the right to use or disclose the data therein to the extent provided in the contract. This restriction does not limit the City of New Orleans’s right to use or disclose data obtained from any source, including the Respondent, without restrictions.”

Further, to protect such data, each page containing such data shall be specifically identified and marked “CONFIDENTIAL”.

You must be prepared to defend the reasons why the material should be held confidential. By submitting a proposal with data, information, or material designated as containing trade secrets and/or privileged or confidential proprietary information, or otherwise designated as “confidential”, you agree to indemnify and defend (including attorney’s fees) the City and hold the City harmless against all actions or court proceedings that may ensue which seek to order the City to disclose the information.

The City reserves the right to make any proposal, including proprietary information contained therein, available to city personnel for the sole purpose of assisting the City in its evaluation of the proposal. The City shall require said individuals to protect the confidentiality of any specifically identified proprietary information or privileged business information obtained as a result of their participation in these evaluations.

Additionally, any proposal that fails to follow this section and/or La. R.S. 44:3.2.(D)(1) shall have failed to properly assert the designation of trade secrets and/or privileged or confidential proprietary information and the information may be considered public records.

SECTION 10 – STATEMENT OF NO RESPONSE

If you elected not to respond to the RFP, the Bureau of Purchasing is interested in learning the reason(s) for non-response.

Your response to the below questionnaire will help the City understanding potential challenges and/or barriers with the RFP.

- <https://forms.office.com/Pages/ResponsePage.aspx?id=hfTLCLccAkqaIQ3ZtFuf90s12RkxNB5KnaGW8hYN33NUMjZBN05YS1U0UVY4N0tXOFdEMEVHQTFXNi4u>

SECTION 11 – ATTACHMENTS

11.1. Document to Review

- Attachment A – Statement of Needs and Price Proposal

11.2. Required to Submit with Proposal In Response to RFP

- Attachment B – DBE Compliance Form-3
- Attachment C – Conflict of Interest
 - C1 - Organizational Conflict of Interest Disclosure Certification

- C2 - Organizational Conflict of Interest Disclosure and Avoidance/Neutralization/Mitigation Plan
- Attachment D – Responsibility Questionnaire

11.3. *Contract Terms and Conditions and Insurance*

- Attachment E - Insurance Requirements
- Attachment F – City Contract Terms and Conditions

[ATTACHMENTS A THRU F ON FOLLOWING PAGES]

SECTION 11.1.

THE FOLLOWING DOCUMENT IS FOR REVIEW ONLY

**ATTACHMENT NO. A
CITY OF NEW ORLEANS
STATEMENT OF NEEDS AND PRICE PROPOSAL**

Part 1 - Statement of Needs

Firms are invited to submit a proposal to carry out the following tasks in fulfillment of the project.

Task 1: Portal Setup

Administrator will establish a user-friendly and easy-to-navigate application portal. Applicants will be directed to the application portal via the City of New Orleans website. The voucher portal must be available in English, Spanish, and Vietnamese. The voucher application portal must accommodate a brief survey on applicants' demographics and travel behavior. The survey content will be provided by the City of New Orleans, which will need to be able to access responses.

In providing the voucher portal, the Administrator must:

Use a domain name consistent with the City of New Orleans' nola.gov naming conventions. These guidelines require web applications to embed within existing nola.gov pages or provide subdomains that maintain the nola.gov top-level domain.

Leverage web analytics and use statistics, including sessions, views, and other relevant metrics.

Adhere to City of New Orleans security and data privacy policies as outlined in Attachment A.1.

Task 2: Applicant Registration and Rebate Distribution

After each Application Phase closes, the Administrator will conduct a random selection among submitted applications and send an invitation to selected applicants to "claim" their voucher by submitting documentation demonstrating eligibility. The Administrator will process applications, which will include verifying participants' eligibility, and issuing unique digital vouchers via email. Additionally, any participants with barriers to digital access must have the ability to receive a printed voucher by mail. Vouchers for any selected applicants who fail to demonstrate eligibility will be redistributed to applicants on the waitlist.

Task 3: E-Bike Vendor Registration and Reimbursement

Administrator will establish an online access point for e-bike vendors, where participating retailers can:

Validate vouchers,

Redeem voucher(s) for qualifying sales,

Indicate that they have redeemed a voucher; and

Submit documentation to request reimbursement.

The Administrator will administer CPRG funding and reimburse e-bike vendors within approximately 14 business days of receiving completed invoices for the vouchers redeemed at participating retailers. Respondents should detail in their proposal their experience meeting a payment timeline like this under similar programs. The City reserves the right to negotiate a shorter payment timeline during contract negotiations with the selected firm.

Task 4: Applicant and Vendor Customer Service

The Administrator will provide customer service support by telephone and email, and preferably live web chat to assist residents in completing voucher applications. The City encourages respondents to propose methods for making customer service resources available in Spanish and Vietnamese languages. Phone service hours must be available at a minimum between 9 am and 5 pm CT weekdays during open application periods. Note, City of New Orleans staff and our partners will also provide in-person customer support during drop-in office hours and regular events in neighborhoods throughout the city.

Prior to the application opening, Administrator will provide training and make training resources available to e-bike vendors in how to access the voucher portal, apply vouchers to eligible purchases, and submit proper documentation for voucher reimbursement. Training materials must be provided in print format (a printable pdf file is sufficient), and preferably will include a recorded webinar, slide deck, or video. Until all voucher funds have been distributed, Administrator will provide technical assistance to bike shops by phone and/or email.

Task 5: Reporting

Once the first application period launches and until all allocated funding for the vouchers is distributed, Administrator will provide reports to the City twice per month via CSV or XLS file. In lieu of reporting twice per month, Administrator may provide an online data dashboard that allows CSV file downloads. Reports (and, if applicable, data dashboards) shall include at a minimum:

- a) Resident name
- b) Resident email
- c) Resident phone
- d) Resident address
- e) Voucher ID number
- f) Bike shop
- g) Sale date
- h) Bike manufacturer and model
- i) Bike serial number
- j) Rebate amount
- k) E-bike sale price
- l) Application date and application status
- m) Voucher issue date and voucher status

Additionally, Administrator will ensure timely access to any survey data collected via the application. Finally, once per quarter, Administrator will provide a brief written report summarizing work accomplished for the previous period, including but not limited to: description of the deliverables and tasks completed during the reporting period; challenges encountered; recommendations for revisions in program administration; and findings and/or results.

Attachment A.1

CITY OF NEW ORLEANS Ownership of Data, Data Security and Availability

1. Ownership of Data: The City of New Orleans (hereafter called the City) understands and agrees that it owns all data and content that it uploads or otherwise inputs into the Vendor's application and any third-party request for access to this data must be directed to the City and in accordance

with all applicable laws.

2. Technology Security: The Vendor must provide administrative, physical, and technical security to protect sensitive or confidential information in performing their responsibilities and duties. In addition, the Vendor should address how the Vendor will ensure compliance with the following security measures:

- 2.1. Data Security: The Vendor shall maintain policy and procedures to maintain and support the security of confidential information. The Vendor shall describe their policies, procedures, and protocols for data security breaches. Data breach notification procedures and plans are maintained and shall, at a minimum, comply with Louisiana laws including, but not limited to, Louisiana Revised Statutes 51:3071 – 51:3077, and Louisiana Administrative Code Title 16, Part 3, Chapter 7, Section 701.
- 2.2. Data Breach – Venue of Law: Louisiana laws regarding data security breach notification shall apply.
- 2.3. The Vendor shall take commercially reasonable precautions to prevent the loss of or alteration to City data files in the Vendor's possession. In addition, the Vendor shall establish and follow reasonable security measures to prevent unauthorized access to the City's data.
- 2.4. Should any of the City's data become compromised or if the City's data or the Vendor's data has been or is reasonably expected to be subject to a use or a disclosure that is not authorized (collectively, an "Information Security Incident"), the Vendor shall:
 - 2.4.1. Notify the City via email immediately of any Information Security Incident;
 - 2.4.2. Investigate the Information Security Incident and conduct an analysis of the cause of the Information Security Incident;
 - 2.4.3. Provide periodic updates of any ongoing investigation to the City, including updates as requested by the City;
 - 2.4.4. Develop and implement an appropriate plan to remediate the cause of such Information Security Incident;
 - 2.4.5. Cooperate with the City's investigation or efforts to comply with any notification or other regulatory requirements applicable to the Information Security Incident; and
 - 2.4.6. Reimburse the City for any reasonable actions the City takes to remediate the Information Security Incident upon notice of the same by the City.
- 2.5. Certification and Audits: The Vendor shall provide a copy to the City of their applicable certifications/audits including the dates that the certifications/audits were conducted.

3. On Demand Access to Data and Retrieval Upon Termination:

- 3.1. The City can retrieve and download its data from the Vendor at any time and at no cost during the term of an Agreement with the City. Upon termination of an Agreement: (i) Vendor shall not delete any of the City's data in the Vendor's application during the sixty (60) days following termination; and (ii) during the sixty (60) days following termination, the City may retrieve its data without regard to any current or pending dispute or engagement between the City and the Vendor. The City shall not incur any additional fees for downloading its data from the Vendor's application during this sixty (60) day period. After this sixty (60) day period, the Vendor has no obligation to maintain or provide any of the City's data and shall thereafter, unless legally prohibited, delete all of the City's data stored in the Vendor's application and provide a certificate of deletion certifying that the data was removed. No proprietary software should be required to access the transferred data.

- 3.2. In the event that the size and volume of the City's data prevents the data from being downloaded in a reasonable time period, the Vendor shall use its best commercially available efforts to propose and provide a workable alternative transfer function that can be utilized by the City. When the Vendor transfers data to the City, the data shall be provided with appropriate indexing allowing for distinct records to be adequately differentiated. This includes any applicable meta-data created as well.
 - 3.3. The Vendor agrees to make the City's application data accessible for local exports/downloads at all times. In the case where data needs to be exported to support transition to a succeeding system, the Vendor shall provide the data in a format that is convenient and best suited for the purpose.
 - 3.4. In the Event of Company Failure or Insolvency: If the Vendor defaults in providing software maintenance support due to company failure, discontinuance of support services, or Vendor bankruptcy, the Vendor shall make the configuration and source code available to the City within ten (10) days of notice to the City.
4. Malicious Code: The Vendor warrants that it has used its best efforts and industry-standard tools and practices to provide Subscription Software that does not contain any programming devices that will have access to the City's data without authorization or improperly denies the City services provided by the Subscription Software. In so doing, the Vendor must use methods at least as stringent as those used to protect their own computers, servers, software, and/or code.
5. Disaster Recovery:
 - 5.1. Vendor shall maintain a commercially reasonable disaster recovery plan ("DR Plan"), a copy of the summary of which is available to the City upon request. The Vendor agrees to follow its DR Plan. The Vendor may amend its DR Plan at any time, provided that the Vendor shall not reduce its disaster recovery ability to less than the disaster recovery ability in effect pursuant to the DR Plan in existence on the Effective Date of this Agreement. A copy of the Vendor's amended DR Plan shall be sent to the City at the time of amendment.
 - 5.2. The Vendor agrees to maintain secondary replicas of all City data in a geographically dispersed data center location.
 - 5.3. The Vendor agrees to replicate a tertiary copy of all City data to the City's local database instance in real-time as an additional DR measure. If the application does not allow this, the Vendor shall list alternatives.
 - 5.4. The Vendor agrees to maintain a twelve (12) hour Recovery Time Objective (RTO) and a two (2) hour Recovery Point Objective (RPO) for all data restored from backup.
 - 5.5. The Vendor agrees to fulfill any demands to relinquish City data within a reasonable timeframe and provide the City with access to their data for a period of one hundred eighty (180) days after a disaster.
6. Vendor agrees to provide 99.99% availability of proposed applications, excluding agreed-upon downtime for system maintenance. All non-emergency system maintenance shall be performed during the City's maintenance window of 8:00 p.m. CST and 4:00 a.m. CST and shall be requested ten (10) days in advance of the scheduled maintenance period. The first and last working days of each calendar month are excluded from the maintenance window. City holidays are also excluded from the maintenance window. The Vendor agrees to obtain prior approval from the City to perform all emergency maintenance.
7. Integration with City Systems: The Vendor shall make a good faith effort to accommodate requests made by the City, or by another vendor working on behalf of the City, for information and assistance in integrating the Vendor's application processes and interfaces with a third-party application, the City's applications, or with City data. This effort shall not require the Vendor to

actively conduct integration work, unless specified in the contract.

8. Service Level Agreements (“SLAs”): The Vendor shall provide SLAs. SLAs are basic agreements on the expectations for how the Vendor will respond to problems or needs. This will be different for each engagement but here is an example of an SLA that includes penalties for missing service restoration dates:

Service Interruption Length	Credit
< 4 hours, continuous	none
> 4 hours, continuous	1/30 of monthly charges due for the applicable month for each 4 hours portion of continuous service interruption

This section would also include some definition of services and may delineate different SLAs for each service. Potential SLAs could be restoration of services, response time on requests or expectations on delivery of any direct services that the Vendor might provide.

Part 2 - Price Proposal

Respondents should propose a schedule of billing rates by staff classification, inclusive of any personnel that may be expected to provide the services needed. The rates shall be inclusive of all costs associated with labor, overhead, administrative costs, software, account management, and any other costs associated with provision of services. Respondents must submit a table similar to the table below that clearly shows estimated professional fees by task and position and the number of hours you anticipate spending. Respondents should add as many columns as necessary to describe their Consultant and Team members.

**Please note that the City requires a fixed price for this contract; price will not be based on the total number of hours. However, the details provided below will give us insight into the level of effort for each component of the proposed solution.*

	Position 1			Position 2			Total	
	Hours	Rate	Fee	Hours	Rate	Fee	Hours	Fee
Task 1: Portal Setup								
Task 2: Applicant Registration and Rebate Distribution								
Task 3: E-Bike Vendor Registration and Reimbursement								
Task 4: Applicant and Vendor Customer Service								
Task 5: Reporting								
Total								

[ATTACHMENTS B THRU F ON FOLLOWING PAGES]

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SECTION 11.2.

THE FOLLOWING DOCUMENTS MUST BE COMPLETED AND SUBMITTED WITH RESPONSE

INSTRUCTIONS:

- Documents must be signed by an authorized representative of the entity or it will not be accepted.
- For Affidavits: the document must be notarized, or it will not be accepted.
- For Affidavits: Affiant **MUST** select when required or the affidavit will not be accepted.

Instructions sheet may be omitted when submitting the affidavit.

ATTACHMENT B
CITY OF NEW ORLEANS
DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS

I - DBE PROGRAM COMPLIANCE

The requirements of the City of New Orleans ("City") Disadvantaged Business Enterprise ("DBE") Program apply to this Agreement. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agree to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the City's Office of Supplier Diversity ("OSD"), shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program

II - DBE CONTRACT GOAL

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation.

Participation shall be counted toward meeting the contract goal based on the following:

1. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
2. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
3. A Bidder/Proposer can count 100 % of the DBE's participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
4. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier's participation and 60 % of DBE Non-Manufacturer supplier's participation toward its contract goal.
5. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.

6. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function.

“DBE Commercially Useful Function means” a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:

- a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
- b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
- c. Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.
- d. Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

III - DBE DIRECTORY

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City’s DBE Program goals.

- a. Contractors agree to utilize the City’s SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board and Harrah’s New Orleans. The SLDBE directory is available at www.nola.gov.
- b. The Louisiana Unified Certification Program (“LA UCP”) directory is available at www.dotd.louisiana.gov.

Information on locating these directories may also be requested from the OSD at supplierdiversity@nola.gov.

IV - GOOD FAITH EFFORT POLICY

In accordance with Sec.70-461 of the City Code, the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the

Bidder's or Proposer's responsiveness to fulfilling the City's DBE Program goals prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:

- i. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project
- ii. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:

- i. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
- ii. Bidder/Proposer included a copy of each announcement or notification.

C. INITIAL SOLICITATION & FOLLOW-UP:

- i. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
- ii. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

D. NEGOTIATE IN GOOD FAITH:

- i. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.
- ii. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/Proposer fails to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at supplierdiversity@nola.gov.

V - REQUIRED DBE FORMS for RFPs/RFQs

Request for Proposals ("RFP") / Request for Qualifications ("RFQs"):

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

- 1. DBE Participation Plan (Attachment "B"):** A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.
 - a. If a DBE Participation Plan (Attachment "B") is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.
- 2.** Within ten (10) days of the City's issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1: This form is used to establish your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).
 - a. If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

VI - CONTRACTOR COOPERATION

The Contractor shall:

- 1.** Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE subcontractors/suppliers ("DBE Entities").
- 2.** Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Contractor shall provide the DBE Compliance Officer ("DBECO") with copies of said contracts within thirty (30) days from the date the Agreement is fully executed between the City and the Contractor.
 - b. The Contractor 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 Contractor does not use in accordance with the approved DBE participation submission;
- d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the 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 Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth (15th) 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 Contractor 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.

VII - POST-AWARD MODIFICATION

The OSD may grant a post-award modification request if:

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

VIII - MONITORING DBE PARTICIPATION

To ensure compliance with DBE requirements during the term of the Agreement, the DBECO will monitor the Contractor' 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 Contractor or DBE Entities.

IX - FAILURE TO COMPLY

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of the Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

All DBE Compliance forms are maintained by the OSD and are subject to change.

Please contact the OSD at supplierdiversity@nola.gov to request a copy of all DBE referenced documents.

**DBE COMPLIANCE FORM-3 IS ATTACHED SEPARATELY TO
THIS RFP ON THE SUPPLIER PORTAL**

[ATTACHMENTS C THRU F ON FOLLOWING PAGES]

[The remainder of the page is intentionally left blank]

ATTACHMENT C CONFLICT OF INTEREST

INSTRUCTIONS:

- **You are required to submit ONLY ONE FORM: either C1 or C2 with your response.**
- **DO NOT COMPLETE AND SUBMIT BOTH.**
- **If you did not identify a conflict, you must complete and submit Attachment C1.**
- **If you identified a conflict, you must complete and submit Attachment C2.**

Instructions sheet may be omitted when submitting the affidavit

**ATTACHMENT C1
CITY OF NEW ORLEANS
ORGANIZATIONAL CONFLICTS OF INTEREST CERTIFICATION**

STATE OF _____

COUNTY/PARISH OF _____

Before me, the undersigned authority, came and appeared (*first and last name*) _____
_____, who, being first duly sworn, deposed, and said that:

1. He/She is the (*title*) _____ and
authorized representative of (*name of respondent*) _____
_____, hereafter called "Respondent."
2. The Respondent submits the attached proposal in response to City of New Orleans
Solicitation No. _____.
3. The Respondent certifies that, prior to submitting the attached proposal, the Respondent
conducted an internal review of its team, including the sub-contractor(s) listed in the
proposal, for potential, real, or perceived Organizational Conflicts of Interest.
4. The Respondent further certifies that, to the best of its knowledge and belief except as
otherwise disclosed, it does not have any organizational conflict of interest.

Respondent Representative Signature

Print or Type Name

Address

Sworn to and subscribed before me, _____, Notary Public, this _____ day of _____
_____, 20____.

Notary Public (signature)

Notary Public Name

Notary ID#/Bar Roll#: _____

[ATTACHMENTS C2 THRU F ON FOLLOWING PAGES]

ATTACHMENT C2
CITY OF NEW ORLEANS
ORGANIZATIONAL CONFLICTS OF INTEREST DISCLOSURE AND
AVOIDANCE/NEUTRALIZATION/MITIGATION PLAN

STATE OF _____

COUNTY/PARISH OF _____

Before me, the undersigned authority, came and appeared (first and last name) _____
_____, who, being first duly sworn, deposed, and said that:

1. He/She is the (*title*) _____ and
authorized representative of (*name of respondent*) _____
_____, hereafter called "Respondent."

2. The Respondent submits the attached proposal in response to City of New Orleans
Solicitation No. _____.

3. The Respondent hereby confirms the following organizational conflict of interest:

a. Description of the OCOI

i. Name of Person or Firm Conflicted: _____

ii. Past/Current/Future Project Name and Scope of Work: _____

iii. Description of the Conflict of Interest: _____

b. Avoidance/Neutralization/Mitigation Plan

**ATTACHMENT D
CITY OF NEW ORLEANS
RESPONSIBILITY QUESTIONNAIRE**

If you choose to circle "N/A", you must provide a written explanation on a separate document and submit it with this questionnaire in your response.

ATTACHMENT D - CITY OF NEW ORLEANS RESPONSIBILITY QUESTIONNAIRE

No.	Questions	Circle Answer
1.	Is your firm in good standing with the Louisiana Secretary of State or other state of incorporation (if your firm is incorporated in another state) at the time of submission of your response?	YES NO N/A
2.	Have you or your firm's incorporation been cancelled, revoked, suspended, forfeited by the state of incorporation in the last 5 years?	YES NO N/A
3.	Do you or your firm owe tax to the City of New Orleans?	YES NO N/A
4.	Do you or your firm have adequate staffing resources to perform the work described in this RFP?	YES NO N/A
5.	Do you or your firm possess adequate insurance for the work described in this RFP?	YES NO N/A
6.	Have you or your firm been denied insurance coverage in the last 5 years?	YES NO N/A
7.	Have you or your firm been terminated for cause from a contract with a public agency in the last 5 years?	YES NO N/A
8.	Have you or your firm been declared non-responsible to or prevented from bidding or performing work or subcontract in the last 5 years?	YES NO N/A
9.	Have you or your firm been debarred or suspended by the Federal Government or the State of Louisiana or the state where your firm is incorporated?	YES NO N/A
10.	Is there a proceeding pending relating to your firm's responsibility, debarment, suspension, or qualification to receive a public contract?	YES NO N/A
11.	Did you or someone from your firm colluded, conspired, connived, or agreed, directly, or indirectly with any other respondent, firm or person to submit a collusive or sham bid in connection with this RFP?	YES NO N/A
12.	Do you or your firm comply with the City's hiring requirements contained in the city code?	YES NO N/A

This questionnaire was completed by:

First and Last Name

Title

Signature

Date

[ATTACHMENTS E THRU F ON FOLLOWING PAGES]

SECTION 11.3.

**CONTRACT TERMS AND CONDITIONS AND
INSURANCE**

ATTACHMENT E

CITY OF NEW ORLEANS

INSURANCE REQUIREMENTS

Except as otherwise noted, for the duration of this Agreement or the performance of work required by this Agreement, the Contractor agrees to have and maintain the policies set forth in said Agreement. All policies, endorsements, certificates, and/or binders shall be subject to approval from the City of New Orleans as to form and content. These requirements are subject to amendment or waiver only if approved in writing by the City of New Orleans.

Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement. A lapse in any required insurance coverage during this Agreement shall be a breach of this Agreement.

Minimum Requirements:

Workers' Compensation & Employers Liability Insurance in compliance with the Louisiana Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$1,000,000. All employers must provide this insurance or be registered as a "Self-Insured" entity within the State.

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

Cyber Liability Insurance 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 of the Contractor and shall include, but not limited to claims involving Network Interruption, Security and Privacy, extortion, and release of private information.

Business Automobile Insurance (Where applicable) 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.

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

Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that 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.

Additional Insured Status: 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 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 insurance coverage 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).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-contractor 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 (**User Department Mailing Address**), with a copy forwarded to Risk Management Division, 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

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

Primary Coverage: For any claims related to this agreement, the 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.

Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.

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 agreement.

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.

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.

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:

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.

Special Risks or Circumstances: 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.

[ATTACHMENT F ON FOLLOWING PAGES AND END OF SOLICITATION]

[The remainder of the page is intentionally left blank]

**ATTACHMENT F
CITY OF NEW ORLEANS
CITY CONTRACT TERMS AND CONDITIONS**

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15. EMPLOYEE VERIFICATION.	36. PROHIBITION ON POLITICAL ACTIVITY.
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44. **TERMINATION FOR CONVENIENCE.**
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46. **TERMS BINDING.**
47. **WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.**

1. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.

The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Contract, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

2. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.

The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Contract for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Contract, or agreement for hire, and in connection with unemployment compensation only, that:

- a. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and
- b. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and

- c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Contract.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

- 3. ASSIGNABILITY.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of the City.

- 4. AMENDMENT.** The Contract shall not be modified except by written amendment executed by duly authorized representatives of the parties.

5. AUDIT AND INSPECTION:

- a. The Contractor 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 Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

- b. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor 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 Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

6. CHOICE OF LAWS. This Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

7. COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX.

A. The Contractor 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, Contractor 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.

B. 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 Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to

Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

C. 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.

D. The Contractor 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.

8. CONFLICT OF INTEREST. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor 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 Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

9. CONSTRUCTION OF AGREEMENT. Neither party will be deemed to have drafted the Contract. The Contract has been reviewed by all parties and will 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 the Contract will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Contract are provided for convenience only and are not intended to have effect in the construction or interpretation of the Contract. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

10. CONVICTED FELON STATEMENT.

The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor 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.

11. 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 Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

12. DECLARED DISASTER.

A. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide

a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.

B. Task Order. Notification and Personnel.

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

C. Purchase Order.

Once services are identified, the City will issue a purchase order to the Contractor. The City will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.

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

13. DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM.

A. In General. The Contractor 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 Contractor’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 Contractor or DBE Entities.

C. Cooperation. The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.
 - b. The Contractor 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 Contractor does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (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 Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth (15th) 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 Contractor 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 Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor 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 Contractor 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 Contractor 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 Contractor shall use and document "Good Faith Efforts"

to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

14. DURATION. The services to be provided under the terms of this Contract shall begin upon execution of Contract and shall end no later than twelve (12) months after. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished during the time period specified herein.

15. EMPLOYEE VERIFICATION. The Contractor 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 the Contractor 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 the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor 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. The Contractor 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 the Contractor fails to provide

such the requested affidavit or violates any provision of this paragraph.

16. 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.

17. FAMILIARITY WITH LAWS

The Contractor shall be familiarized with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the Agreement.

These laws and/or ordinance will be deemed to be included in the Agreement, the same as though herein written in full.

18. NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, 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, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Contractor 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 Contractor in any of Contractor'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 Contractor. The Contractor 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. The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

19. EXCLUSIVE JURISDICTION AND VENUE. For all claims arising out of or related to this Contract, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly

waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

20. EXTENSION. This Contract 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 Contract facilitates the continuity of services provided herein. This Contract may be extended by the City for four (4) additional one-year terms.

21. 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 the City, provided such event was not caused by the negligence or misconduct of the City, by the failure of the 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 the 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.

22. INCORPORATION INTO SUBCONTRACTS. The Contractor will incorporate these Contract Terms and

Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

23. INDEMNIFICATION.

A. To the fullest extent permitted by law, the Contractor 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 Contractor, its agents or employees while engaged in or in connection with the discharge or performance of any services under this Contract; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Contract.

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

C. Independent Duty. The Contractor 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) the Contractor is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Contractor

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.

24. INDEPENDENT CONTRACTOR STATUS.

The Contractor 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.

25. INVOICING. The Contractor 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 the following information: invoice number, contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

26. 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.

27. 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. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$15.56. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for

the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1st using the Consumer Price Index figures provided for the calendar year ended December 31st of 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 31st 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.

28. NO THIRD PARTY BENEFICIARIES. The Contract is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.

29. NON-EXCLUSIVITY. This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Contract and the City may engage the services of others for the provision of some or all of the work to be performed under this Contract.

30. NON-SOLICITATION. The Contractor has not employed or retained

any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Contract.

31. NON-WAIVER. The failure of the City to insist upon strict compliance with any provision of the Contract, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor 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 the City'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.

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

33. 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), or rendered, and approved by the City after receipt by the City of properly submitted invoice via the City's supplier portal.

34. PERFORMANCE MEASURES.

A. Factors. The City will measure the performance of the Contractor 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; staff turnover; 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 Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor 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.

35. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT. No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Contract voidable by the City and

shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Contract without regard to the Contractor's satisfactory performance.

36. PROHIBITION ON POLITICAL ACTIVITY. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.

37. REMEDIES CUMULATIVE. No remedy set forth in the Contract 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.

38. SEVERABILITY. If a court of competent jurisdiction finds any provision of the Contract 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 will be fully severable and the remaining provisions of the Contract will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Contract.

39. SUBCONTRACTOR REPORTING. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to

perform work on the Contract with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

40. SURVIVAL. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Contract and continue in full force and effect.

41. SUSPENSION. The City may suspend this Contract at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

42. TAX CLEARANCE. (NEW PROVISION AS OF MARCH 2024) On or about March 1st of each calendar year that the contract is effect, the Contractor must complete a tax clearance form with the information from the contractor, sign it, and submit it to the department, board, or commission that manages the contract (Department). "Please supply a copy of a valid City of New Orleans Occupational License if the vendor is domiciled within Orleans Parish or Registration Certificate if the vendor is located outside of Orleans Parish. To get a copy of your documents visit: (<https://salestax.nola.gov>)

43. The Department will then use the tax clearance form to verify with the Departments of Revenue, Treasury, and Finance whether the Contractor is

delinquent with city taxes or not. If found delinquent, the Contractor must cure it, after being notified by the Department, or the contract could be terminated for cause. "Please supply a copy of a valid City of New Orleans Occupational License if the vendor is domiciled within Orleans Parish or Registration Certificate if the vendor is located outside of Orleans Parish. To get a copy of your documents visit: (<https://salestax.nola.gov>)

44. TERMINATION FOR CAUSE.

The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "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 thirty (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.

45. TERMINATION FOR CONVENIENCE.

The City may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the City's intention to terminate at least thirty (30) days before the date of termination.

46. TERMINATION FOR NON-APPROPRIATION.

This Contract will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Contract without the requirement of notice and the City will not

be liable for any amounts beyond the funds appropriated and encumbered for this Contract.

47. TERMS BINDING. The terms and conditions of the Contract are binding on any heirs, successors, transferees, and assigns.

48. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS. It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

**FEDERAL COMPLIANCE PROVISIONS
FOR
AGREEMENTS
WITH
SUBRECIPIENTS/CONTRACTORS**

**FROM 2 CFR PART 200
APPLICABLE TO ALL FEDERAL GRANTS.**

- 1. REMEDIES FOR NON-COMPLIANCE**
- 2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE**
- 3. EQUAL OPPORTUNITY ACT**
- 4. EQUAL OPPORTUNITY ACT FOR FEDERALLY ASSISTED CONSTRUCTION CONTRACTS**
- 5. DAVIS-BACON ACT**
- 6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION**
- 7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT**
- 8. COPELAND "ANTI-KICKBACK" ACT**
- 9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT**
- 10. CLEAR AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT**
- 11. DEBARMENT AND SUSPENSION**
- 12. BYRD ANTI-LOBBYING ACT**
- 13. PROCUREMENT OF RECOVERED MATERIALS**
- 14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT**
- 15. DOMESTIC PREFERENCES FOR PROCUREMENT**
- 16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED**
- 17. ACCESS TO RECORDS**
- 18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS**
- 19. NO OBLIGATION BY FEDERAL GOVERNMENT**
- 20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS**

1. REMEDIES FOR NON-COMPLIANCE

[See the body of the Agreement/Contract for this language.]

2. TERMINATION FOR CAUSE AND TERMINATION FOR CONVENIENCE

[See the body of the Agreement/Contract for this language.]

3. EQUAL OPPORTUNITY ACT.

A. Except as otherwise provided under [41 CFR Part 60](#), all non-exempt agreements/contracts and/or sub-subrecipient agreements/subcontracts that meet the definition of “federally assisted construction contract” in [41 CFR Part 60-1.3](#) shall include the equal opportunity clause provided under [41 CFR 60-1.4\(b\)](#), in accordance with [Executive Order 11246](#), “Equal Employment Opportunity” ([30 FR 12319](#), [12935](#), [3 CFR Part, 1964-1965](#) Comp., p. 339), as amended by [Executive Order 11375](#), “Amending [Executive Order 11246](#) Relating to Equal Employment Opportunity,” and implementing regulations at [41 CFR Part 60](#), “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.” By operation of the order, the equal opportunity clause shall be considered to be a part of every agreement/contract and sub-subrecipient agreement/subcontract required by the order and the regulations in this part to include a clause, whether or not it is physically incorporated in such agreements/contracts and whether or not the agreement/contract between the agency and the Subrecipient/Contractor is written. During the performance of this Agreement/Contract, the Subrecipient/Contractor agrees as follows:

(1) The Subrecipient/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 Subrecipient/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 Subrecipient/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 Subrecipient/Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient/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 Subrecipient/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 Subrecipient/Contractor's legal duty to furnish information.

(4) The Subrecipient/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 Subrecipient's/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 Subrecipient/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 Subrecipient/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 or her 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 Subrecipient's/Contractor's non-compliance with the nondiscrimination clauses of this Agreement/Contract or with any of such rules, regulations, or orders, this Agreement/Contract may be canceled, terminated or suspended in whole or in part, and the Subrecipient/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 Subrecipient/Contractor will include the provisions of paragraphs (A)(1) through (A)(8) in every sub-subrecipient agreement, 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 sub-subrecipient/subcontractor. The Subrecipient/Contractor will take such action with respect to any sub-subrecipient agreement, 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 Subrecipient/Contractor becomes involved in, or is threatened with, litigation with a sub-subrecipient/subcontractor as a result of

such direction, the Subrecipient/Contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. EQUAL OPPORTUNITY ACT FOR FEDERALLY ASSISTED CONSTRUCTION CONTRACTS.

A. The applicant hereby agrees that it will incorporate or cause to be incorporated into any agreement/contract for construction work, or modification thereof, as defined in the regulations of the Secretary of Labor at *41 CFR Chapter 60*, which is paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to a grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the following equal opportunity clause:

B. During the performance of this Agreement/Contract, the Subrecipient/Contractor agrees as follows:

(1) The Subrecipient/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 Subrecipient/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 Subrecipient/Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

(2) The Subrecipient/Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Subrecipient/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 Subrecipient/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 Subrecipient's/Contractor's legal duty to furnish information.

(4) The Subrecipient/Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers'

representatives of the Subrecipient's/Contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.

(5) The Subrecipient/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 Subrecipient/Contractor will furnish all information and reports required by *Executive Order 11246 of September 24, 1965*, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering 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 Subrecipient's/Contractor's noncompliance with the nondiscrimination clauses of this Agreement/Contract or with any of the said rules, regulations, or orders, this Agreement/Contract may be canceled, terminated, or suspended in whole or in part, and the Subrecipient/Contractor may be declared ineligible for further Government contracts or federally assisted construction agreements/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 Subrecipient/Contractor will include the language in Subsection (B) and the provisions of paragraphs (B)(1) through (B)(8) in every sub-subrecipient agreement, 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 sub-subrecipient/subcontractor. The Subrecipient/Contractor will take such action with respect to any sub-subrecipient agreement, subcontract, or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance: *Provided*, however, that in the event a Subrecipient/Contractor becomes involved in, or is threatened with, litigation with a sub-subrecipient/subcontractor as a result of such direction by the administering agency, the Subrecipient/Contractor may request the United States to enter into such litigation to protect the interests of the United States.

(9) The applicant further agrees that it will be bound by the above equal opportunity clause with respect to its own employment practices when it participates in federally assisted construction work: *Provided*, That if the applicant so participating is a State or local government, the above equal opportunity clause is not applicable to any agency, instrumentality or subdivision of such government which does not participate in work on or under the Agreement/Contract.

(10) The applicant agrees that it will assist and cooperate actively with the administering agency and the Secretary of Labor in obtaining the compliance of Subrecipients/Contractors and sub-subrecipients/subcontractors with the equal

opportunity clause and the rules, regulations, and relevant orders of the Secretary of Labor, that it will furnish the administering agency and the Secretary of Labor such information as they may require for the supervision of such compliance, and that it will otherwise assist the administering agency in the discharge of the agency's primary responsibility for securing compliance.

(11) The applicant further agrees that it will refrain from entering into any Agreement/Contract or contractual modification subject to *Executive Order 11246 of September 24, 1965*, with a Subrecipient/Contractor debarred from, or who has not demonstrated eligibility for, Government contracts and federally assisted construction contracts pursuant to the Executive Order and will carry out such sanctions and penalties for violation of the equal opportunity clause as may be imposed upon Subrecipients/Contractors and sub-subrecipients/subcontractors by the administering agency or the Secretary of Labor pursuant to *Part II, Subpart D of the Executive Order*.

(12) The applicant agrees that if it fails or refuses to comply with these undertakings, the administering agency may take any or all of the following actions: Cancel, terminate, or suspend in whole or in part this grant (contract, loan, insurance, guarantee); refrain from extending any further assistance to the applicant under the program with respect to which the failure or refund occurred until satisfactory assurance of future compliance has been received from such applicant; and refer the case to the Department of Justice for appropriate legal proceedings.

5. DAVIS-BACON ACT.

A. (For prime construction contracts in excess of \$2,000.00)

(1) Applicable agreements/contracts must comply with the *Davis Bacon Act*, as amended (*40 U.S.C. 3141-3148*). In accordance with the statute, Subrecipients/Contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, Subrecipients/Contractors must be required to pay wages not less than once a week.

6. LABOR STANDARDS PROVISIONS APPLICABLE TO CONTRACTS COVERING FEDERALLY FINANCED AND ASSISTED CONSTRUCTION

A. (For construction agreements/contracts (incl. alteration and/or repair, including painting and decorating) of a public building or public work, or building or work financed in whole or part from Federal funds.)

(1) *Minimum wages.*

- (i) *Wage rates and fringe benefits.*** All laborers and mechanics employed or working upon the site of the work (or otherwise working in construction or development of the project under a development statute), 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 Subrecipient/Contractor and such laborers and mechanics. The appropriate wage determinations are effective by operation of law even if they have not been attached to the Agreement/Contract. Contributions made or costs reasonably anticipated for bona fide fringe benefits under *the Davis-Bacon Act (40 U.S.C. 3141(2)(B))* on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(1)(viii) of this section; 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 § 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 paragraph (A)(1)(iii) of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Subrecipient/Contractor and its sub-subrecipients/subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

(ii) ***Frequently recurring classifications.*** In addition to wage and fringe benefit rates that have been determined to be prevailing under the procedures set forth in 29 CFR Part 1, a wage determination may contain, pursuant to Part 1.3(f), wage and fringe benefit rates for classifications of laborers and mechanics for which conformance requests are regularly submitted to the paragraphs relating to conformance in this section, provided that:

- The work performed by the classification is not performed by a classification in the wage determination for which a prevailing wage rate has been determined.
- The classification is used in the area by the construction industry; and
- The wage rate for the classification bears a reasonable relationship to the prevailing wage rates contained in the wage determination.

The Administrator will establish wage rates for such classifications based on the proposed wage rate, including any bona fide fringe benefits, that bears a reasonable relationship to the wage rates contained in the wage determination. Work performed in such classification must be paid at no less than the wage and fringe benefit rate listed on the wage determination for such classification.

Conformance related provisions include paragraphs (A)(1)(iii)-(A)(1)(vi).

(iii) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination, and which is to be employed under the Agreement/Contract, be classified in conformance with the wage determination. Conformance of an additional classification and wage rate and fringe benefits is appropriate only when the following criteria have been met:

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

The conformance process may not be used to split, subdivide, or otherwise avoid application of classifications listed in the wage determination.

(iv) If the Subrecipient/Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer 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 the contracting officer by email to DBAconformance@dol.gov. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty-day period that additional time is necessary.

(v) In the event the Subrecipient/Contractor, the laborers, or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall, by email to DBAconformance@dol.gov, refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within thirty (30) days of receipt and so advise the contracting officer or will notify the contracting officer within the thirty-day period that additional time is necessary. The contracting officer must promptly notify the Subrecipient/Contractor of the action taken by the Wage and Hour Division under paragraphs (A)(1)(iv) and (A)(1)(v) of this section. The Subrecipient/Contractor must furnish a written copy of such determination to each affected worker, or it must be posted as a part of the wage determination. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (A)(1)(iv) and (A)(1)(v) of this section must be paid to all workers performing work in the classification under this Agreement/Contract from the first day on which work is performed in the classification.

(vi) **Fringe Benefits Not Expressed as an Hourly Rate.** Whenever the minimum wage rate prescribed in the agreement/contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Subrecipient/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.

(vii) **Unfunded Plans.** If the Subrecipient/Contractor does not make payments to a trustee or other third person, the Subrecipient/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 Subrecipient/Contractor, in accordance with the criteria set forth in § 5.28, that the applicable standards of the *Davis-Bacon Act* have been met. The Secretary of Labor may require the Subrecipient/Contractor to set aside in a separate account asset for the meeting of obligations under the plan or program.

(viii) **Interest.** In the event of a failure to pay all or part of the wages required by the agreement/contract, the Subrecipient/Contractor will be required to pay interest on any underpayment of wages.

(2) **Withholding.** The Federal agency or the City of New Orleans may, upon its own action, or shall, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the Subrecipient/Contractor so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime Subrecipient/Contractor or any sub-subrecipient/subcontractor for the full amount of wages and monetary relief, including interest, required by the paragraphs in Subsection (A) of this section for violations of this Agreement/Contract, or to satisfy any such liabilities required by any other Federal agreement/contract, or federally assisted agreement/contract subject to *Davis-Bacon labor standards*, that is held by the same prime Subrecipient/Contractor (as defined in §5.2). The necessary funds may be withheld from the Subrecipient/Contractor under this Agreement/Contract, any other Federal Agreement/Contract with the same prime Subrecipient/Contractor, or any other Federally assisted Agreement/Contract that is subject to Davis-Bacon labor standards requirements and is held by the same prime Subrecipient/Contractor, regardless of whether the other agreement/contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Subrecipient/Contractor liability for which the funds were withheld. In the event of a Subrecipient's/Contractor's failure to pay any laborer or mechanic, including any apprentice or helper working on the site of the work (or otherwise working in construction or development of the project under a development statute) all or part of the wages required by the Agreement/Contract, or upon the Subrecipient's/Contractor's failure to submit the required records as discussed in the paragraphs of this section relating to required disclosures and access, the Federal agency may on its own initiative and after written notice to the Subrecipient/Contractor, sponsor, applicant, owner, or other entity, as the case may be, 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.

(i) **Priority to withheld funds.** The Department has priority to funds withheld or to be withheld in accordance with paragraph regarding withholding or the provisions relating to the *Contract Work Hours and Safety Standards Act*, or both, over claims to those funded by:

- A Subrecipient's/Contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties;
- A contracting agency for its procurement costs;
- A trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a Subrecipient/Contractor, or a Subrecipient's/Contractor's bankruptcy estate;
- A Subrecipient's/Contractor's assignee(s);
- A Subrecipient's/Contractor's successor(s); or
- A claim asserted under the *Prompt Payment Act*, 31 U.S.C. 3901-3907.

(3) Records and Certified Payrolls.

(i) **Basic Record Requirements.** All regular payrolls and other basic records must be maintained by the Subrecipient/Contractor and any sub-subrecipient/subcontractor during the course of the work and preserved for all laborers and mechanics working at the site of the work (or otherwise working in construction or development of the project under a development statute) for a period of at least three (3) years after all the work on the prime Agreement/Contract is completed. Such records must contain the name; Social Security number; last known address, telephone number, and email address of each such worker; each worker's correct classification(s) of work actually performed; 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 40 U.S.C. 3141(2)(B) of the *Davis Bacon Act*); daily and weekly number of hours actually worked in total and on each covered agreement/contract; deductions made; and actual wages paid. Whenever the Secretary of Labor has found under paragraph (A)(1)(vii) of this section 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 40 U.S.C. 3141(2)(B) of the *Davis-Bacon Act*, the Subrecipient/Contractor must 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. Subrecipients/Contractors with apprentices working under approved programs must maintain written evidence of the registration of apprenticeship programs, the registration of the apprentices, and the ratios and wage rates prescribed in the applicable programs.

(ii) **Certified Payroll Requirements.** The Subrecipient/Contractor or sub-subrecipient/subcontractor shall submit weekly, for each week in which any

DBA- or Related Acts-covered work is performed, certified payrolls to the appropriate Federal agency, if the agency is a party to the Agreement/Contract, but if the agency is not a party, the Subrecipient/Contractor shall submit the certified payrolls to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the appropriate Federal agency. The prime Subrecipient/Contractor is responsible for the submission of all certified payrolls by all sub-subrecipients/subcontractors. A contracting agency or prime Subrecipient/Contractor may permit or require sub-subrecipients/subcontractors to submit certified payrolls through an electronic system, as long as the electronic system requires a legally valid signature; the system allows the Subrecipient/Contractor, the contracting agency, and the Department of Labor to access the certified payrolls upon request for at least three (3) years after the work on the prime agreement/contract has been completed; and the contracting agency or prime Subrecipient/Contractor permits other methods of submission in situations where the Subrecipient/Contractor or the sub-subrecipient/subcontractor is unable or limited in its ability to use or access the electronic system. The certified payrolls submitted must set out accurately and completely all of the information required to be maintained under paragraph (A)(3)(i) of this section, except that full Social Security numbers and last known addresses, telephone numbers, and email addresses must not be included on weekly transmittals. Instead, the certified payrolls need only include an individually identifying number for each worker (e.g., the last four digits of the worker's Social Security number). The required weekly certified payroll information may be submitted using Optional Form WH-347 or in any other format desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division website at <https://www.dol.gov/sites/dolgov/files/WHD/legacy/files/wh347.pdf> or its successor website. It is not a violation of this section for a prime Subrecipient/Contractor to require a sub-subrecipient/subcontractor to provide full Social Security numbers and last known addresses, telephone numbers, and email addresses to the prime Subrecipient/Contractor for its own records, without weekly submission by the sub-subrecipient/subcontractor to the sponsoring government agency (or the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records).

(iii) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Subrecipient/Contractor or sub-subrecipient/subcontractor or their agents who pays or supervises the payment of the persons employed under the Agreement/Contract and shall certify the following:

- That the certified payroll for the payroll period contains the information required to be provided under paragraph (A)(3)(ii) of this section, the appropriate information and basic records are being maintained under paragraph (A)(3)(i) of this section, and such information and records are correct and complete;
- That each laborer or mechanic (including each helper and apprentice) working on the Agreement/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 *Regulations, 29 CFR Part 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(s) of work actually performed, as specified in the applicable wage determination incorporated into the Agreement/Contract.

(iv) **Use of Optional Form WH-347.** 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 paragraph (A)(3)(iii) of this section.

(v) **Signature.** The signature by the Subrecipient/Contractor, sub-subrecipient/subcontractor, or their agent(s) shall be an original handwritten signature or a legally valid electronic signature.

(vi) **Falsification.** The falsification of any of the above certifications may subject the Subrecipient/Contractor or sub-subrecipient/subcontractor to civil or criminal prosecution under *Section 1001 of Title 18* and *Section 31 U.S.C. 3729*.

(vii) The Subrecipient/Contractor or sub-subrecipient/subcontractor shall make the records required under paragraph (A)(3) of this section, and any other documents that the Federal Agency or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by § 5.1, available for inspection, copying, or transcription by authorized representatives of the Federal agency or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Subrecipient/Contractor or sub-subrecipient/subcontractor fails to submit the required records or to make them available, or refuses to permit worker interviews during the working hours on the job, the Federal agency may, after written notice to the Subrecipient/Contractor, sponsor, applicant, owner, or other entity, as the case may be, that maintains such records or that employs such workers, 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, or to permit worker interviews during working hours on the job, may be grounds for debarment action pursuant to *29 CFR 5.12*. In addition, any Subrecipient/Contractor or other person that fails to submit the required records or make those records available to WHD¹ within the time WHD requests that the records be produced will be precluded from introducing as evidence in an administrative proceeding under *29 CFR Part 6* any of the required records that were not provided or made available to WHD. WHD will take into consideration a reasonable request from the Subrecipient/Contractor or person for an extension of the time for submission of records. WHD will determine the reasonableness of the request

¹ Department of Labor’s Wage and Hour Division

and may consider, among other things, the location of the records and the volume of production.

(viii) *Agreements/Contracts, subrecipient agreements/subcontracts, and related documents.* The Subrecipient/Contractor or sub-subrecipient/subcontractor shall maintain this Agreement/Contract or sub-subrecipient agreement/subcontract and related documents, including, without limitation, bids, proposals, amendments, modifications, and extensions. The Subrecipient/Contractor or sub-subrecipient/subcontractor shall preserve these agreements/contracts, sub-subrecipient agreements/subcontracts, and related documents during the course of the work and for a period of three (3) years after all the work on the prime Agreement/Contract is completed.

(ix) *Required Disclosures and Access.* The Subrecipient/Contractor or sub-subrecipient/subcontractor shall make the records required under paragraphs (A)(3)(i) through (A)(3)(viii) of this section, and any other documents that the Federal Agency or the Department of Labor deems necessary to determine compliance with the labor standards provisions of any of the applicable statutes referenced by 29 CFR 5.1, available for inspection, copying, or transcription authorized representatives of the Federal Agency or the Department of Labor, and must permit such representatives to interview workers during working hours on the job. Paragraph (A)(3)(vii) of this section outlines the sanctions for non-compliance with records and worker access requirements. Subrecipients/Contractors and sub-subrecipients/subcontractors must maintain the full Social Security number and last known address, telephone number, and email address of each covered worker, and shall provide them upon request to the appropriate Federal Agency, if the agency is a party to the Agreement/Contract or to the Wage and Hour Division of the Department of Labor. If the Federal Agency is not such a party to the Agreement/Contract, the Subrecipient/Contractor, sub-subrecipient/subcontractor, or both, must upon request, provide the full Social Security number and last known address of each covered worker to the applicant, sponsor, owner, or other entity, as the case may be, that maintains such records, for transmission to the appropriate Federal agency, the Subrecipient/Contractor, or the Wage and Hour Division of the Department of Labor for purposes of an investigation or other compliance action.

(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 (“**OA**”), or with a State Apprenticeship Agency recognized by the OA. A person who is not individually registered in the program, but who has been certified by the OA or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice, will be permitted to work at less than the predetermined rate for the work they perform in the first ninety (90) days of probationary employment as

an apprentice in such program. In the event the OA or a State Apprenticeship Agency recognized by the OA withdraws approval of an apprenticeship program, the Subrecipient/Contractor will no longer be permitted to use apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved. Apprentices must be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify the 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, fringe benefits must be paid in accordance with that determination. The allowable ratio of apprentices to journeyworkers on the job site in any craft classification must not be greater than the ratio permitted to the Subrecipient/Contractor as to the entire work force under the registered program or the ratio applicable to the locality of the project discussed below in this paragraph. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed, as stated earlier in this paragraph, must 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 this section must be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Subrecipient/Contractor is performing construction on a project in a locality other than the locality in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyworker's hourly rate) applicable within the locality, in which the construction is being performed shall be observed. If there is no applicable ratio or wage rate for the locality of the project, the ratio or wage rate specified in the Subrecipient/Contractor's or sub-subrecipient's/subcontractor'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 journeyworker hourly rate specified in the applicable wage determination. The use of apprentices and journeyworkers under this part must be in conformity with the equal employment opportunity requirements of *Executive Order 11246*, as amended, and *29 CFR Part 30*.

- (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 journeyworkers 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 no less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyworker's 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 journeyworker 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 who 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 classification of 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 Subrecipient/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.

(5) Compliance with Copeland Act requirements. The Subrecipient/Contractor shall comply with the requirements of *29 CFR Part 3*, which are incorporated by reference in this Agreement/Contract.

(6) Subcontracts. The Subrecipient/Contractor or sub-subrecipient/subcontractor shall insert in any sub-subrecipient agreements/subcontracts the clauses contained in Subsection (A), in their entirety, within this section and along with the applicable wage determination(s) and such other clauses or contract modifications as the appropriate Federal agency may by appropriate instructions require, and also a clause requiring the sub-subrecipients/subcontractors to include these clauses and wage determination(s) in any lower tier sub-subrecipient agreements/subcontracts. The prime Subrecipient/Contractor shall be responsible for the compliance by any sub-subrecipient/subcontractor or lower tier sub-subrecipient/subcontractor with all the contract clauses in *29 CFR 5.5*. In the event of any violations of these clauses, the prime Subrecipient/Contractor, and any sub-subrecipients/subcontractors responsible will be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier sub-subrecipients/subcontractors, and may be subject to debarment, as appropriate.

(7) Contract termination: debarment. A breach of the contract clauses in *29 CFR 5.5* may be grounds for termination of the Agreement/Contract, and for debarment as a Subrecipient/Contractor and a sub-subrecipient/subcontractor 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 Agreement/Contract.

(9) Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this Agreement/Contract shall not be subject to the general disputes clause of this Agreement/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 Subrecipient/Contractor (or any of its subrecipients/subcontractors) and the

contracting agency, the U.S. Department of Labor, or the employees or their representatives.

(10) Certification of eligibility.

- (i) By entering into this Agreement/Contract, the Subrecipient/Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Subrecipient/Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of *41 U.S.C. 3144(b)* or *29 CFR 5.12(a)*.
- (ii) No part of this Agreement/Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of *40 U.S.C. 3144(b)* or *29 CFR 5.12(a)*.
- (iii) The penalty for making false statements is prescribed in the *U.S. Criminal Code, Title 18 Crimes and Criminal Procedure, 18 U.S.C. 1001*.

(11) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or to cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any Subrecipient/Contractor or sub-subrecipient/subcontractor of any conduct which the worker reasonably believes constitutes a violation of the *DBA, Related Acts*, in *Part 5*, or *29 CFR Part 1* or *Part 3*;
- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the *DBA, Related Acts*, in *Part 5*, or *29 CFR Part 1* or *Part 3*;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the *DBA, Related Acts*, in *Part 5*, or *29 CFR Part 1* or *Part 3*; or
- (iv) Informing any other person about their rights under the *DBA, Related Acts*, in *Part 5*, or *29 CFR Part 1* or *Part 3*.

7. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.

- A.** (Where applicable, all agreements/contracts awarded by the non-Federal entity in excess of \$100,000.00 or covered by the Federal Acquisition Regulation by reference, subject to the overtime provisions of the *Contract Work Hours and Safety Standards Act* that involve the employment of mechanics or laborers must include a provision for compliance with *40 U.S.C. 3702* and *3704*, as supplemented by Department of Labor regulations (*29 CFR Part 5*.) The Agency Head must cause or require the contracting officer to insert the following clauses set forth in the paragraphs in this section in full.

These clauses must be inserted in addition to the clauses under *Section 6: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction* or 29 CFR 4.6. As used in this section, the terms “laborers and mechanics” include watchpersons and guards.

(1) Overtime requirements. No Subrecipient/Contractor or sub-subrecipient/subcontractor contracting for any part of the contractual 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 forty 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 forty hours in such workweek.

(2) Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (A)(1) of this section, the Subrecipient/Contractor and any sub-subrecipient/subcontractor responsible therefore shall be liable for the unpaid wages and interest from the date of underpayment. In addition, such Subrecipient/Contractor and sub-subrecipient/subcontractor 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 watchpersons and guards, employed in violation of the clause set forth in paragraph (A)(1) of this section, in the sum of \$32 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (A)(1) of this section.

(3) Withholding for unpaid wages and liquidated damages. The appropriate Federal Agency or City of New Orleans may, upon its own action or shall, upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld, from the Subrecipient/Contractor or sub-subrecipient/subcontractor, so much of the accrued payments or advances as may be considered necessary to satisfy the liabilities of the prime Subrecipient/Contractor or any sub-subrecipient/subcontractor for any unpaid wages, monetary relief, including interest, and liquidated damages required by the clauses set forth in this section of this Agreement/Contract, or any other Federally assisted agreement/contract subject to the *Contract Work Hours and Safety Standards Act* that is held by the same prime Subrecipient/Contractor (as defined in § 5.2). The necessary funds may be withheld from the Subrecipient/Contractor under this Agreement/Contract, or any other Federally assisted agreement/contract that is subject to the *Contract Work Hours and Safety Standards Act* and is held by the same prime Subrecipient/Contractor, regardless of whether the other agreement/contract was awarded or assisted by the same agency, and such funds may be used to satisfy the Subrecipient/Contractor liability for which the funds were withheld.

(4) Priority to Withheld Funds. The Department has priority to funds withheld or to be withheld in accordance with withholding processes in this section and in *Section 6: Labor Standards Provisions Applicable to Contracts Covering Federally Financed and*

Assisted Construction, or both, over claims funded by: a Subrecipient's/Contractor's surety(ies), including without limitation performance bond sureties and payment bond sureties; a contracting agency for its procurement costs; a trustee(s) (either a court-appointed trustee or a U.S. trustee, or both) in bankruptcy of a Subrecipient/Contractor, or a Subrecipient's/Contractor's bankruptcy estate; a Subrecipient's/Contractor's assignee(s); a Subrecipient's/Contractor's successor(s); or a claim asserted under the *Prompt Payment Act*, 31 U.S.C. 3901-3907.

(5) Subcontracts. The Subrecipient/Contractor or sub-subrecipient/subcontractor shall insert in any sub-subrecipient agreements/subcontracts the clauses set forth in paragraphs (A)(1) through (A)(9) of this section and also a clause requiring the subrecipients/subcontractors to include these clauses in any lower tier sub-subrecipient agreements/subcontracts. The prime Subrecipient/Contractor shall be responsible for compliance by any sub-subrecipient/subcontractor or lower tier sub-subrecipient/subcontractor with the clauses set forth in paragraphs (A)(1) through (A)(9) of this section. In the event of any violations of these clauses, the prime Subrecipient/Contractor, and any sub-subrecipients/subcontractors responsible shall be liable for any unpaid wages and monetary relief, including interest from the date of the underpayment or loss, due to any workers of lower-tier sub-subrecipients/subcontractors, and associated liquidated damages and may be subject to debarment, as appropriate.

(6) The Subrecipient/Contractor or sub-subrecipient/subcontractor shall maintain regular payrolls and basic payroll records during the course of the work and shall preserve them for a period of three (3) years after all the work on the prime Agreement/Contract is completed for all laborers and mechanics, including guards and watchpersons, working on the Agreement/Contract. Such records shall contain the name, last known address, telephone number, email address, and Social Security number of each such worker, each worker's correct classifications of work actually performed, hourly rates of wages paid, daily and weekly number of hours actually worked, deductions made, and actual wages paid. Further, the Agency Head shall cause or require the contracting officer to insert in any such contract a clause providing that the records to be maintained under this paragraph shall be made available by the Subrecipient/Contractor or sub-subrecipient/subcontractor for inspection, copying, or transcription by authorized representatives of the appropriate Federal Agency and the Department of Labor, and the Subrecipient/Contractor or sub-subrecipient/subcontractor will permit such representatives to interview workers during working hours on the job.

(7) Anti-retaliation. It is unlawful for any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, or cause any person to discharge, demote, intimidate, threaten, restrain, coerce, blacklist, harass, or in any other manner discriminate against, any worker or job applicant for:

- (i) Notifying any Subrecipient/Contractor or sub-subrecipient/subcontractor of any conduct which the worker reasonably believes constitutes a violation of the *Contract Work Hours and Safety Standards Act* or its implementing regulations in this part;

- (ii) Filing any complaint, initiating, or causing to be initiated any proceeding, or otherwise asserting or seeking to assert on behalf of themselves or others any right or protection under the *Contract Work Hours and Safety Standards Act* or this part;
- (iii) Cooperating in any investigation or other compliance action, or testifying in any proceeding under the *Contract Work Hours and Safety Standards Act* or this part; or
- (iv) Informing any other person about their rights under the *Contract Work Hours and Safety Standards Act* or this part.

(8) Incorporation of Contract Clauses and Wage Determinations by Reference.

Although agencies are required to insert the contract clauses set forth in this section, along with appropriate wage determinations, in full into covered agreements/contracts, and Subrecipients/Contractors and sub-subrecipients/subcontractors are required to insert them in any lower-tier sub-subrecipient agreements/subcontracts, the incorporation by reference of the required contract clauses and appropriate wage determinations will be given the same force and effect as if they were inserted in full text.

(9) Incorporation by Operation of Law. The contract clauses set forth in this section (or their equivalent under the Federal Acquisition Regulation), along with the correct wage determinations, will be considered to be a part of every prime Agreement/Contract required by the applicable sections referenced by §5.1 to include such clauses, and will be effective by operation of law, whether or not they are included or incorporated by reference into such Agreement/Contract, unless the Administrator grants a variance, tolerance, or exemption from the application of this paragraph. Where the clauses and applicable wage determinations are effective by operation of law under this paragraph, the prime Subrecipient/Contractor must be compensated for any resulting increase in wages in accordance with applicable law.

B. Note: Section 7 is for agreements/contracts subject only to *the Contract Work Hours and Safety Standards Act* and not to any of the other statutes cited in § 5.1.

8. COPELAND “ANTI-KICKBACK” ACT

A. Subrecipient/Contractor. The Subrecipient/Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Pt. 3 (“*Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States*”) as may be applicable, which are incorporated by reference into this Agreement. The Act provides that each Contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

B. Subcontracts. The Subrecipient/Contractor or sub-subrecipient/subcontractor shall insert in any sub-subrecipient agreements/subcontracts Subsection (A) above and such other clauses as FEMA, or other appropriate Federal Agency, may by appropriate

instructions require, and also a clause requiring the sub-subrecipients/subcontractors to include these required clauses in any lower tier sub-subrecipient agreements/subcontracts. The prime Subrecipient/Contractor shall be responsible for the compliance by any sub-subrecipient/subcontractor or lower tier sub-subrecipient/subcontractor with all of these contract clauses.

- C. *Breach.*** A breach of Subsections (A) and (B) above may be grounds for termination of the Agreement/Contract, and for debarment as a Subrecipient/Contractor and sub-subrecipient/subcontractor as provided in 29 C.F.R. § 5.12.

9. RIGHTS TO INVENTIONS MADE UNDER A CONTRACT OR AGREEMENT

- A.** If the Federal award meets the definition of “funding agreement” under 37 CFR § 401.2 (a) and the Recipient, Subrecipient, or Contractor wishes to enter into an agreement/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, Subrecipient, 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.

10. CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT

- A.** (For agreements/contracts over, \$150,000.00, the Subrecipient/Contractor must comply with all applicable standards, orders, or regulations issued pursuant to *the Clean Air Act* (42 U.S.C. 7401-7671(q)) and *the Federal Water Pollution Control Act*, as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(1) The Subrecipient/Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to *the Clean Air Act*, as amended, 42 U.S.C. § 7401 *et seq* and *the Federal Water Pollution Control Act*, as amended, 33 U.S.C. § 7401 *et seq*.

(2) The Subrecipient/Contractor agrees to report each violation to the City of New Orleans and understands and agrees that the City of New Orleans will, in turn, report each violation as required to assure notification to FEMA or the appropriate Federal awarding agency, and the appropriate Environmental Protection Agency Regional Office.

(3) The Subrecipient/Contractor agrees to include these requirements in each sub-subrecipient agreement/subcontract, exceeding \$150,000.00, financed in whole or in part with Federal assistance provided by FEMA or another Federal awarding agency.

11. DEBARMENT AND SUSPENSION

- A.** This Agreement/Contract is a covered transaction for purposes of 2 C.F.R. Pt. 180 and 2 C.F.R. Pt. 3000. As such, the Subrecipient/Contractor is required to verify that none of the Subrecipient's/Contractor's principals (defined at 2 C.F.R. § 180.995) or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). An Agreement/Contract award (see 2 CFR 180.220) shall not be made to parties listed on the governmentwide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implemented *Executive Orders 12549* (3 CFR Part 1986 Comp., p. 189) and 12689 (3 CFR Part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the name of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than *Executive Order 12549*.
- B.** The Subrecipient/Contractor must comply with 2 C.F.R. Pt. 180, Subpart C and 2 C.F.R. Pt. 3000, Subpart C, and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
- C.** This certification is a material representation of fact relied upon by the City and the Subrecipient/Contractor. If it is later determined that the Subrecipient/Contractor did not comply with 2 C.F.R. Pt. 180, Subpart C and 2 C.F.R. Pt. 3000, Subpart C, in addition to remedies available to the City and the Subrecipient/Contractor, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- D.** The bidder or proposer agrees to comply with the requirements of 2 C.F.R. Pt. 180, Subpart C and 2 C.F.R. Pt. 3000, Subpart C while this offer is valid and throughout the period of any agreement/contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

12. BYRD ANTI-LOBBYING ACT

- A.** The Subrecipient/Contractor will be expected to comply with Federal statutes required in *Byrd Anti-Lobbying Amendment* (31 U.S.C. 1352).
- B.** Subrecipients/Contractors who apply or bid for an award exceeding \$100,000.00 shall 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 shall 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.
- C.** Note: Subrecipients/Contractors who apply or bid for an award of \$100,000.00 or more shall file the required certification found below in Appendix A.

13. PROCUREMENT OF RECOVERED MATERIALS

- A. In the performance of this Agreement/Contract, the Subrecipient/Contractor shall make maximum use of products containing recovered materials that are EPA-designated items unless the product cannot be acquired—
- (1) Competitively within a timeframe providing for compliance with the Agreement's/Contract's performance schedule;
 - (2) Meeting the Agreement's/Contract's performance requirements; or
 - (3) At a reasonable price.
- B. Information about this requirement, along with the list of EPA-designated items, is available at EPA's Comprehensive Procurement Guidelines web site, <https://www.epa.gov/smm/comprehensiveprocurement-guideline-cpg-program>.
- C. The City of New Orleans and Subrecipient/Contractor shall comply with all other applicable requirements of *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 \$10,000.00 or the value of the quantity required during the preceding fiscal year exceeded \$10,000.00, 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.

14. PROHIBITION ON CERTAIN TELECOMMUNICATIONS AND VIDEO SURVEILLANCE SERVICES OR EQUIPMENT

- A. Recipients, subrecipients, and contractors are prohibited from obligating or expending loan or grant funds to:
- (1) Procure or obtain;
 - (2) Extend or renew an agreement or a contract to procure or obtain; or
 - (3) Enter into an agreement or a contract (or extend or renew an agreement or 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. see 2 *CFR* § 200.216; *Public Law* 115-232 § 889.

B. Costs incurred for telecommunications and video surveillance services or equipment such as phones, internet, video surveillance, [and] cloud servers are allowable except for the following circumstances: obligating or expending covered telecommunications and video surveillance services or equipment or services described in § 200.216 as prohibited in Subsections (A)(1)-(A)(3) of this section.

15. DOMESTIC PREFERENCES FOR PROCUREMENT

A. 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 agreements, 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. see 2 *CFR* § 200.322.

C. Federal agencies providing Federal financial assistance for infrastructure projects must implement the Buy America preferences set forth in 2 *CFR Part* 184.

16. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

A. Each and every provision of law and clause required by law to be inserted in this Agreement/Contract shall be deemed to be inserted herein, and the Agreement/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 Agreement/Contract shall forthwith be physically amended to make such insertion or correction.

17. ACCESS TO RECORDS

A. The following “access to records” requirements apply to this Agreement/Contract:

(1) The Subrecipient/Contractor agrees to provide any official from the Federal government or the Comptroller General of the United States, or any of their authorized representatives access to any books, documents, papers, and records of the Subrecipient/Contractor which are directly pertinent to this Agreement/Contract for the purposes of making audits, examinations, excerpts, and transcriptions.

(2) The Subrecipient/Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

(3) The Subrecipient/Contractor agrees to provide the Federal administrator or their authorized representatives access to construction or other work sites pertaining to the work being completed under the Agreement/Contract.

(4) In compliance with *the Disaster Recovery Act of 2018*, the City and the Subrecipient/Contractor acknowledge and agree that no language in this Agreement/Contract is intended to prohibit audits or internal reviews by the Federal administrator or the Comptroller General of the United States.

18. COMPLIANCE WITH FEDERAL LAW, REGULATIONS, AND EXECUTIVE ORDERS

A. This is an acknowledgement that Federal financial assistance will be used to fund all or a portion of the Agreement/Contract. The Subrecipient/Contractor will comply with all applicable Federal laws, regulations, executive orders, policies, procedures, and directives as well as any FEMA policies, procedures, and directives.

19. NO OBLIGATION BY FEDERAL GOVERNMENT

A. The Federal Government is not a party to this Agreement/Contract and is not subject to any obligations or liabilities to the non-Federal entity, Subrecipient/Contractor, or any other party pertaining to any matter resulting from the Agreement/Contract.

20. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

A. The Subrecipient/Contractor acknowledges that *31 U.S.C. Chap. 38 (Administrative Remedies for False Claims and Statements)* applies to the Subrecipient's/Contractor's actions pertaining to this Agreement/Contract.

Citations:

Items 1-15 are from 2 CFR 200, Appendix II
Item 16 is prudent.
Items 17-20 are from FEMA's Recommended Provisions.

[THE LOBBYING CERTIFICATION IS ON THE NEXT PAGE]
APPENDIX A, 44 C.F.R. PART 18 – CERTIFICATION REGARDING LOBBYING

Certification for Contracts, Grants, Loans, and Cooperative Agreements

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

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an 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 Federal 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 undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients/contractors shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by *Section 1352, Title 31, U.S. Code*. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000.00 and not more than \$100,000.00 for each such failure.

The Subrecipient/Contractor, _____, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Subrecipient/Contractor understands and agrees that the provisions of 31 U.S.C. Chap. 38, *Administrative Remedies for False Claims and Statements*, apply to this certification and disclosure, if any.

Signature and Title
Subrecipient's/Contractor's
Authorized Official Representative

Date

[END OF AGREEMENT]

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[END OF SOLICITATION]

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