

K16-673

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

GCR, INC.

RFP NO 7821-01978 NATIONAL DISASTER RESILIENCE FUNDING

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “**City**”), and **GCR Inc.** represented by Dan Cox, Chief Executive Officer (the “**Consultant**”). The Agreement is effective as of March 28, 2016 (the “**Effective Date**”).

RECITALS

WHEREAS, on February 24, 2016, the City issued a request for proposals RFP #7821-01978 seeking Technical Assistance and Advisory Services for the City of New Orleans HUD-National Disaster Resilience Funding (the “**RFP**”);

WHEREAS, the Consultant submitted a proposal dated March 15, 2016, and the City has selected the Consultant to provide the professional services as described in the RFP and as outlined in the Consultant’s response;

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

ARTICLE I - THE CONSULTANT’S OBLIGATIONS

- A. Contracted Services:** Consultant shall provide professional services for the City in the form of technical assistance and advisory services. In accordance with instructions given by the Office of Community Development, Project Delivery Unit, and/or Resilience Office through specific Task Orders, Consultant shall do and perform Services including but not limited to:

Task 1: CDBG-NDR Regulatory Issues

- 1.1 Grant Agreement Negotiations
- 1.2 Program Design
- 1.3 Develop Policies and Procedures
- 1.4 Compliance with Regulatory Requirements

Task 2: Financing

- 2.1 Identification of benefits, measurements, monetization mechanisms
- 2.2 Estimate Operating and Maintenance (O&M) Costs

- 2.3 Evaluate and Plan for Financing for Urban Water Projects and Programs
- 2.4 Implement Financing for Urban Water Projects and Programs
- 2.5 Integrate Homeowner Adaptation Program with the PACE program
- 2.6 Identify and Leverage Additional Public, Private and Philanthropic Sources

Task 3: Low-Income Beneficiaries

- 3.1 Examine and Refine Existing Strategies
- 3.2 Connect to Economic Opportunities
- 3.3 Community Engagement
- 3.4 Demographic Analytics of Project Service Areas

Task 4: Reporting and Administrative Capacity

- 4.1 On-site and On-call Support
- 4.2 Data Management and Reporting
- 4.3 Performance Tracking and Demonstrating Outcomes
- 4.4 Staff Trainings and Capacity Building
- 4.5 Project Oversight
- 4.6 Quality Control

Task 5: Coordination and Communication

- 5.1 Project Management Support
- 5.2 Unified Engagement of External Stakeholders
- 5.3 Public Facing Communication Materials

Consultant shall also perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: RFP7821-01978 and the Consultant's proposal dated March 15, 2016.

- 1. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Consultant as set forth in this Agreement;
- 2. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;
- 3. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;
- 4. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within thirty (30) days after the approval of the associated plan change or amendment; and

5. Cooperate with the City and any person performing work for the City.

The City's officers and employees are not authorized to request or instruct the Consultant to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. Standards. The Consultant represents that it has the requisite skills and expertise necessary to perform the Services. Accordingly, the Consultant is obligated to perform such services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which the Consultant is engaged in providing similar services in areas under the same or similar circumstances.

The Consultant acknowledges and agrees that, at the City's option, the Consultant shall be obligated to re-perform, at no additional cost to the City, any or all of the Services that fail to satisfy the foregoing standard of care for up to one (1) year of such Service being provided to the City.

C. Performance Measures. The Consultant's services will be evaluated annually based on performance measures that will be agreed upon each year by the City and the Consultant and signed by the Consultant and the Project Delivery Unit Manager or Chief Resilience Officer. The initial performance measures will be agreed upon and signed within sixty (60) days of the execution of this Agreement. At the end of each year, the City and Consultant will meet and the City will evaluate the Consultant's services based on the performance measures.

D. Monitoring Plan. The Consultant will be requested by the City, through its duly authorized representatives, to perform certain Services for the City in furtherance of the activities described in this Agreement. Each request will be in the form of a document authorizing the completion of certain Services (a "Task Order") and will describe in detail the Services to be performed by Consultant, including a task description, a maximum compensation amount, and a proposed schedule for delivery of Services. Any Task Order must be approved and signed by the consultant designee and the City's Project Delivery Unit Manager or Chief Resilience Officer. All Services provided by the Consultant under any Task Order shall be governed by the terms and conditions of this Agreement.

Task Order progress tracking will be accomplished through regular (bi-weekly or monthly) reports from the Consultant to the City that will include the following information: 1) percent completion of task order, 2) amount of fees invoiced to date, and 3) amount of allotted time used. Analysis and comparison of information in 1, 2, and 3 above against the Task Order budgets for these items will provide the monitoring information necessary to ensure successful performance and completion of Consultant's obligations.

The City will also measure the performance of the Consultant according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts,

invoices, insurance certificates, and computer-generated reports).

E. Key Personnel Clause. Consultant must provide the City a résumé and proposed position and rate as described in Exhibit “A” for all proposed staff. The Consultant must have approval in writing from the City’s Project Delivery Unit Manager, Chief Resilience Officer, or appropriate director of department that the proposed staff and the assigned position are acceptable prior to that staff member becoming billable under this Agreement. The Consultant shall notify the City as soon as reasonably possible should any of the approved staff be reassigned or no longer work for the Consultant. Any new or existing staff assigned to perform any part of this Agreement after initial City approval must also be approved by the City before he or she may begin billing under this Agreement.

F. Compliance with Laws. The Consultant, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances, including but not limited to any applicable federal wage rate determinations.

G. Invoices.

1. The Consultant will submit monthly invoices for work performed under this Agreement to the City no later than ten (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 and supporting documentation: The Consultant shall submit three (3) invoices in a format approved by the Department shall be submitted to the Department along with three (3) sets of back-up or verification documentation and three (3) CDs/DVDs containing the electronic files of the invoices and back-up documentation.

2. All hours billed must be tracked and monitored by task and/or project and as allowable under the provisions of Federal guidance for administrative and project management costs.

3. All invoices must be signed by an authorized representative of the Consultant under penalty of perjury attesting to the validity and accuracy of the invoice.

4. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

H. Records and Reporting.

1. The Consultant will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of five (5) years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Consultant will deliver to the City all plans and records of work compiled through the date of termination.

2. The Consultant will identify any reporting requirements, including the frequency, method and contents.

3. The Consultant is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

I. Audit and Inspection.

1. The Consultant will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Consultant, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Consultant's office or place of business in Louisiana. If no such location is available, the Consultant will make the documents available at a time and location that is convenient for the City.

2. The Consultant will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Consultant to provide the Office of Inspector General with documents and information as requested to comply with such requests. Failure to comply shall constitute a material breach of the contract. The Consultant agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

J. Insurance.

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

- a. **Commercial General Liability ("CGL").** Insurance Services Office Form CG 00 01 or similar acceptable to the City, covering CGL on an "occurrence" basis, including products and completed operations, property damage, bodily injury and personal & advertising injury with limits no less than \$1,000,000 per occurrence. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. **Automobile Liability.** ISO Form Number CA 00 01 or similar acceptable to the City covering any auto (Symbol 1, or Symbols 7, 8, 9), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$500,000 Combined Single Limit per accident for bodily injury and property damage.
- c. **Workers' Compensation.** As required by the State of Louisiana, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.

2. Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions:

- a. Additional Insured Status.** The City, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as “Additional Insureds” on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor’s insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).
- b. Primary Coverage.** For any claims related to this contract, the Contractor’s insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non- contributing to Contractor’s coverage.
- c. Waiver of Subrogation.** The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this contract.
- d. Notice of Cancellation.** Each insurance policy required above shall provide that coverage shall not be canceled, except with prior notice to the City of no less than sixty (60) days.
- e. 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:VIII, unless otherwise acceptable to the City.

3. The Consultant will provide the City’s Risk Manager with the following documents within ten (10) calendar days of the Effective Date and at any other time at the City’s request:

- a.** Proof of coverage for each policy of insurance required by this Agreement;
- b.** Copy of the fully executed Agreement;
- c.** Copies of all policies of insurance, including all policies, forms, and endorsements; and
- d.** Statements disclosing any policy aggregate limit.

4. Without notice from the City, the Consultant will:

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

- c. Notify the City's Risk Manager in writing within forty-eight (48) hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

5. The Consultant shall provide documents or notification(s) or both subject to this Article I.H. to the following address: City of New Orleans Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112.

K. Indemnity.

1. To the fullest extent permitted by law, the Consultant will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "**Indemnified Parties**") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Consultant, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work or non-performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of work under this Agreement.

2. Limitation. The Consultant's indemnity does not extend to the extent that such loss arises from the negligent act or omission, gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Consultant nor any of its agents, subcontractors, or employees' negligent act or omission, gross negligence or willful misconduct contributed to the loss.

3. Independent Duty. The Consultant has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Consultant is ultimately absolved from liability.

4. Expenses. Notwithstanding any provision to the contrary, the Consultant shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Consultant represents and warrants to the City that:

1. The Consultant, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. The Consultant has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

3. The Consultant is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Consultant, its employees, or its subcontractors in the performance of this Agreement;

4. The Consultant is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Consultant's performance of this Agreement;

5. The Consultant has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City and incorporated into this Agreement;

6. The Consultant is not in breach of any federal, state, or local statute or regulation applicable to the Consultant or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Consultant's most favored customer for the same or substantially similar services;

8. The Consultant has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

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

B. Convicted Felon Statement. The Consultant complies with City Code § 2-8(c) and no principal, member, or officer of the Consultant 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.

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

D. Employee Verification. The Consultant 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 Consultant 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 Consultant being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Consultant further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the 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 Consultant 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 Consultant fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Consultant acknowledges that the City is relying on these representations and warranties and Consultant's expertise, skill, and knowledge and that the Consultant's obligations and liabilities will not be diminished by reason of any approval by the City.

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Office of Community Development and the Project Delivery Unit.
2. Provide the Consultant any documents deemed necessary for the Consultant's performance of any work required under this Agreement;
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Consultant; and

B. Payment. The City will make payments to the Consultant at the rate of compensation established in this Agreement based upon the Consultant's certified invoices, except:

1. The City's obligation to pay is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The City may set off any amounts due to the Consultant against any amounts deemed by the City to be owed to the City by the Consultant pursuant this Agreement; and
4. All compensation owed to the Consultant under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Consultant that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Consultant or its subcontractors; or the City is not expressly obligated to pay under this Agreement.
6. If this Agreement is terminated for any reason, the City will pay the Consultant only for the work requested by the City and satisfactorily performed by the Consultant through the date of termination, except as otherwise provided in this Agreement.

ARTICLE IV - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Consultant to perform the contracted services according to the following fee schedule outlined in Exhibit "A" Hourly Rate Schedule and Position Descriptions of this Agreement.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for, the Consultant's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, travel, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Consultant any other charges or fees and the Consultant will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement

4. The Consultant immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

B. **Maximum Amount.** The maximum aggregate amount payable by the City under this Agreement is FOUR HUNDRED THOUSAND DOLLARS, (\$400,000). The Parties agree that should the proposed scope of work expand or additional funding become available, the Agreement may be amended to increase the maximum amount payable accordingly.

C. **Amendment of Terms.** The terms of the Agreement, including but not limited to the Consultant's Obligations, City's Obligations and compensation may be amended as provided in Article X Section A of the Agreement and Agreement in accordance with RFP 7821-01978, the Consultant's response dated March 15, 2016, and all other terms and conditions contained herein.

ARTICLE V - DURATION AND TERMINATION

A. **Initial Term.** The term of this agreement shall be for one (1) year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. **Extension.** This Agreement may be extended at the option of the City and the concurrence of the Consultant, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for four (4) additional one-year terms.

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

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

E. Termination for Cause. The City may terminate this Agreement immediately for cause by sending written notice to the Consultant. “Cause” includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City’s Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 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. If the City is in default of any material obligation imposed upon it under this Agreement, including failure of payment, and such default was not the result of unforeseen circumstances that directly caused the default, Consultant may give written notice of such default and indicate its intention to suspend this Agreement if reasonable efforts to remedy are not taken within thirty (30) days.

F. Suspension. The City may suspend this Agreement at any time and for any reason by giving two (2) business day’s written notice to the Consultant. The Consultant will resume work upon five (5) business day’s written notice from the City.

ARTICLE VI - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM

A. In General. The Consultant agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City’s DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City’s Office of Supplier Diversity (“**OSD**”) oversees the DBE Program and assigns a DBE Compliance Officer (“**DBECO**”) to ensure compliance.

B. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Consultant’s use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

1. Job site visits;
2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
3. Routine audits of contract payments to all subcontractors;
4. Reviewing of records and reports; and/or
5. Interviews of selected personnel.

The DBECO may schedule inspections and on-site visits with or without prior notice to the Consultant or DBE Entities.

C. Cooperation. The Consultant shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Consultant’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
 - a. The Consultant shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Consultant.
 - b. The Consultant shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
 - a. Copies of written contracts with DBE Entities and purchase orders;
 - b. Documentation of payments and other transactions with DBE Entities;
 - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Consultant does not use in accordance with the approved DBE participation submission;
 - d. Any other records required by the OSD.

The Consultant is required to maintain such records for 3 years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
 - a. The Consultant shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Consultant. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
 - b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Consultant may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.

- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if: for a reason beyond the Consultant's control, the Consultant is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Consultant must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Consultant shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or the Consultant reasonably believes that due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Consultant shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE VII - FAILURE TO PERFORM

A. Failure to Perform. If the Consultant fails to perform according to the Agreement, the City will notify the Consultant. If there is a continued lack of performance after notification, the City may declare the Consultant in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting consultant for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting consultant.

ARTICLE VIII - NON-DISCRIMINATION

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

shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Consultant will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Consultant in any of Consultant's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Consultant. The Consultant agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

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

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

ARTICLE IX - INDEPENDENT CONSULTANT

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

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

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

D. Waiver of Benefits. The Consultant, as an independent Consultant, will not receive

from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE IX - NOTICE

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

1. To the City:

Project Delivery Unit Manger
City of New Orleans
1300 Perdido Street, Suite 6E15
New Orleans, LA 70112

&

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

2. To the Consultant:

Dan Cox, Chief Executive Officer
GCR Inc.
2021 Lakeshore Drive
New Orleans, LA 70122

B. Effectiveness. Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery.

C. Notification of Changes. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above.

ARTICLE X - ADDITIONAL PROVISIONS

A. Amendment. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.

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

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

D. Conflicting Employment. To ensure that the Consultant's efforts do not conflict with the City's interests, and in recognition of the Consultant's obligations to the City, the Consultant

Page 15 of 35

will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Consultant will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Consultant's performance of this Agreement. The City will make the final determination whether the Consultant may accept the other employment.

E. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Consultant on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

F. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. In the event of a conflict between the terms of the main body of the Agreement and Exhibit B (CDBG Compliance Provisions), the conflict shall be resolved according to all applicable state and federal laws and regulations. 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.

G. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit A "Hourly Rate Schedule and Position Descriptions" and Exhibit B "Special Conditions for CDBG Contracts."

H. Jurisdiction. The Consultant consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Consultant.

I. 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.

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

K. Non-Exclusivity. This Agreement is non-exclusive and the Consultant may provide services to other clients, subject to the City's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

L. Non-Waiver. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right

to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

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

N. Ownership of Records. Upon final payment, all data collected and all products of work prepared, created or modified by Consultant in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Consultant’s personnel and administrative records and any tools, systems, and information used by the Consultant to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, “Work Product”) will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City’s name. No Work Product may be reproduced in any form with the City’s express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Consultant’s consent and for no additional consideration to the Consultant.

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

P. Prohibition on Political Activity. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

Q. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

R. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

S. Special Conditions for CDBG Contracts. The “CDBG Compliance Provisions for Professional Services Contracts,” attached as Exhibit “B” to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City’s notice to the Consultant that the City intends to seek reimbursement from the Community Development Block Grant Program in connection with the work to be performed under this Agreement. The Consultant shall be referred to as “Sub-recipient” with respect to the CDBG Compliance Provisions attached as Exhibit “B” to this Agreement. Such reference shall apply only to these provisions as specified in Exhibit B and shall not alter any other Consultant obligations or rights contained in the Agreement or any attachments thereto.

T. Subcontractor Reporting. The Consultant will provide a list of all natural or artificial persons who are retained by the Consultant at the time of the Agreement’s execution and who are expected to perform work as subcontractors in connection with the Consultant’s work for the City. For any subcontractor proposed to be retained by the Consultant to perform work on the Agreement with the City, the Consultant must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Consultant fails to submit the required lists and notices, the City may, after thirty (30) days’ written notice to the Consultant, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

U. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and all special conditions for FEMA/CDBG compliance shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

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

(SIGNATURES ON THE FOLLOWING PAGES)

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

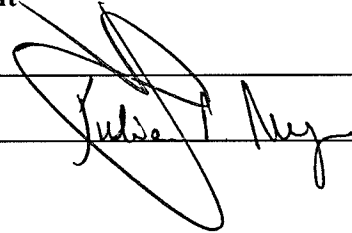
CITY OF NEW ORLEANS

BY: 
MITCHELL J. LANDRIEU, MAYOR

Executed on this 31 of August, 2016

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Julie P. Mey

GCR Inc.

BY: 
Dan Cox, Chief Executive Officer

Exhibit A

Rate Schedule

Labor Category	Hourly Rate
Principal	\$250.00
Senior Architect	\$175.00
Project Manager	\$150.00
Senior Manager	\$128.00
Senior Associate	\$100.00
Associate	\$87.50
Junior Associate	\$75.00
Principal Financing Subject Matter Expert	\$405.00
Senior Financing Subject Matter Expert	\$360.00
Senior Technical Advisor	\$310.00
Technical Advisor	\$225.00
Senior Analyst	\$175.00
Research Analyst	\$140.00

Position Descriptions

Position	Description	Minimum Years of Experience
Principal	Responsible for developing overarching strategies, communicating with the client and client' designees, managing contract issues, and providing overall oversight and quality control of all deliverables.	8
Senior Architect	Responsible for providing technical expertise and oversight related to project design and effectiveness.	8
Project Manager	Responsible for managing and overseeing the day-to-day activities of all team members. Will serve as the primary point of contact for the client and will handle quality control for all work tasks and deliverables.	5
Senior Manager	Responsible for providing guidance on technical issues, developing policies and	5

Position	Description	Minimum Years of Experience
	procedures and other technical documents, data analytics, interfacing with client and designees, and directing the activities of junior staff members.	
Senior Associate	Responsible for providing guidance on technical issues, developing policies and procedures and other technical documents, data analytics, and providing general administrative support.	5
Associate	Responsible for developing policies and procedures and other technical documents and providing general administrative support.	3
Junior Associate	Responsible for completing research tasks, data analytics, and providing general administrative support.	1
Principal Financing Subject Matter Expert	Responsible for designing high level financing strategy and connecting the City to other sources of financing.	8
Senior Financing Subject Matter Expert	Responsible for designing high level financing strategy, developing relationships with potential funding sources and connecting the City to other sources of financing.	5
Senior Technical Advisor	Responsible for designing high level financing strategy, developing relationships with potential funding sources and creating actionable implementation plan.	5
Technical Advisor	Responsible for research and support of implementation plan related to financing strategy.	3
Senior Analyst	Responsible for research and data analytics related to the	3

Position	Description	Minimum Years of Experience
	development and implementation of the financing strategy.	
Research Analyst	Support research and data analytics related to the development and implementation of the financing strategy.	2

Exhibit B

CDBG COMPLIANCE PROVISIONS FOR PROFESSIONAL SERVICES CONTRACTS

CONTENTS

1. EQUAL EMPLOYMENT OPPORTUNITY (Equal Opportunity Clause)
2. CERTIFICATION OF NONSEGREGATED FACILITIES
3. CIVIL RIGHTS
4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974
5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES
6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)
7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED
8. AGE DISCRIMINATION ACT OF 1975
9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS
10. FLOOD DISASTER PROTECTION
11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS
12. INSPECTION
13. REPORTING REQUIREMENTS
14. CONFLICT OF INTEREST
15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED
16. PATENTS
17. COPYRIGHT
18. TERMINATION FOR CAUSE
19. TERMINATION FOR CONVENIENCE
20. ENERGY EFFICIENCY
21. SUBCONTRACTS

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY
23. BREACH OF CONTRACT TERMS
24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED
25. CHANGES
26. PERSONNEL
27. ANTI-KICKBACK RULES
28. ASSIGNABILITY
29. INTEREST OF SUB-RECIPIENT
30. POLITICAL ACTIVITY
31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET
32. DISCRIMINATION DUE TO BELIEF
33. CONFIDENTIAL FINDINGS
34. LOBBYING

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

- A. During the performance of this contract, the Sub-recipient agrees as follows: The will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Sub-recipient will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Sub-recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.
- B. The Sub-recipient will, in all solicitations or advertisements for employees placed by or on behalf of the Sub-recipient, state that all qualified applicants will receive consideration without regard to race, color, religion, sex, or national origin.
- C. The Sub-recipient will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the Contract Compliance Officer advising the said labor union or workers' representatives of the Sub-recipient's commitment under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- D. The Sub-recipient will comply with all provisions of Executive Order 11246 of September 24, 1965, as amended, and the rules, regulations, and relevant orders of the Secretary of Labor.
- E. The Sub-recipient will furnish all information and reports required by Executive Order 11246 of September 24, 1965, as amended, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the Department and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and others.
- F. In the event of the Sub-recipient's noncompliance with the non-discrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be cancelled, terminated, or suspended in whole or in part and the Sub-recipient may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, as amended, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

G. The Sub-recipient will include the provisions of the sentence immediately preceding paragraph A and the provisions of paragraphs A through G in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subSub-recipient or vendor. The Sub-recipient will take such action with respect to any subcontract or purchase order as the Department may direct as a means of enforcing such provisions, including sanctions for noncompliance. Provided, however, that in the event a Sub-recipient becomes involved in, or is threatened with, litigation with a subSub-recipient or vendor as a result of such direction by the Department, the Sub-recipient may request the United States to enter into such litigation to protect the interest of the United States.

2. CERTIFICATION OF NONSEGREGATED FACILITIES (applicable to contracts and subcontracts over \$10,000)

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

As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, rest rooms and wash rooms, restaurants and other eating areas, time clocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation and housing facilities provided for employees which are segregated by explicit directive or are, in fact, segregated on the basis of race, color, religion, or national origin because of habit, local custom, or any other reason.

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

3. CIVIL RIGHTS

The Sub-recipient shall comply with the provisions of Title VI of the Civil Rights Act of 1964. No person shall, on the grounds of race, color, or national origin, be excluded from

Page 25 of 35

participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving federal financial assistance.

4. SECTION 109 OF THE HOUSING AND COMMUNITY DEVELOPMENT ACT OF 1974

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

5. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 - COMPLIANCE IN THE PROVISION OF TRAINING, EMPLOYMENT AND BUSINESS OPPORTUNITIES

- A. The work to be performed under this contract is subject to the requirements of Section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by Section 3, shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly persons who are recipients of HUD assistance for housing.
- B. The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement Section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.
- C. The Sub-recipient agrees to send to each labor organization or representative of workers with which the Sub-recipient has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the Sub-recipient's commitments under this Section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the Section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each, and the name and location of the person(s) taking applications for each of the positions, and the anticipated date the work shall begin.
- D. The Sub-recipient agrees to include this Section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take

appropriate action, as provided in an applicable provision of the subcontract or in this Section 3 clause, upon a finding that the sub-recipient is in violation of the regulations in 24 CFR part 135. The Sub-recipient will not subcontract with any sub-recipient where the Sub-recipient has notice or knowledge that the sub-recipient has been found in violation of the regulations in 24 CFR part 135.

- E. The Sub-recipient will certify that any vacant employment positions, including training positions, that are filled (1) after the Sub-recipient is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the Sub-recipient's obligations under 24 CFR part 135.
- F. Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.
- G. With respect to work performed in connection with Section 3 covered Indian housing assistance, Section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of Section 3 and section 7(b) agree to comply with Section 3 to the maximum extent feasible, but not in derogation of compliance with Section 7(b).

6. SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793) (applicable to contracts and subcontracts over \$10,000)

- A. The Sub-recipient will not discriminate against any employee or applicant for employment because of physical or mental handicap in regard to any position for which the employee or applicant for employment is otherwise qualified. The Sub-recipient agrees to take affirmative action to employ, advance in employment and otherwise treat qualified handicapped individuals without discrimination based upon their physical or mental handicap in all employment practices such as the following: employment upgrading, demotion or transfer, recruitment, advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.
- B. The Sub-recipient agrees to comply with the rules, regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.
- C. In the event of the Sub-recipient's noncompliance with the requirements of this clause, actions for noncompliance may be taken in accordance with the rules,

regulations, and relevant orders of the Secretary of Labor issued pursuant to the Act.

- D. The Sub-recipient agrees to post in conspicuous places, available to employees and applicants for employment, notices in a form to be prescribed by the Director, provided by or through the contracting officer. Such notices shall state the Sub-recipient's obligation under the law to take affirmative action to employ and advance in employment qualified handicapped employees and applicants for employment, and the rights of applicants and employees.
- E. The Sub-recipient will notify each labor union or representative of workers with which it has a collective bargaining agreement or other contract understanding, that the Sub-recipient is bound by the terms of Section 503 of the Rehabilitation Act of 1973, and is committed to take affirmative action to employ and advance in employment physically and mentally handicapped individuals.
- F. The Sub-recipient will include the provisions of this clause in every subcontract or purchase order of \$10,000 or more unless exempted by rules, regulations, or orders of the Secretary issued pursuant to Section 503 of the Act, so that such provisions will be binding upon each sub-recipient or vendor. The Sub-recipient will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs may direct to enforce such provisions, including action for noncompliance.

7. SECTION 504 OF THE REHABILITATION ACT OF 1973, AS AMENDED

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

8. AGE DISCRIMINATION ACT OF 1975

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

9. CERTIFICATION OF COMPLIANCE WITH AIR AND WATER ACTS (applicable to contracts and subcontracts exceeding \$100,000)

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

In addition to the foregoing requirements, all nonexempt Sub-recipients and sub-recipients shall furnish to the owner, the following:

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

10. FLOOD DISASTER PROTECTION

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

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

11. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

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

12. INSPECTION

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

13. REPORTING REQUIREMENTS

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

14. CONFLICT OF INTEREST

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

15. ACTIVITIES AND CONTRACTS NOT SUBJECT TO EXECUTIVE ORDER 11246, AS AMENDED (applicable to contracts and subcontracts of \$10,000 and under)

During the performance of this contract, the Sub-recipient agrees as follows:

- A. The Sub-recipient shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The Sub-recipient shall take affirmative action to ensure that applicants for employment are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not

be limited to, the following: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

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

16. PATENTS

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

17. COPYRIGHT

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

18. TERMINATION FOR CAUSE

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

19. TERMINATION FOR CONVENIENCE

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

20. ENERGY EFFICIENCY

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

21. SUBCONTRACTS

- A. The Sub-recipient shall not enter into any subcontract with any sub-recipient who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The Sub-recipient shall be as fully responsible to the Owner for the acts and omissions of the Sub-recipient's sub-recipients, and of persons either directly or indirectly employed by them, as he is for the acts and omissions of persons directly employed by the Sub-recipient.
- C. The Sub-recipient shall cause appropriate provisions to be inserted in all subcontracts relative to the work to bind sub-recipient to the Sub-recipient by the terms of the contract documents insofar as applicable to the work of sub-recipients

and to give the Sub-recipient the same power as regards terminating any subcontract that the Owner may exercise over the Sub-recipient under any provision of the contract documents.

- D. Nothing contained in this contract shall create any contractual relation between any Sub-recipient and the Owner.

22. DEBARMENT, SUSPENSION, AND INELIGIBILITY

The Sub-recipient represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

23. BREACH OF CONTRACT TERMS

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

24. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

Each and every provision of law and clause required by law to be inserted in this contract shall be deemed to be inserted herein and the contract shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the application of either party the contract shall forthwith be physically amended to make such insertion or correction.

25. CHANGES

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

26. PERSONNEL

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

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

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

27. ANTI-KICKBACK RULES

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

28. ASSIGNABILITY

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

29. INTEREST OF SUB-RECIPIENT

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

30. POLITICAL ACTIVITY

The SUB-RECIPIENT will comply with the provisions of the Hatch Act (5 U.S.C. 1501 et seq.), which limits the political activity of employees.

31. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

The parties agree to comply with the regulations, policies, guidelines, and requirements of the Office of Management and Budget, Circulars A-95, A-102, A-133, and A-54, as they relate to the use of Federal funds under this contract.

32. DISCRIMINATION DUE TO BELIEFS

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

33. CONFIDENTIAL FINDINGS

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

34. LOBBYING

The Sub-recipient certifies, to the best of his or her knowledge and belief that:

1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Sub-recipient, to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, the Sub-recipient shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.