

K21-1008

SUBRECIPIENT AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND DELTARES USA, INC.
FOR
NATIONAL DISASTER RESILIENCE WATER MONITORING NETWORK

THIS SUBRECIPIENT AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the “**City**”), and Deltares USA, Inc., represented by Edwin Welles, Director (the “**Subrecipient**”). The City and the Subrecipient may sometimes each be referred to as a “**Party**,” and collectively, as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

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

WHEREAS, the Subrecipient is a Maryland non-profit corporation and private independent institute whose mission is to conduct applied research in water and subsoil resources whose principal address is located at 8601 Georgia Avenue, Suite 508, Silver Spring, MD 20910.

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

WHEREAS, the Subrecipient, by agreeing to undertake the implementation of this Agreement utilizing CDBG-NDR funds provided by HUD, will be acting as a Subrecipient of the City as defined by 24 C.F.R. part 570, and hereby agrees to carry out this Agreement in full compliance with the laws and regulations of the NDR program and exhibits incorporated to this Agreement;

WHEREAS, the activities hereunder are eligible under the NDR program;

WHEREAS, the City and the Subrecipient desire to accomplish the valuable public purpose of advancing the work of the Gentilly Resilience District (“**GRD**”) and integrating subsoil and groundwater engineering into stormwater and subsidence management;

WHEREAS, the City and Subrecipient desire to design and implement a sustainable surface and groundwater monitoring network to support subsidence reduction efforts, urban

planning, and water planning; identify existing knowledge gaps related to the City's soil and groundwater system, and analyze the potential impacts on surface and subsurface infrastructure; conduct operational research related to the applicability of new sustainable drainage systems and best management practices for rainwater harvesting and stormwater treatment; and design and develop real-time control systems for tangible City environmental mechanisms and structures (e.g. pumps, gates) using weather and urban water forecasting to support optimal water management in New Orleans.

WHEREAS, the City will provide the Subrecipient with National Disaster Resilience grant funding in exchange for the aforementioned services;

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

ARTICLE I- GENERAL AWARD INFORMATION

The subaward from the City to the Subrecipient, which is described below, is for the purpose of carrying out a portion of a Federal award described in this Article of this agreement, and creates a Federal assistance relationship with the Subrecipient. This Agreement must be updated to reflect any changes to the federal award and the following award information.

Federal Award Identification Number (FAIN): B-13-MS-22-0002

CFDA Number and Name: 14 272 National Disaster Resiliency Grant Competition

Federal award project description: Construction of a district-scale Gentilly Water Monitoring Network including 84 groundwater monitoring wells.

Is this award for research and development? Yes

Subrecipient's unique entity identifier: Tax ID No. 26-3402690

Total Amount of the Federal Award Committed to the Subrecipient by the Grantee:
\$1,127,750.00

Amount of Federal funds obligated by this agreement: \$773,266.40

Total Amount of Federal Funds Obligated to the Subrecipient: \$1,127,750.00

Indirect cost rate applicable to the Subaward to the Subrecipient: None

Contact information:

Grantee:

Marjorianna Willman
Director of Community Development

Subrecipient:

Edwin Welles
Director

Grantee Name: City of New Orleans
1600 Perdido Street
New Orleans, LA 70112
marjorianna.willman@nola.gov

Subrecipient Name: Deltares, USA Inc,
8601 Georgia Avenue, Ste. 508
Silver Spring, MD 20910
Edwin.welles@deltares-usa.us

ARTICLE II –SUBRECIPIENT’S OBLIGATIONS

A. Statement of Work. The Subrecipient shall:

1. Deltares will finalize the Water Monitoring Sensor Specification report based on the comments received. This report was previously delivered as *Report GroundWater Well Specifications.pdf*.
2. Deltares will provide an installed, scientific research only (no decision making) functioning system for storing water monitoring data that is accessible to the City and its partners, and a report on system setup and guidelines for storing, accessing, and utilizing the data.
3. Deltares will provide a Water Monitoring Network Design as follows:
 - a. Memo detailing notes from Project Inception Meeting;
 - b. Design Report and list of participants from Design Workshop
 - c. Cost Benefit analysis report
 - d. Final Network Design report distributed for review and comment
 - e. Final Network Monitoring Strategy Report
 - f. Installation memo with final field locations, sensors, surface water and groundwater observation wells
 - g. Spreadsheets with 0.5 and 1 year data including graphics and short report
 - h. Report with presentation and analyses of monitoring results and User Guide for monitoring network management and annual reporting.
 - i. Documentation of final workshop with City and partner stakeholders.
4. Deltares will provide Subsidence Vulnerability Maps upon final comment from the City and partners, to include:
 - a. City-accessible database with collected shallow boreholes
 - b. Map with potential coring sites and table with location and site owner permissions
 - c. Installation of 63 boreholes (6-15 feet) and table with all borehole characteristics (location, depth, absolute surface level)
 - d. Table with results of 315 samples (organic content, pH)
 - e. Map with estimated future subsidence based on borehole information, organic matter content map, and groundwater level contours map

- f. Slides, notes and list of participants from half-day workshop
- 5.. Deltares will provide parameters and other input files for an Integrated Groundwater and Subsidence scientific research only (no decision making) Model, to include:
- a. Initial Report detailing modeling approach and data handling.
 - b. Project fact sheet with vision and project description, notes and list of participants at one day workshop
 - c. GIS database with maps and subsurface information
 - d. Parameters and other input files for Three-dimensional hydrogeological model
 - e. Database with all collected and estimated relevant geotechnical data, including subsidence
 - f. Parameters and other input files for Groundwater model and results of ten scenario calculations (effects of sea level rise, climate change, groundwater pumping, green infrastructure, drainage improvements)
 - g. Groundwater Model Parameters and other Input Files User Manual
 - h. Public Presentation Materials
 - i. Materials and list of participants and notes from stakeholder workshop
6. Deltares will assess gaps in knowledge of subsurface water and soil dynamics and submit a Knowledge Gaps report.
7. Deltares will research performance of green infrastructure projects in New Orleans and provide recommendations on effectiveness of installations.
8. Deltares will conduct a study of real time interaction between storm drainage discharge and groundwater infiltration.

B. Obligations. The Subrecipient shall:

- 1. Provide monthly progress reports of project progress; and
- 2. Provide quarterly reports of project progress and performance measures.

C. Deliverables. The Subrecipient shall provide:

- 1. Water Monitoring Sensor Specification report as follows:
 - a. Sensor specifications
 - b. Specifications report outlining instrumentation, deployment, and databasing guidelines
- 2. Water Monitoring Database as follows:
 - a. Installed and scientific research only (no decision making) functional system

- for storing water monitoring data, accessible to the City and partners
 - b. Report on system setup with guidelines for storing, accessing, and utilizing the data
3. Water Monitoring Network Design as follows:
- a. Memo detailing notes from Project Inception Meeting;
 - b. Design Report and list of participants from Design Workshop
 - c. Cost Benefit analysis report
 - d. Final Network Design report distributed for review and comment
 - e. Final Network Monitoring Strategy Report
 - f. Installation memo with final field locations, sensors, surface water and groundwater observation wells
 - g. Spreadsheets with 0.5 and 1 year data including graphics and short report
 - h. Report with presentation and analyses of monitoring results and User Guide for monitoring network management and annual reporting.
 - i. Documentation of final workshop with City and partner stakeholders.
4. Subsidence Vulnerability Maps upon final comment from the City and partners, to include:
- a. City-accessible database with collected shallow boreholes
 - b. Map with potential coring sites and table with location and site owner permissions
 - c. Installation of 63 boreholes (6-15 feet) and table with all borehole characteristics (location, depth, absolute surface level)
 - d. Table with results of 315 samples (organic content, pH)
 - e. Map with estimated future subsidence based on borehole information, organic matter content map, and groundwater level contours map
 - f. Slides, notes and list of participants from half-day workshop
5. Parameters and other Input Files for Integrated Groundwater and Subsidence Model for scientific research (no decision making), to include:
- a. Initial Report detailing modeling approach and data handling.
 - b. Project fact sheet with vision and project description, notes and list of participants at one day workshop
 - c. GIS database with maps and subsurface information
 - d. Parameters and other input files for Three-dimensional hydrogeological model
 - e. Database with all collected and estimated relevant geotechnical data, including subsidence

- f. Parameters and other input files for Groundwater model and results of ten scenario calculations (effects of sea level rise, climate change, groundwater pumping, green infrastructure, drainage improvements)
 - g. Groundwater Model parameters and other input files
 - h. Public Presentation Materials
 - i. Materials and list of participants and notes from stakeholder workshop
 - j. User Manual
6. Knowledge Gaps report as follows:
- a. Memo detailing notes and participants from inception meeting with City and stakeholder workshop
 - b. Draft Concept Report including background literature review
 - c. Final report, inclusive of all City and stakeholder feedback
7. Green Infrastructure Performance Research, as follows:
- a. Documentation and performance report of existing green infrastructure projects in New Orleans
 - b. Report with participants and notes from one-day green infrastructure workshop
 - c. Report with locations and performance analysis results of ten green infrastructure projects and five permeable pavement tests
 - d. Memo with practical hydrological design recommendations
8. Study for real time interaction, as follows:
- a. Needs Assessment and Model Integration Report
 - b. Updated groundwater and surface water parameter files if required for the model interaction.
 - c. Final project report and publication materials
 - d. Notes and list of participants from stakeholder workshop

D. Schedule of Work. The Schedule of Work is incorporated into this Agreement, and attached as Exhibit A.

E. Key Personnel. The Subrecipient identifies the following key personnel to provide the services:

1. Project Administration and Operations:

- a. Roelof Sturmman
- b. Edwin Welles

2. **Change to Key Personnel:** The Subrecipient shall notify the City in writing of any change of the above listed “Key Personnel.” The City retains the right to reject any such substitution within 30 days of receipt of written notice of substitution.

F. **Prohibited Activities.** The Subrecipient may only carry out the activities described in this Agreement. The Subrecipient is prohibited from charging to the subaward the costs of CDBG ineligible activities, including those described at 24 CFR 570.207, and from using funds provided herein or personnel employed in the administration of activities under this agreement for political activities, inherently religious activities, or lobbying.

G. **Compliance with CDBG Regulations and HUD Notices.** The Subrecipient shall:

1. **In general.** Comply with the federal regulations published in Volume 24, Part 570, of the *Code of Federal Regulations* (24 CFR 570), as well as all federal regulations and requirements incorporated therein by reference, whether specifically discussed herein or not.

2. **Uniform Administrative Requirements.** Comply with the applicable Uniform Administrative Requirements as described in 24 CFR 570.502.

3. **Procurement.** Comply with the procurement standards in 2 CFR §200.318 - §200.326 when procuring property and services under this Agreement.

4. **Notices.** Comply with all applicable Notices and directives promulgated by the U.S. Department of Housing and Urban Development.

H. **Invoices.**

1. The Subrecipient 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:

- a. Name of Subrecipient;
- b. Date of Invoice;
- c. Invoice Number;
- d. Contract or BRASS Number issued by the City (*i.e.*, K#);
- e. Name of the City Department to be invoiced (*i.e.*, PDU);
- f. Description of the Services completed; and
- g. FEMA or HUD Project Number (*i.e.*, PW#), if applicable.

2. Invoices will be processed in accordance with the Agreement.

3. All invoices must be signed by an authorized representative of the Subrecipient 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.

ARTICLE III - THE CITY’S OBLIGATIONS

A. **Administration.** The City will administer this Agreement through the Project Delivery Unit (“PDU”).

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

ARTICLE IV - COMPENSATION

A. **Maximum Amount Payable.** The maximum amount payable by the City under this Agreement is SEVEN HUNDRED SEVENTY-THREE THOUSAND, TWO HUNDRED SIXTY-SIX DOLLARS AND FORTY CENTS (\$773,266.40). The full anticipated budget breakdown is incorporated into this Agreement, and included in Exhibit A.

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

C. **Reversion of Funds.** Upon expiration of the Agreement, the Subrecipient shall transfer to the City any CDBG funds on hand at the time of expiration and any accounts receivable attributable to the use of CDBG funds.

D. **Payment.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the City of properly submitted invoice via the City’s supplier portal.

ARTICLE V - DURATION AND TERMINATION

A. **Term.** The term of this Agreement shall be for one year from the Effective Date.

B. **Extensions.** The City shall have the option to extend the term of this Agreement by giving written notification to the Subrecipient stating such intentions at least thirty calendar days prior to the termination of the Agreement. The term of the Agreement must be extended if the Subrecipient is in control of any CDBG funding.

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

D. **Termination for Cause.** The City may terminate this Agreement immediately for cause by sending written notice to the Subrecipient. “Cause” includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience.

effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

E. 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.

F. Notice. The City shall promptly notify the Subrecipient, in writing, of its determination and the reasons for the termination together with the date on which the termination shall take effect. Upon termination, the City retains the right to recover any improper expenditures from the Subrecipient and the Subrecipient shall return to the City any improper expenditures no later than thirty (30) days after the date of termination. The City may, at its sole discretion, allow Subrecipient to retain or be reimbursed for costs reasonably incurred prior to termination, that were not made in anticipation of termination and cannot be canceled provided that said costs meet the provisions of this agreement, 2 CFR Part 200, Subpart E, Cost Principles, and any other applicable state or Federal statutes, regulations or requirements.

ARTICLE VI- MAINTENANCE AND MONITORING OF RECORDS

A. Maintenance of Records. The Subrecipient agrees to maintain all records of all expenditures of CDBG funds provided to it by the City in accordance with §570.506 for **five years** from the official date of the closeout of the grant. Records are to be maintained separately for each project undertaken by the Subrecipient, and the records for each project will be maintained by the Subrecipient in such a manner so that the funding sources used in each project will be accounted for separately. The aforementioned classification of funds expended will be further itemized by the “funding year” associated with the funds. The Subrecipient hereby agrees to maintain, for the City’s review, all records relating to the creation, development and set-up of CDBG projects, and the expenditure of CDBG funds, itemized for each CDBG-funded project undertaken.

B. Monitoring of Records. The Subrecipient acknowledges the responsibility of the City to monitor its performance and all records relating to projects implemented by the Subrecipient with CDBG funds. The Subrecipient hereby acknowledges its responsibility to provide the City, upon reasonable demand, with all records relating to CDBG-funded projects implemented by the Subrecipient, and hereby agrees to assist the City in reviewing projects undertaken by the Subrecipient with CDBG funds. The aforementioned records will be made available at times reasonable to both the Subrecipient and the City, and the Subrecipient's records will be reviewed by the City no less than annually.

ARTICLE VII- MONITORING OF SUBRECIPIENT PERFORMANCE

A. Monitoring. The City shall monitor the performance of the Subrecipient as necessary and in accordance with regulations on Subrecipient Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure Subrecipient compliance with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities,

as well as procurement. Substandard performance as determined by the Grantee will constitute noncompliance with this agreement. If action to correct such substandard performance is not taken by the Subrecipient within 30 days after being notified by the Grantee, the Grantee may impose additional conditions on the Subrecipient and its use of CDBG-DR funds consistent with 2 CFR 200.207, suspend or terminate this agreement, or initiate other remedies for non-compliance as appropriate and permitted under 2 CFR 200.338.

B. Reporting. The Subrecipient shall submit regular quarterly progress and financial reports to the City.

C. Failure to Perform or Breach. If the Subrecipient: 1) fails to perform according to the Agreement, 2) breaches the Agreement, or 3) does not comply with Federal Regulations governing CDBG-assisted projects, the City will notify the Subrecipient. If there is a continued lack of performance or lack of curing of breach or non-compliance after notification and a reasonable time period to cure (as determined by the City in the given instance), then the City may declare the Subrecipient 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 Subrecipient for any increase in costs and other damages sustained by the City. Furthermore, the Subrecipient acknowledges its obligation to repay the City the CDBG funds that are identified with the period of noncompliance. The Subrecipient acknowledges that the amount of repayment are not necessarily commensurate with the period of non-compliance, and amount repayment could be up to the total amount of compensation disbursed.

ARTICLE VIII – PROGRAM INCOME

Although no Program Income is anticipated, any program income derived from the project will be returned to the City.

ARTICLE IX - INDEMNITY

A. In general. To the fullest extent permitted by law, the Subrecipient 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 claims, demands, suits, and judgments of sums of money accruing against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any negligent act or omission or the operation of the Subrecipient, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement. This indemnity shall not include any claims related to software and databases and model(s).

B. Limitation. The Subrecipient 's indemnity does not extend to any loss arising from the negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Subrecipient nor any of its agents or employees contributed to such gross negligence or willful misconduct.

C. Independent Duty. The Subrecipient 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 Subrecipient is ultimately absolved from liability.

D. Expenses. Notwithstanding any provision to the contrary, the Subrecipient 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 X – INSURANCE

A. In general. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Subrecipient will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Subrecipient's scope of work under the Agreement. If the Subrecipient maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Subrecipient. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the City.

B. Minimum Requirements.

1. **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.

2. **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.

3. **Automobile Liability Insurance** with a combined single limit of liability of not less than \$1,000,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.

4. **Professional (Errors & Omission) Liability Insurance** appropriate to the Subrecipients profession with limits of liability of not less than \$5,000,000 per occurrence or claim / \$5,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Subrecipient in this agreement. Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Subrecipient must procure and evidence full extended reporting period (ERP) coverage.

5. **Umbrella/Excess Liability** – Umbrella/Excess policies must Follow Form of the underlying policies. Important: Subrecipients shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage. The obligations for the Subrecipient to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Subrecipient from any liability incurred as a result of their activities/operations in conjunction with the Subrecipients obligations and/or Scope of Work. Subrecipient shall be responsible for any losses, expenses, damages, claims and/or suits of any kind which exceed the Subrecipients limits of liability that arise from the performance of work under the Contract. In keeping with Article IX, Section A, above, this responsibility does not include claims against the City related to software, models, and databases.

C. Miscellaneous.

1. **Additional Insured Status:** The Subrecipient and all Sub-Subrecipients (where applicable) will C. provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as “Additional Insureds” on the CGL and AL policies with respect to liability arising out of the performance of this agreement. Additional Insured status can be provided in the form of an endorsement to the Subrecipients 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). Subrecipient shall require and verify that all Sub-Subrecipients maintain insurance and coverage limits meeting all the requirements stated herein or the Sub-Subrecipient liability shall be covered by the Subrecipient. The Certificate of Insurance, as evidence of all required coverage, should name the City of New Orleans Risk Manager as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112. The Additional Insured box shall be marked “Y” for Commercial General Liability and Auto Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.

2. **Primary Coverage:** For any claims related to this agreement, the Subrecipients 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 Subrecipients coverage.

3. **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, Subrecipient must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.

4. **Waiver of Subrogation:** The Subrecipient 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.

5. **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.

6. **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.

7. **Notice:** The Subrecipient 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 business days of the City's reasonable 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.

8. **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.

ARTICLE XI- LIVING WAGES

A. **Definitions.** Unless otherwise expressly provided in this Amendment, 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 Subrecipient agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");

2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and

3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

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

1. \$11.19 per hour for any work performed on or before December 31, 2021;
 2. \$13.25 per hour for any work performed on or before December 31, 2022;
 3. \$15.00 per hour for any work performed on or before December 31, 2023;
- and

4. \$15.00 per hour plus any adjustment provided in subsection D below for any work performed during calendar year 2024 or thereafter.

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

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

F. Reporting. On or before January 31st and upon request by the City, the Subrecipient 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 Amendment 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 Subrecipient 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 Subrecipient 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 Subrecipient, payroll records and employee paychecks; and (ii) that the City may audit such records of the Subrecipient as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

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

ARTICLE XII - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Subrecipient (1) will not be discriminate against any

employee or applicant for employment because of race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Subrecipient's employees are treated during employment without regard to their race, color, religion, sex, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

B. Non-Discrimination. In the performance of this Agreement, the Subrecipient 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 Subrecipient in any of the Subrecipient'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 Subrecipient. The Subrecipient 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 Subrecipient will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-Subrecipients to comply with those provisions.

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

ARTICLE XIII - INDEPENDENT ENTITY

A. Independent Entity Status. The Subrecipient is an independent entity 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, sub-Subrecipients 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 Subrecipient, as an independent entity 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 Subrecipient will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

C. Exclusion of Unemployment Compensation Coverage. The Subrecipient, as an independent entity, is being selected by the City under this Agreement for hire and defined in

La. R.S. 23:1472(E) and neither the Subrecipient 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 Subrecipient 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 Subrecipient are outside the normal course and scope of the City's usual business; and (c) the Subrecipient has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.

D. Waiver of Benefits. The Subrecipient, as an independent entity, 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 XIV – DISADVANTAGE BUSINESS ENTERPRISE (“DBE”) PROGRAM

A. In General. The Subrecipient agrees to abide by the City Code Sections 70-456, *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 Subrecipient's use of DBE sub-Subrecipients/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 sub-Subrecipients;
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 Subrecipient or DBE Entities.

C. Cooperation. The Subrecipient shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Subrecipient'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 Subrecipient 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 Subrecipient.
 - b. The Subrecipient shall agree to promptly pay sub-Subrecipients, 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 Subrecipient does not use in accordance with the approved DBE participation submission;
- d. Any other records required by the OSD.

The Subrecipient 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 Subrecipient 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 Subrecipient. 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 Subrecipient 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 Subrecipient's control, the Subrecipient is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Subrecipient 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 Subrecipient 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 subSubrecipients during the performance of the Agreement; or

- b. the Subrecipient 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 Subrecipient shall use and document “Good Faith Efforts” to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE XV – FORCE MAJEURE

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

B. Notice. To seek the benefit of this Article, the City must provide notice in writing to the Subrecipient 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 Subrecipient 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 Subrecipient and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

ARTICLE XVI - 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:**

Joseph W. Threat, Sr.
Manager, Project Delivery Unit
1300 Perdido Street
New Orleans LA

&

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

2. **To the Subrecipient:**

Edwin Welles
President, Deltares USA
8601 Georgia Avenue, Suite 508
Silver Spring, MD 20910

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

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

ARTICLE XVII- INCORPORATED DOCUMENTS

A. **In general.** The following documents are incorporated into this Agreement:

1. The Schedule of Work and Budget, Exhibit A,
3. HUD Compliance Provisions, Exhibit B

B. **Direct Conflict.** If any Exhibit directly conflicts, in whole or in part, with this Agreement, the terms and conditions of the Exhibit will control except as provided by law.

C. **Difference in Standard.** If any Exhibit differs, in whole or in part, with this Agreement in terms of requirements, standards, timelines, etc., then the more stringent requirement, the higher standard, and the longer timeline, etc., shall prevail, unless the Parties mutually agree otherwise.

ARTICLE XVIII - 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 Subrecipient's interest in it are not assignable or transferable without the City's prior written consent.
- C. **Audit and Other Oversight.** The Subrecipient will abide by all provisions of City Code § 2-1120, including without limitation City Code § 2-1120(12), which requires the Subrecipient to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests is a material breach of the Agreement. In signing this Agreement, SUBRECIPIENT agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.
- D. **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.
- E. **Compliance with City's Hiring Requirements - Ban the Box.**
1. The Subrecipient 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, the Subrecipient 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.
 2. 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 Subrecipient notice of noncompliance and allow the Subrecipient 30 days to come into compliance. If, after providing notice and 30 days to cure, the the Subrecipient remains noncompliant, the City may move to suspend payments to the Subrecipient, void the Agreement, or take any such legal action permitted by law or this Agreement.
 3. 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.
 4. The Subrecipient will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all sub-Subrecipients to comply with those provisions.
- F. **Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by the Parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Subrecipient 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.

- G. **Convicted Felon Statement.** The Subrecipient complies with City Code § 2-8(c) and no principal, member, or officer of the Subrecipient has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.
- H. **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 Subrecipient shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Subrecipient fails to meet its contractual obligations.
- I. **Employee Verification.** The Subrecipient 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 sub-Subrecipients to submit to the Subrecipient 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 Subrecipient being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Subrecipient 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 Subrecipient 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 Subrecipient fails to provide such the requested affidavit or violates any provision of this paragraph.
- J. **Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.
- K. **Jurisdiction.** The Subrecipient 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 Subrecipient.
- L. **Limitations of the City’s Obligations.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.
- M. **No Third Party Beneficiaries.** This Agreement is entered into for the exclusive benefit

of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

- N. **Non-Exclusivity.** This Agreement is non-exclusive and the Subrecipient may provide services to other clients. The City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.
- O. **Non-Solicitation Statement.** The Subrecipient 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 Subrecipient has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.
- P. **Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.
- Q. **Ownership Interest Disclosure.** The Subrecipient will provide the City with a sworn affidavit listing all natural or artificial persons with an ownership interest in the Subrecipient and stating that no other person holds an ownership interest in The Subrecipient 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 Subrecipient fails to submit the required affidavit, the City may, after 30 days' written notice to the Subrecipient, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.
- R. **Ownership of Records.** The Subrecipient shall maintain ownership of all data collected and all products of work prepared, created or modified by the Subrecipient 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 Subrecipient's personnel and administrative records and any tools, systems, and information used by the Subrecipient 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"). The Subrecipient shall also maintain all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the Subrecipient's name. However, the Subrecipient acknowledges that the purpose of the Project is for the benefit of the City of New Orleans, and therefore the Subrecipient shall grant the City a no-cost perpetual license to utilize all Work Product in a manner to further the

purpose of the Project, provided that the City takes all reasonable precautions to protect the Subrecipient's intellectual property and proprietary interests of the Subrecipient, subject to all applicable public records laws. The Subrecipient shall also be able present or publish materials deriving from its Work Product at its sole discretion, provided that the Subrecipient provide the City with an advance copy for review and feedback at least seven (7) days prior to presentation or publication.

- S. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of the Subrecipient, 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 the Subrecipient pursuant to this Agreement without regard to the Subrecipient's otherwise satisfactory performance of the Agreement.
- T. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.
- U. **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.
- V. **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.
- R. **Special Conditions for HUD NDR Contracts.** The "HUD NDR Compliance Provisions for Direct Grantee – Subrecipient Agreement and 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 Subrecipient that the City intends to seek reimbursement from the NDR Program in connection with the work to be performed under this Agreement.
- S. **Sub-Subrecipient Reporting.** The Subrecipient will provide a list of all natural or artificial persons who are retained by the Subrecipient at the time of the Agreement's execution and who are expected to perform work as sub-Subrecipients in connection

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

- T. **Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.
- U. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

ARTICLE XVII - ELECTRONIC SIGNATURE AND DELIVERY

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

[SIGNATURES CONTAINED ON NEXT PAGE]

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

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

CITY OF NEW ORLEANS


LATOYA CANTRELL, MAYOR

FOR

Executed on this 24th of September, 2021.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy

DELTARES USA, INC.

Edwin Welles

BY: 

EDWIN WELLES, DIRECTOR

Digitally signed by Edwin Welles

Date: 2021.08.26 16:41:51

07/09/


FEDERAL TAX I.D.

[EXHIBITS A - B CONTAINED ON FOLLOWING PAGES]

**SUBRECIPIENT AGREEMENT
BY AND BETWEEN
THE CITY OF NEW ORLEANS
AND DELTARES USA, INC.
EXHIBIT A
SCHEDULE OF WORK AND BUDGET

[ON FOLLOWING PAGES]**

| SCHEDULE OF WORK AND BUDGET | | | | | |
|--|---|------------------|---|--|--|
| Tasks | Results | Remaining Budget | Status | Work to do | Schedule |
| Activity A: Water Monitoring | <p>Delivered</p> <ul style="list-style-type: none"> Specifications draft-report that outlines instrumentation, deployment, and databasing guidelines <i>Report GroundWater Well Specifications.pdf</i> <p>To Be Delivered</p> <ul style="list-style-type: none"> Final Report | \$3,997.50 | Report delivered | Finalize based on comments already provided | 1 month after contract signing |
| Activity B: Water Monitoring Database Which will include <ul style="list-style-type: none"> geological borehole information collected in this project, the geological report already delivered by the city, geological, groundwater and subsidence maps produced in this project. | <p>Delivered</p> <ul style="list-style-type: none"> Kickoff Meeting minutes <i>MeetingMinutes DataBaseDevelopment_April2.doc</i> Planning presentation <i>PlanningPresentation Database website.pptx</i> Planning documentation <i>PlanningDocument Database System Description.docx</i> <p>To Be Delivered</p> <ul style="list-style-type: none"> System for storing water monitoring data installed for scientific research | \$120,000.00 | <ul style="list-style-type: none"> Start meeting at the City Start document finished Draft design/proposal prepared by Deltares (Gerrit Hendriksen). | <p>a. Organize meeting with Mary Kincaid and City's IT/GIS/database staff</p> <p>b. Looking at the already existing dashboards of New Orleans (https://nola.gov/apps) there is a nice variety of techniques used at NOLA. It is proposed to at least have a setup using components that are already in use at NOLA for efficiency and maintenance. It is proposed to setup a project in several phases, being:</p> | <ul style="list-style-type: none"> We need to organize a meeting with NOLA IT specialists in 2021 as soon as possible after signing contract We can start with design and data preparation 2 weeks after new contract, Depending on support/cooperation of/with the City this task can be |

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|---|---|--|--|--|---|
| Two demonstration meetings to the City staff and other Gentilly project participants. | only (no decision making), functioning and accessible to the City and its partners <ul style="list-style-type: none"> Report on system setup and guidelines for storing, accessing, and utilizing the data | | | <p>a. Phase 1, investigation phase, what is already in use at NOLA and what are the requirements in design, usability, techniques to be used in order to use components that can be maintained by NOLA or related company working for NOLA</p> <p>b. Phase 2, setup first prototype according to requirements and design from phase 1</p> <p>c. Phase 3, finalize prototype and make mobile application which feeds data into database of the Subsurface</p> | <p>delivered 12 months after new contract.</p> <ul style="list-style-type: none"> Report is integrated into the database |
|---|---|--|--|--|---|

| | | | | Information System (SIS) | |
|--|--|--------------|---|--|---|
| Activity C: Water Monitoring Network Design 1. Project Inception 2. Stakeholder Interaction & Design 3. Cost-Benefit Analysis 4. Comments on Final Network Design 5. Final Monitoring Strategy 6. Installation 7. Data Collection 8. First Monitoring Report 9. Lessons Learned Workshop | Delivered <ul style="list-style-type: none"> List of workshop participants, Design Report, and Outreach Brochure <i>General Project Brochure.pdf</i> To Be Delivered <ul style="list-style-type: none"> Memo detailing notes from inception meeting with City and key partners Cost-benefit memo Comments memo distributed to all stakeholders Final monitoring strategy report Memo with final field locations; 20 shallow observation wells installed; sensors installed at pumping stations, surface water and groundwater observation wells Spreadsheets with 0.5 year and 1-year data, including graphics and short report Report with presentation and analyses of monitoring results and User | \$177,700.80 | <ul style="list-style-type: none"> Finished several stakeholder meetings, Finished draft design report and submitted to the city (New Orleans Mon. etc. doc. 3) Finished draft design map (monitoring locations, doc.7)) Start organizing installation (several visits with project stakeholders Visited potential locations | a. Adapt review comments of design report from the City and SWBNO b. Produce report summary memo for stakeholder interaction (incl. comments) c. Organizing installation observation wells (contact with consultant, Eustis?) d. Determination exact location in the field in cooperation with consultant e. Help with choice and installation of sensors etc. f. Perform Cost benefit analysis g. Produce first 6-month report h. Collecting data i. Execute lessons-learned workshop | <ul style="list-style-type: none"> Draft Review report/design phase 1 month after signing contract, Installation phase 1-6 months after signing contract, Cost-benefit analysis, 6 months after signing contract Collecting first data phase: 4-6 months after installation Production (draft) first 6-month report: 9 months after installation Lessons learned workshop spring 2022 (after production |

| | | | | | |
|--|---|-------------|--|---|---|
| | Guide for monitoring network management and yearly reporting. <ul style="list-style-type: none"> List of participants and Memo with results of final workshop with stakeholders | | | | first draft 6-months report) |
| Activity D: Subsidence Vulnerability Maps <ol style="list-style-type: none"> Storage Database and existing borehole analysis Design Borehole Campaign Borehole Campaign Sampling and Laboratory Analysis Subsidence forecast maps Presentation of Results | <p>Delivered</p> <ul style="list-style-type: none"> Map with potential coring sites and table with location and site owner permissions <i>Section 5 of Subsidence 2020.pdf</i> Installation of 63 boreholes (6-15 feet) and table with all borehole characteristics (location, depth, absolute surface level) <i>Installed on site</i> Table with result of 315 samples (organic content, pH) <i>Core Data Bulk Density and Organic matter.xlsx</i> Map with estimated future subsidence based on borehole information, organic matter content map, and groundwater level contours map | \$14,129.80 | <ul style="list-style-type: none"> FINAL report delivered All deliverables realized. Internal review by Tulane (Prof. Tor Tornqvist) Finished editing the comments from Waggonner & Ball, Tulane and City (Tyler Antrup) Improved chapter with urban planning recommendations Waiting for final comments "new" draft report from city. | <ul style="list-style-type: none"> Edit final comments. THIS is DONE | <ul style="list-style-type: none"> FINAL Report delivered Maps and cross sections will be added into database |

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| | <p><i>Report Shallow Subsidence Vulnerability, summer 2020 (doc. 1)</i></p> <ul style="list-style-type: none"> Slides, notes, and list of participants from half-day workshop <i>Presentation Field campaign November 2018.pdf</i> | | | | |
| | <p>To Be Delivered</p> <ul style="list-style-type: none"> City-accessible database with collected shallow boreholes | | | | |
| <p>Activity E: Integrated Groundwater and Subsidence Model for scientific research only (no decision making)</p> <p>To restart this project, we will hold a Zoom presentation of model set-up and approach, presenting first results</p> | <p>Delivered</p> <ul style="list-style-type: none"> Project 1-pager with vision and project description; notes and list of participants at one-day workshop <i>Draft-Report Assessment of Land Subsidence 23 July.pdf</i> <i>General Project Brochure.pdf</i> <p>To Be Delivered</p> <ul style="list-style-type: none"> Initial Report detailing modeling approach, data handling, etc. GIS database with maps and subsurface information | \$200,100.00 | <p>We approach this activity as 2 subprojects:</p> <p>(1) subsidence assessment and (2) urban groundwater modeling study.</p> <p>(1) The subsidence assessment is based on (a) regional modeling, and (b) data and literature study. Draft report is submitted to City and for technical review to NASA. City's review</p> | <p>1. Stationary model</p> <ol style="list-style-type: none"> Install sheet piles walls Add rainfall and evaporation Improve 3D geology model based on recently received geotechnical reports from the city Test runs, validation <ol style="list-style-type: none"> Using our groundwater depth | <ul style="list-style-type: none"> Assessment Report (Kooi et al) edit can be finished 2 weeks after new contract, Stakeholder workshop 2 months after contract Model activities can be finished approx. 8 months after new contract |

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| <p>1. Inception Meeting and Initial Report</p> <p>2. Stakeholder Workshop</p> <p>3. Data Collection and Storage</p> <p>4. Geology and Lithology Analysis</p> <p>5. Subsidence Data Analysis</p> <p>6. Modeling</p> <p>7. Documentation and Stakeholder Presentation</p> <p>8. Project Management & Quality Control</p> | <ul style="list-style-type: none"> 3-D hydrogeological parameter and other input files for model Database with all collected and estimated relevant geotechnical data, including subsidence Parameters and other input files for Groundwater model and results of ten scenario calculations (effects of sea level rise, climate change, groundwater pumping, green infrastructure, drainage improvements, etc) User Manual for Groundwater Model Parameter and other input files, Public Presentation Materials, List of participants and notes from stakeholder workshop | <p>(Alex Kolker, Tyler Antrup) received. We have permission to finish draft based on comments</p> <p>(2) Status urban groundwater model:</p> <ol style="list-style-type: none"> Initial steady-state model: <ol style="list-style-type: none"> urban land use finished storm drainage system (GIS) extracted from SWMM model (pipes are draining groundwater) distribution and depth of sewer system will arrive with help of Stantec (skype meeting August 6th). | <p>information collected dry (and wet) weather flow of storm drainage and waste water system</p> <ol style="list-style-type: none"> Time dependent model <ol style="list-style-type: none"> Add time series of rain and evaporation, Add time series of river levels Add information of shallow groundwater pumping Test runs, validation Scenario's <ol style="list-style-type: none"> Effect of increased sea/canal water levels Effect of renovated water mains, storm drainage pipes etc. | <ul style="list-style-type: none"> Analyze existing geo-reports, creating borehole database ready 3 months after new contract, End-workshop can be organized approx. 12 months after new contract (interaction stakeholders). Including manual |
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| | | | | <p>d. First 3D-subsurface model is constructed</p> <p>e. 1x1 meter DEM applied</p> <p>2. Initial results presented to Tyler Antrup and Ramsey Green.</p> <p>3. Finished Oak tree salinization risk chapter (salinization calculations doc 11)</p> | <p>c. Effects of designed green blue infra in Gentilly</p> <p>d. Effects of large-scale water storage into parkways, parks and gardens</p> <p>4. Acceptance Testing We will conduct acceptance testing for the City to take ownership of the model by demonstrating the model runs with the files provided.</p> <p>5. Workshop</p> <p>6. Reporting</p> <p>7. Edit "assessment of land subsidence in New Orleans" report</p> | | <p>o Draft report 4 months after signing contract</p> <p>o Edit reviews 2 months after presentation draft report</p> <p>o Final report: 6 months after contract</p> |
| <p>Activity F: Knowledge Gaps Report</p> <p>1. Inception Meeting and Stakeholder Workshop</p> <p>2. Draft Concept Report</p> <p>3. Final Report</p> | <p>Delivered</p> <ul style="list-style-type: none"> Draft Concept Report, including background literature review <i>Report Knowledge Gaps DRAFT.docx</i> <p>To Be Delivered</p> <ul style="list-style-type: none"> Memo detailing notes and participants from inception meeting with City and stakeholder workshop | \$44,683.20 | <p>o Background research (done)</p> <p>o Stakeholder meetings with several institutions (done)</p> <p>o Data, information collected</p> <p>o (draft) Reporting/ input Ryan (WI) and Alex (Tulane) arrived</p> | <p>o Preparation first draft</p> <p>o Submit to many people for review and comments</p> <p>o Produce final report</p> | | | |

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| <ul style="list-style-type: none"> Final report, inclusive of all City and stakeholder feedback | | | | <ul style="list-style-type: none"> Collected and mapped all available locations 2 weeks visit in March 2019. Field measurements/observations Several stakeholder meetings finished Several field visits executed Finished Daan Rooze's Living on thick water report. Input for final report (doc 18) | <ul style="list-style-type: none"> Execute 1-week field tests <ul style="list-style-type: none"> permeable pavement tests (5 locations) installation temporal monitoring network Collecting monitoring data, workshop Improve design rules/quantification tool Reporting Final workshop | <ul style="list-style-type: none"> field tests data t.b.d. (Corona? monitoring data t.b.d. (Corona?) reporting/design rules workshop Autumn 2021 finished 18 months after contract |
| Activity G: Green Infrastructure (GI) Applied Research <ol style="list-style-type: none"> Mapping and Evaluation of Existing GI projects GI Stakeholder Workshop Monitoring & Testing Design Recommendations Final Report Project Management | <ul style="list-style-type: none"> Delivered <ul style="list-style-type: none"> Draft documentation and performance report of existing GI projects in New Orleans <i>Report CostBenefitsGreenInfra Outline.docx</i> To Be Delivered <ul style="list-style-type: none"> Report with participants and notes from one-day GI workshop Report with locations and performance analysis results of 10 GI projects and 5 permeable pavement tests Memo with practical hydrological design recommendations and a simple tool to calculate effectiveness Simple and practical final report with GI design recommendations, to be shared with local stakeholders | \$112,472.10 | <ul style="list-style-type: none"> executed start meeting with City and Ardurra Compiled start document (draft detailed project plan) | \$100,182.00 | Delivered <ul style="list-style-type: none"> Draft Needs Assessment and Feasibility Report <i>Report InitialResults and Plan RealTimeSystem.docx</i> | <ul style="list-style-type: none"> Start 2 weeks after new contract Report 12 months after contract |
| Activity H: Real Time Control Pilot Study <ol style="list-style-type: none"> Needs Assessment & Feasibility Study | | | | | Objective is to understand storm drainage discharge, considering groundwater leakage/infiltration (note: during serious rain events waste water discharges | |

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| <p>2. Reporting & Publications</p> <p>3. Stakeholder Workshop</p> <p>4. Project Management & Quality Control</p> | <p>To Be Delivered</p> <ul style="list-style-type: none"> • Final project report and publication materials • Needs Assessment and Feasibility Report • Notes and list of participants from stakeholder workshop | | <p>doubles).</p> <p>Focus on Gentilly pumping station 4 catchment.</p> <ol style="list-style-type: none"> 1. Time series analyses of pumping station 4, 2. Improve existing SWMM model at Gentilly scale (1,2, 10 years events) by Ardurra 3. Extend this improved model with groundwater interaction <ol style="list-style-type: none"> a. Dry weather drainage b. Wet weather drainage c. Possibly by using our model results 4. Reporting 5. Execute Workshop 6. <i>Additional work, which does not require additional resources for Deltares USA, but does require cooperation with the City and SWBNO.</i> <p><i>Installation of temporal monitoring network (sensors distributed in catchment area, in</i></p> | <p>o Workshop spring 2022</p> |
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SUBRECIPIENT AGREEMENT

BY AND BETWEEN

THE CITY OF NEW ORLEANS

AND DELTARES USA, INC.

EXHIBIT B

HUD NDR COMPLIANCE PROVISIONS FOR DIRECT GRANTEE – SUBRECIPIENT AGREEMENT AND PROFESSIONAL SERVICES CONTRACTS

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

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

- A. The Sub-recipient 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 not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information. 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 Sub-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 Sub-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. **STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY
CONSTRUCTION CONTRACT SPECIFICATIONS**
(applicable to contracts and subcontracts exceeding \$10,000)

A. As used in these specifications:

- (1) "Covered area" means the geographical area described in the solicitation from which this contract resulted;
- (2) "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- (3) "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
- (4) "Minority" includes:
 - (a) Black (all persons having origins in any of the Black African racial

groups not of Hispanic origin);

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

specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

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

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

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

obligation to do so under 41 CFR Part 60 3.

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

- H. Sub-recipients are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (G(1) through G(16)). The efforts of a Sub-recipient association, joint Sub-recipient-union, Sub-recipient-community, or other similar group of which the Sub-recipient is a member and participant, may be asserted as fulfilling any one or more of its obligations under G(1) through G(16) of these specifications provided that the Sub-recipient actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in the Sub-recipient's minority and female workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Sub-recipient. The obligation shall not be a defense for the Sub-recipient's non-compliance.
- I. A single goal for minorities and a separate single goal for women has been established. The Sub-recipient, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Sub-recipient may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Sub-recipient has achieved its goals for women generally, the Sub-recipient may be in violation of the Executive Order if a specific minority group of women is underutilized).
- J. The Sub-recipient shall not use the goals and timetables or affirmative action standards to discriminate against any persons because of race, color, religion, sex, or

national origin.

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

3. NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION

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

- A. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- B. The goals and timetables for minority and female participation, expressed in percentage terms for the Sub-recipient's aggregate workforce in each trade on all construction work in the covered area are applicable to all the Sub-recipient's construction work (whether or not it is federal or federally assisted) performed in the covered area. If the Sub-recipient performs construction work in a geographic area located outside of the covered area, it shall apply the goals established for such geographic area where the work is actually performed.

With regard to this second area, the Sub-recipient also is subject to the goals for both its federally involved and non-federally involved construction. The Sub-recipient's compliance with the Executive Order and the regulations in 41 CFR Part 60 4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60 4.3 (a) and its efforts to meet the goals established for the geographical area where the contract resulting from this solicitation is to be performed. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Sub-recipient shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Sub-recipient to Sub-recipient or from project to project for the sole purpose of meeting the Sub-recipient's goals shall be a violation of the contract, the Executive Order, and the regulations in 41 CFR Part 60 4. Compliance with the goals will be measured against the total work hours performed.

- C. The Sub-recipient shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address, and telephone number of the Sub-recipient; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the sub-contract; and the geographical area in which the contract is to be performed.
- D. As used in this Notice, and in the contract resulting from this solicitation, the "covered area" is (insert description of the geographical areas where the contract is to be performed, giving the State, parish, and city, if any):

4. CERTIFICATION OF NON-SEGREGATED FACILITIES
(applicable to contracts and subcontracts exceeding \$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).

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

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

The 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.

7. SECTION 3 OF THE HOUSING AND URBAN DEVELOPMENT ACT OF 1968 -

(Section 3 Clause) (applicable to contracts and subcontracts exceeding \$100,000 funded by Section 3 covered assistance)

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

- 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).
8. **SECTION 503 OF THE REHABILITATION ACT OF 1973 (29 USC 793)**
(applicable to contracts and subcontracts exceeding \$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.

9. 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.

10. 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.

11. 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.

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

A. Lead-Based Paint Hazards

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

B. Use of Explosives

When the use of explosives is necessary for the prosecution of the work, the Sub-recipient shall observe all local, state and federal laws in purchasing and handling explosives. The Sub-recipient shall take all necessary precaution to protect completed work, neighboring property, water lines, or other underground structures. Where there is danger to structures or property from blasting, the charges shall be reduced and the material shall be covered with suitable timber, steel or rope mats. The Sub-recipient shall notify all owners of public utility property of intention to use explosives at least 8 hours before blasting is done close to such property. Any supervision or direction of use of explosives by the engineer does not in any way reduce the responsibility of the Sub-recipient or his Surety for damages that may be caused by such use.

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

The Sub-recipient shall make all necessary precautions to guard against damages to

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

13. FLOOD DISASTER PROTECTION

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

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

14. ACCESS TO RECORDS - MAINTENANCE OF RECORDS

The State of Louisiana, 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 State's final closeout of the grant.

15. INSPECTION

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

16. REPORTING REQUIREMENTS

The Sub-recipient shall complete and submit all reports, in such form and according

to such schedule, as may be required by the Owner.

17. CONFLICT OF INTEREST

- A. No officer or employee of the local jurisdiction or its designees or agents, no member of the governing body, and no other public official of the locality who his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed. Further, the 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 there from, but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

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

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

During the performance of this contract, the 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-recipients shall incorporate foregoing requirements in all subcontracts.

19. 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.

20. COPYRIGHT

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

21. TERMINATION FOR CAUSE

If, through any cause, the 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.

22. TERMINATION FOR CONVENIENCE

The Owner may terminate this contract at any time by giving at least ten (10) days notice in writing to the 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.

23. 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).

24. SUBCONTRACTS

- A. The Sub-recipient shall not enter into any subcontract with any contractor who has been debarred, suspended, declared ineligible, or voluntarily excluded from participating in contracting programs by any agency of the United States Government or the State of Louisiana.
- B. The 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 contractor 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.

25. 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 2 CFR 200.213 (government debarment and suspension regulations).

26. PROTECTION OF LIVES AND HEALTH

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

27. BREACH OF CONTRACT TERMS

Any violation or breach of terms of this contract on the part of the 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.

28. PROVISIONS REQUIRED BY LAW DEEMED INSERTED

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

29. CHANGES

The Owner may, from time to time, request changes in the scope of the services of the 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.

30. 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.

31. ANTI-KICKBACK RULES

Salaries of personnel performing work under this Contract shall be paid unconditionally and not less often than once a month without payroll deduction or rebate on any account except only such payroll deductions as are mandatory by law or permitted by the applicable regulations issued by the Secretary of Labor pursuant to the "Anti-Kickback Act" of June 13, 1934 (48 Stat. 948; 62 Stat. 740; 63 Stat. 108; Title 18 U.S.C. 874; and Title 40 U.S.C. 276c). The 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.

32. 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.

33. INTEREST OF SUB-RECIPIENT

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

34. 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.

35. COMPLIANCE WITH THE OFFICE OF MANAGEMENT AND BUDGET

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

36. DISCRIMINATION DUE TO BELIEFS

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

37. CONFIDENTIAL FINDINGS

All of the reports, information, data, etc., prepared or assembled by the 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.

38. 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.

39. FEDERAL LABOR STANDARDS PROVISIONS

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

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

Applicability

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

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

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

(ii) (a) Any class of laborers or mechanics which is not listed in the wage determination and

which is to be employed under the contract shall be classified in conformance with the wage determination. HUD shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(b) If the Sub-recipient and the laborers and mechanics to be employed in the classification (if known), or their representatives, and HUD or its designee agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by HUD or its designee to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, D.C. every additional classification action within 30 days of receipt and so advise HUD or its designee or will notify HUD or its designee within the 30-day period that additional time is necessary. (Approved by the Office of Management and Budget under OMB control number 1215-0140.)

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

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

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

(iv) If the Sub-recipient does not make payments to a trustee or other third person, the Sub-recipient 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 Sub-recipient, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Sub-recipient to set aside in a separate account assets for the meeting of obligations under the plan or program. (Approved by the Office of Management and Budget under OMB Control Number 1215-0140.)

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

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

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

(b) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by

the Sub-recipient or Sub-recipient or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

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

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

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

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

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

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

4. Apprentices and Trainees.

(i) **Apprentices.** Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Sub-recipient as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of

the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Sub-recipient is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or sub-recipient's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the Sub-recipient will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

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

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

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

6. Subcontracts. The Sub-recipient or Sub-recipient will insert in any subcontracts the clauses contained in subparagraphs 1 through 11 of this paragraph A and such other clauses

as HUD or its designee may by appropriate instructions require, and a copy of the applicable prevailing wage decision, and also a clause requiring the sub-recipients to include these clauses in any lower tier subcontracts. The prime Sub-recipient shall be responsible for the compliance by any Sub-recipient or lower tier Sub-recipient with all the contract clauses in this paragraph.

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

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

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

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

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

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001. Additionally, U.S. Criminal Code, Section 1010, Title 18, U.S.C., "Federal Housing Administration transactions", provides in part: "Whoever, for the purpose of . . . influencing in any way the action of such Administration..... makes, utters or publishes any statement knowing the same to be false..... shall be fined not more than \$5,000 or imprisoned not more than two years, or both."

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

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

(1) Overtime requirements. No Sub-recipient or Sub-recipient contracting for any part of

the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of 40 hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of 40 hours in such workweek.

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

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

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

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

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

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

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

40. SOLID WASTE DISPOSAL ACT

The Grantee shall comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements listed below include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) AT 40 CFR part 247 containing the highest percentage of recovered materials, practicable, consistent with maintaining a satisfactory level of competition.

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

(b) The term *procurement actions* includes:

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

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

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

41. CONFIDENTIALITY

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

42. REPAYMENT OF FUNDS

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

43. DUPLICATION OF BENEFITS

The Subrecipient shall not carry out any of the activities under this Agreement in a manner

that results in a prohibited duplication of benefits as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 USC §5155). The Subrecipient must comply with HUD's requirements for duplication of benefits imposed by Federal Register notice on the City (81 Fed. Reg. 36564). The Federal Register notice requires compliance with the following HUD guidance documents: (1) the guidance published by HUD in the Federal Register on November 16, 2011 (76 Fed. Reg. 71060); and (2) the guidance document entitled "HUD Guidance on Duplication of Benefit Requirements and Provision of CDBG Disaster Recover (DR) Assistance," issued on July 25, 2013.

44. LIMITED ENGLISH PROFICIENCY (LEP)

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