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**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
HILL INTERNATIONAL, INC.**

**TEMPORARY ACUTE MENTAL HEALTH FACILITY – PROJECT MANAGEMENT
SERVICES**

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THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (“**Owner**” or the “**City**”), and Hill International, Inc., represented by Robert A. Ferguson (the “**Consultant**”). The City and the Consultant may sometimes be collectively referred to as the “**Parties**.” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

RECITALS

WHEREAS, through a federal court order the City has been directed to move forward with renovations of the existing Orleans Justice Center (“OJC”) Temporary Detention Center Buildings (“TDC”) to provide temporary medical and mental health services and housing for acute male and female inmates in OPSO custody; and

WHEREAS, on May 31, 2019, the City requested proposals to provide project management services for renovations of the OJC TDC for use as temporary medical and mental health services and housing;

WHEREAS, on July 22, 2019 the Consultant submitted a proposal for the requested project management services and the City has selected the Consultant to perform the professional services.

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

ARTICLE I – DEFINITIONS

As used in this Agreement, the following terms have the meanings given below:

“**Architect**” means the designer of record for the Project.

“**Consultant**” means the Project Manager (PM) of record for the Project.

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

“**Contract Documents**” means all of the graphic and written information prepared or assembled by the Consultant or the Owner for communicating the design and for the bidding and construction of the Project in accordance with all applicable laws, including but not limited to the Instruction to Bidders, the Contract, the General Conditions and any Supplemental Conditions furnished to the Contractor, the drawings and specifications furnished to the Contractor and all exhibits thereto, addenda, bulletins and change orders issued in accordance with the General Conditions to any of the above.

“**Construction Progress Schedule**” means Contractor’s construction progress schedule as approved by the Owner.

“**OPSO**” means the Orleans Parish Sheriff’s Office.

“**Project**” means the renovations to the OJC TDC, which will provide temporary medical and mental health housing and infirmary services.

“Work” means all design services for the entire Project, commencing from the initial concept planning until construction completion and closeout.

ARTICLE II – SCOPE OF SERVICES

A. **BASIC SERVICES**: The Consultant shall provide the basic services as described in this Section below:

1. **PRE – DESIGN PHASE**: During this phase, the Consultant shall develop a Master Program Schedule to identify all Project objectives and milestones for the delivery of the Project for pre-construction, construction and post-construction phases of the work.

1.1. **Construction Management Plan**: The Consultant shall prepare a Construction Management Plan for the Project and shall make recommendations to the plan throughout the duration of the Project, as may be appropriate. In preparing the Construction Management Plan, the Consultant shall consider the Owner’s schedule, budget and general design requirements for the Project. The Consultant shall then develop various alternatives for the scheduling and management of the Project and shall make recommendations to the Owner. The Construction Management Plan shall be presented to the Owner for acceptance.

1.2. From the pre-construction phase of the Program Master Schedule, working with the Design Team, and the Court-appointed Monitors, develop a schedule for the design phase incorporating all the necessary activities. Monitor the schedule to ensure that all activities adhere to the schedule.

1.3. **Designer Orientation**: The Consultant shall conduct, or assist the Owner in conducting, a Designer orientation session during which the Designer shall receive information regarding the Project scope, schedule, budget, and administrative requirements.

1.4. **Time Management**

1.4.1. **Master Schedule**: In accordance with the Construction Management Plan, the Consultant shall prepare a Master Schedule for the Project. The Master Schedule shall specify the proposed starting and finishing dates for each major project activity. The Consultant shall submit the Master Schedule to the Owner for acceptance.

1.4.2. **Design Phase Milestone Schedule**: After the Owner accepts the Master Schedule the Consultant shall prepare the Milestone Schedule for the Design Phase, which shall be used for judging progress during the Design Phase.

1.5. **Cost Management**

- 1.5.1. Construction Market Survey: The Consultant shall conduct a Construction Market Survey to provide current information regarding the general availability of local construction services, labor, material and equipment costs and the economic factors related to the construction of the Project. A report of the Construction Market Survey shall be provided to the Owner and Designer.
- 1.5.2. Project and Construction Budget: Based on the Construction Management Plan and the Construction Market Survey, the Consultant shall prepare a Project and Construction Budget based on the separate divisions of the Work required for the Project and shall identify contingencies for design and construction. The Consultant shall review the budget with the Owner and Designer and the Consultant shall submit the Project and Construction Budget to the Owner for acceptance. The Project and Construction Budget shall be revised by the PM as directed by the Owner.
- 1.5.3. Preliminary Estimate and Budget Analysis: The Consultant shall analyze and report to the Owner and the Designer the estimated cost of various design and construction alternatives, including Consultant's assumptions in preparing its analysis, a variance analysis between budget and preliminary estimate, and recommendations for any adjustments to the budget. As a part of the cost analysis, the Consultant shall consider costs related to efficiency, usable life, maintenance, energy and operation.
- 1.6. Establishing the Project MIS: The Consultant shall develop a Management Information System (MIS) in order to establish communication between the Owner, Consultant, Designer, Contractor and other parties involved with the Project. In developing the MIS, the Consultant shall interview the Owner's key personnel, the Designer, and others in order to determine the type of information for reporting, the reporting format and the desired frequency for distribution of the various reports. The MIS shall include procedures for reporting, communications, and administration during the Design Phase.

2. DESIGN PHASE:

- 2.1. During the Design Phase, the Consultant shall provide the following non-exhaustive list of services:
 - Develop a Program Budget to confirm the established City Budget which identifies the hard and soft costs for the Project. The hard costs comprise of the construction and any possible environmental remediation requirements. The soft costs identified could possibly include geotechnical, architectural, special inspections, hazardous material survey, furniture furnishings, and equipment, permit and system development fees, etc. Once established and accepted by the Owner, the Consultant shall make recommendations to the Owner concerning

revisions to the Project and Construction Budget that may result from design changes.

- Assist in preparing all required documents concerning the Project and Construction Budget for use in obtaining or reporting on Project funding. The documents shall be prepared in a format approved the Owner. The Consultant shall assist the Owner in preparing and providing all FEMA requested documentation to ensure project funding is secured both for program eligibility, environmental and historic preservation requirements.
- Recommend revisions to the Master Schedule as necessary. The Owner shall issue, as needed, change orders to the appropriate parties to implement the Master Schedule revisions.
- Monitor compliance with the Design Phase Milestone Schedule.
- Assist the City, OPSO and the Architect in finalizing the prescribed program for the intended construction.
- Provide cost estimating services on behalf of the City to support your review of required design phase detailed cost estimates to assure compliance with the project budget requirements.
- Prepare a complete Constructability Review of the working drawings and specifications and recommend alternative solutions whenever necessary to maintain the Project budget.
- Assist in researching possible energy and waste savings opportunities for new facility.
- Collaborate/communicate with relevant stakeholders (e.g. Monitors, community partners and service providers) as required.

- 2.2. Project Conference: At the start of the Design Phase, the Consultant shall conduct a Project Conference attended by the Designer, the Owner and others as necessary. During the Project Conference the Consultant shall review the Construction Management Plan, the Master Schedule, Design Phase Milestone Schedule, the Project and Construction Budget and the MIS.
- 2.3. Revisions to the Construction Management Plan: During the Design Phase the Consultant shall make recommendations to the Owner regarding revisions to the Construction Management Plan. The Construction Management Plan shall include a description of the various bid packages recommended for the Project. Revisions approved by the Owner shall be incorporated into the Construction Management Plan.
- 2.4. Design Phase Information: The Consultant shall monitor the Designer's compliance with the Construction Management Plan and the MIS, and the Consultant shall coordinate and expedite the flow of information between the Owner, Designer and others as necessary.

- 2.5. Review of Design Documents: The Consultant shall review the design documents and make recommendations to the Owner and Designer as to constructability, scheduling, and time of construction; as to clarity, consistency, and coordination of documentation among Contractors; and as to the separation of the Project into contracts for various categories of the Work. In addition, the PM shall give to the Designer all data of which it or the Owner is aware concerning patents or copyrights for inclusion in Contract Documents. The recommendations resulting from such review shall be provided to the Owner and Designer in writing or as notations on the design documents. The PM's actions in making such reviews and recommendations as provided herein are to be advisory only to the Owner and to the Designer. The PM shall expedite the Owner's design reviews by compiling and conveying the Owner's review comments to the Designer.
- 2.6. Approvals by Regulatory Agencies: The Consultant shall coordinate discussions with the utility companies as well as city, state, federal and other entities during the pre-construction phase to ensure proper compliance with entity requirements. Consultant shall coordinate transmittal of documents to regulatory agencies for review and shall advise the Owner of potential problems resulting from such reviews and suggested solutions regarding completion of such reviews.
- 2.7. Other Contract Conditions: The Consultant shall assist the Owner to prepare the Supplemental Conditions of the Construction Contract and separate General Conditions for materials or equipment procurement contracts to meet the specific requirements of the Project, and shall provide these to the Designer for inclusion in the Contract Documents.
- 2.8. Cost Control: The Consultant shall prepare an estimate of the construction cost for each submittal of design drawings and specifications from the Designer. This estimate shall include a contingency acceptable to the Owner, Consultant and the Designer for construction costs appropriate for the type and location of the Project and the extent to which the design has progressed. Costs will vary from budget figures included in the Construction Management Plan as amended from time to time. If the budget figure is exceeded, the Owner will give written consent to increasing the budget, or authorize negotiations or rebidding of the Project within a reasonable time, or cooperate with the Consultant and Designer to revise the Project's general scope, extent or character in keeping with the Project's design requirements and sound design practices, or modify the design requirements appropriately. Instead of the foregoing, the Owner may abandon the Project and terminate this Agreement in accordance with Article VII herein below. The estimate for each submittal shall be accompanied by a report to the Owner and Designer identifying variances from the Project and Construction Budget. The Consultant shall facilitate decisions by the Owner and Designer when changes to the design are required to remain within the Project and Construction Budget.

- 2.9. Value Engineering Studies: The Consultant shall provide value engineering recommendations to the Owner and Designer on major construction components, including cost evaluations of alternative materials and systems.
- 2.10. Schedule Reports: In conjunction with the services provided by Paragraph 4.4, the PM shall prepare and distribute schedule maintenance reports that shall compare actual progress with scheduled progress for the Design Phase and the overall Project and shall make recommendations to the Owner for corrective action
- 2.11. Design Phase Reports: The Consultant shall prepare and distribute:
- Project cost reports, which shall indicate actual or estimated costs compared to the Project and Construction Budget and shall make recommendations to the Owner for corrective action;
 - Cash Flow Report; and
 - Design-Phase Change Report, which shall list all Owner-approved changes as of the date of the report and shall state the effect of the changes on the Project and Construction Budget and the Master Schedule.

3. PROCUREMENT PHASE:

- 3.1. Pre-Bid Conference: In conjunction with the Owner and Designer, the Consultant shall assist with the conducting of the pre-bid conferences. These conferences shall be forums for the Owner, Consultant, and Designer to explain the Project requirements to the bidders, including information concerning schedule requirements, time and cost control requirements, access requirements, contractor interfaces, the Owner's administrative requirements and technical information. The Consultant shall emphasize to the bidders their responsibilities regarding the Pre-Bid Construction Schedule specified in the Instructions to Bidders or the Contract Documents.
- 3.2. Addenda: The Consultant shall receive from the Designer a copy of all addenda and shall review addenda for constructability, for effect on the Project, and Construction Budget, scheduling and time of construction, and for consistency with the related provisions as documented in the Bid Documents. The Consultant, if directed by the City, shall prepare an estimate of costs for all Addenda and shall submit a copy of the estimate to the Designer and to the Owner for approval.
- 3.3. Bid Opening and Recommendations: The Consultant shall assist the Owner in the bid opening and shall evaluate the bids for responsiveness and price. Upon receipt of the bids, the Consultant shall evaluate the bids, including alternate bid prices and unit prices, and shall make a recommendation to the Owner concerning the acceptance or rejection of bids and the award of the Construction Contract.
- 3.4. Post-Bid Conference: The Consultant shall conduct a post-bid conference to review Contract award procedures, schedules, Project staffing and other pertinent

issues. Prior to this Post-Bid Conference, the Consultant shall prepare and distribute the following reports:

- 3.4.1. Schedule Maintenance Report: This report shall compare the actual bid and award dates to scheduled bid and award dates and shall summarize the progress of the Project.
- 3.4.2. Project Cost Report: This report shall compare actual contract award prices for the Project with those contemplated by the Project and Construction Budget.
- 3.4.3. Cash Flow Report: This report shall be based on actual contract award prices and estimated other construction costs for the duration of the Project.

3.5. Notice to Proceed: The Consultant shall issue to the Contractor on behalf of the Owner the Notice to Proceed.

4. CONSTRUCTION PHASE:

4.1. During the Construction Phase, the Consultant shall provide the following non-exhaustive list of services:

- Assure proper coordination of the work of any of OPSO's separate contractors which may impact the project or any other activities and responsibilities of the General Contractor to complete the project in accordance with CNO/OPSO's objectives of cost, time and quality. Assure proper coordination of the schedule of activities between contractor and OPSO's designated personnel during construction so as to: 1) minimize interference with existing operations, and 2) avoid unnecessary delays in the work of the contractor.
- Conduct on-site observations and spot checks of the architect/engineer activity and construction work in progress to assure compliance with CNO/OPSO's objectives of cost, time and quality. Confirm that the Architect or other Consultants provide additional details or information if, and when, required at the site for proper execution of the work. Become acquainted with standard or reference specifications referred to in the specifications.
- Consider and evaluate suggestions or recommendations which may be submitted to the Architect by the contractor on CNO/OPSO's behalf, and report the Architect's responses back with recommendations to the CNO/OPSO for consideration.
- Monitor the work of the contractors, architect/engineer team members, and or other consultants to guard CNO/OPSO against defect and deficiencies in the work and services being provided without duplicating or assuming any of the architect's customary, contractual or legal responsibilities.
- Manage the flow of information between CNO/OPSO, Architect and Contractor on CNO/OPSO's behalf to assure the proper flow of information in a manner that creates an organized record of project information, that supports

the completion of the project on time and within budget, and that supports the CNO/OPSO against future claims and compliance with FEMA documentation requirements.

- Assist the architect in establishing and implementing procedures for expediting approval of shop drawings, mock-ups and samples.
- Maintain liaison with the contractor and all subcontractors on the project only through the contractor's superintendent, or project manager.
- Conduct progress meetings and provide minutes and any other documentation that tracks contractors, architect and CNO/OPSO's representative discussions, decisions and actions.
- Monitor the General Contractor to assure that tests at the project site which are required by the contract documents are actually conducted and adequate records and reports are being provided to the City.
- Review special inspections tests and reports and advise CNO/OPSO regarding architect/engineer and Contractor compliance with the requirements of the contract documents.
- Provide regular monitoring of the approved estimate of construction costs and issue monthly budget reports that inform CNO/OPSO of actual and projected costs against the project budget.
- Perform Cost Analysis review for all contracts, amendments, and change orders related to the project.
- Assist in coordinating the procurement and delivery of all required furniture and equipment to ensure they are ordered timely, within budget and that delivery is coordinated with construction completion.
- Coordinate system start-up, training, testing and acceptance of building systems and equipment with CNO/OPSO's designated personnel.

4.2. Pre-Construction Conference: In consultation with the Owner and Architect, the Consultant shall conduct a Pre-Construction Conference during which the Consultant shall review the Project reporting procedures and other requirements for performance of the Work.

4.3. On-Site Management and Construction Phase Communication Procedures: The Consultant shall provide and maintain a management team on the Project site to provide contract administration as an agent of the Owner, and the Consultant shall establish and implement coordination and communication procedures among the Consultant, Owner, Designer, and Contractor.

4.4. Contract Administration Procedures: The Consultant shall establish and implement procedures for reviewing and processing requests for clarifications and interpretations of the Contract Documents; shop drawings, samples and other submittals; contract schedule adjustments; change order proposals; written proposals for substitutions; payment applications; and the maintenance of logs. As

the Owner's representative at the construction site, the Consultant shall be the party to whom all such information shall be submitted. After its review, the Consultant shall provide recommendations to the City/OPSO as required.

- 4.5. Review of Requests for Information, Shop Drawings, Samples, and Other Submittals: The Consultant shall examine the Contractor's requests for information, shop drawings, samples, and other submittals, and Designer's reply or other action concerning them, to determine the anticipated effect on compliance with the Project requirements, the Project and Construction Budget, and the Master Schedule. The PM shall forward to the Designer for review, approval or rejection, as appropriate, the request for clarification or interpretation, shop drawing, sample, or other submittal, along with the Consultant's comments. The Consultant's comments shall not relate to design considerations, but rather to matters of cost, scheduling and time of construction, and clarity, consistency, and coordination in documentation. The Consultant shall receive from the Designer and transmit to the Contractor, all information so received from the Designer.
- 4.6. Coordination of Other Independent Consultants: Technical inspection and testing provided by others shall be coordinated by the Consultant. The Consultant shall receive a copy of all inspection and testing reports and shall provide a copy of such reports to the Designer. The Consultant shall not be responsible for providing, nor shall the Consultant control, the actual performance of technical inspection and testing. The Consultant is performing a coordination function only and the Consultant is not acting in a manner so as to assume responsibility or liability, in whole or in part, for all or any part of such inspection and testing.
- 4.7. Change Orders: The Consultant shall establish and implement a change order control system. All changes to the Contract between the Owner and Contractor shall be only by change orders executed by the Owner.
 - 4.7.1. All proposed Owner-initiated changes shall first be described in detail by the Architect and submitted to the Consultant in a request for a proposal format to be issued to the Contractor. The request shall be accompanied by drawings and specifications prepared by the Designer. In response to the request for a proposal, the Contractor shall submit to the Consultant for evaluation detailed information concerning the price and time adjustments, if any, as may be necessary to perform the proposed change order Work. The Consultant shall review the Contractor's proposal, shall discuss the proposed change order with the Contractor, and endeavor to determine the Contractor's basis for the price and time proposed to perform the changed Work.
 - 4.7.2. The Consultant shall review the contents of all Contractor-requested changes to the Contract time or price, endeavor to determine the cause of the request, and assemble and evaluate information concerning the request. The Consultant shall provide to the Designer a copy of each change request, and the Consultant shall consider in its evaluations of the Contractor's request the Designer's comments regarding the proposed changes.

- 4.7.3. The Consultant shall make recommendations to the Owner regarding all proposed change orders.
- 4.7.4. Effect of Change Orders on the Schedule: Prior to the issuance of a change order, the Consultant shall determine and advise the Owner as to the effect on the Master Schedule of the change. The Consultant shall verify that activities and adjustments of time, if any, required by approved change orders have been incorporated into the Contractor's Construction Schedule.
- 4.7.5. Effect of Change Orders on Cost: The Consultant shall advise the Owner as to the effect on the Project and Construction Budget of all proposed and approved change orders.
- 4.7.6. Change Order Reports: Periodically as needed, the Consultant shall prepare and distribute change order reports. The report shall list all Owner-approved change orders by number, a brief description of the change order work, the cost established in the change order, and percent of completion of the change order work. The report shall also include similar information for potential change orders of which the Consultant may be aware.
- 4.8. Subsurface and Physical Conditions: Whenever the Contractor notifies the Consultant that a surface or subsurface condition at or contiguous to the site is encountered that differs from what the Contractor is entitled to rely upon or from what is indicated or referred to in the Contract Documents, or that may require a change in the Contract Documents, the PM shall notify the Designer. The Consultant shall receive from the Designer and transmit to the Contractor all information necessary to specify any design changes required to be responsive to the differing or changed condition.
- 4.9. Quality Review: The Consultant shall establish and implement a program to monitor the quality of the Work. The purpose of the program shall be to assist in guarding the Owner against Work by the Contractor that does not conform to the requirements of the Contract Documents. The Consultant shall reject any portion of the Work and transmit to the Owner and Contractor a notice of nonconforming Work when it is the opinion of the Consultant, Owner, or Designer that such Work does not conform to the requirements of the Contract Documents. Communication between the PM and Contractor with regard to quality review shall not in any way be construed as binding the Consultant or Owner, or releasing the Contractor from performing in accordance with the terms of the Contract Documents. The PM will not be responsible for, nor does the Consultant control, the means, methods, techniques, sequences and procedures of construction for the Project. It is understood that the Consultant's action in providing quality review under this Agreement is a service of the Consultant for the sole benefit of the Owner and by performing as provided herein, the Consultant is not acting in a manner so as to assume responsibility of liability, in whole or in part, for all or any part of the construction for the Project. No action taken by the Consultant shall relieve the Contractor from its obligation to perform the Work in strict conformity with the

requirements of the Contract Documents, and in strict conformity with all other applicable laws, rules and regulations.

- 4.10. Contractor's Safety Program: The Consultant shall require each Contractor that will perform Work at the site to prepare and submit to the Consultant for general review a safety program, as required by the Contract Documents. The Consultant shall review each safety program to determine that the programs of the various Contractors performing Work at the site, as submitted, provide for coordination among the Contractors of their respective programs. The Consultant shall not be responsible for any Contractor's implementation of or compliance with its safety programs, or for initiating, maintaining, monitoring or supervising the implementation of such programs or the procedures and precautions associated therewith, or for the coordination of any of the above with the other Contractors performing the Work at the site. The Consultant shall not be responsible for the adequacy or completeness of any Contractor's safety programs, procedures or precautions.
- 4.11. Render to the Owner in writing within a reasonable time recommendations concerning disputes between the Contractor and the Owner relating to acceptability of the Work, or the interpretation of the requirements of the Contract Documents pertaining to the furnishing and performing of the Work.
- 4.12. Receive from the Contractor operation and maintenance manuals, warranties, and guarantees for materials and equipment installed in the Project. The Consultant shall deliver this information to the Owner and shall provide a copy of the information to the Designer.
- 4.13. Substantial Completion: The Consultant shall inform the Owner when the Project and the Contractor's Work is substantially complete. In consultation with the Designer, the Consultant shall, prior to the issuance of a certificate of substantial completion, prepare a list of incomplete Work or Work that does not conform to the requirements of the Contract Documents with an associated itemized cost valuation of all of the identified incomplete or non-confirming work. This list shall be attached to the certificate of substantial completion.
- 4.14. Final Completion: In consultation with the Designer, the Consultant shall inform the Owner when the Project and the Contractor's Work is finally completed, the Consultant shall recommend issuance of a certificate of final completion and shall provide to the Owner a written recommendation regarding payment to the Contractor.
- 4.15. Scheduling:
 - 4.15.1. Master Schedule: The Consultant shall adjust and update the Master Schedule and distribute copies to the Owner and Designer. All adjustments to the Master Schedule shall be made for the benefit of the Project. Maintain a construction schedule review and be alert to

conditions which may cause delay in completion and report same to the City. Submit project updates on a regular basis.

- 4.15.2. Contractor's Construction Schedule: The Consultant shall review the Contractor's Construction Schedule and shall verify that the schedule is prepared in accordance with the requirements of the Contract Documents and that it establishes completion dates that comply with the requirements of the Master Schedule.
- 4.15.3. Construction Schedule Report: The Consultant shall, on a bi-weekly basis or as directed by the Owner, review the progress of construction of the Contractor, shall evaluate the percentage complete of each construction activity as indicated in the Contractor's Construction Schedule and shall review such percentages with the Contractor. This evaluation shall serve as data for input to the periodic Construction Schedule report that shall be prepared and distributed to the Contractor, Owner and Designer by the Consultant. The report shall indicate the actual progress compared to scheduled progress and shall serve as the basis for the progress payments to the Contractor. The Consultant shall advise and make recommendations to the Owner concerning the alternative courses of action that the Owner may take in its efforts to achieve Contract compliance by the Contractor. The Consultant may require the Contractor to prepare and submit a recovery schedule as specified in the Contract Documents.
- 4.15.4. Allocation of Cost to the Contractor's Construction Schedule: The Contractor's Construction Schedule may have the total Contract price allocated by the Contractor among the Contractor's scheduled activities so that each of the Contractor's activities shall be allocated a price and the sum of the prices of the activities shall equal the total Contract price. The Consultant shall review the Contract price allocations and verify that such allocations are made in accordance with the requirements of the Contract Documents. Progress payments to the Contractor shall be based on the Contractor's percentage of completion of the scheduled activities as set out in the Construction Schedule reports and the Contractor's compliance with the requirements of the Contract Documents.
- 4.16. Schedule of Values (Each Contract): The Consultant shall, in participation with the Contractor, determine a schedule of values for the construction Contract. The schedule of values shall be the basis for the allocation of the Contract price to the activities shown on the Contractor's Construction Schedule.
- 4.17. Cost Records: In instances when a lump sum or unit price is not determined prior to the Owner's authorization to the Contractor to perform change order Work, the Consultant shall request from the Contractor records of the cost of payroll, materials and equipment incurred and the amount of payments to each subcontractor by the Contractor in performing the Work.

- 4.18. Trade-off Studies: The Consultant shall provide trade-off studies for various minor construction components. The results of these studies shall be in report form and distributed to the Owner and Designer.
- 4.19. Progress Payments: The Consultant, along with the Owner and Architect, shall review the payment applications submitted by the Contractor and determine whether the amount requested reflects the progress of the Contractor's Work. The Consultant shall recommend appropriate adjustments to each payment application and shall prepare and forward to the Owner a progress payment report. The report shall state the total Contract price, payments to date, current payment requested, retainage and actual amounts owed for the current period. Included in this report shall be a Certificate of Payment that shall be signed by the Consultant and the Architect and delivered to the Owner. Review monthly applications for payment by contractors on behalf of the City/OPSO and make recommendations.
- 4.20. Progress Payment Reports (Each Contract): The Consultant shall prepare and distribute the Progress Payment reports. The reports shall state the total Contract price, payment to date, current payment requested, retainage, and amounts owed for the period. A portion of this report shall be a recommendation of payment that shall be signed by the PM and delivered to the Owner for use by the Owner in making payments to the Contractor.
- 4.21. Construction Reports: During the Construction Phase, the Consultant shall prepare and distribute the following reports:
- Schedule Maintenance Reports, which shall compare the projected completion dates to scheduled completion dates of each separate contract and to the Master Schedule for the Project.
 - Project Cost Reports, which shall compare actual Project costs to the Project and Construction Budget.
 - Cash Flow Reports, which shall compare actual cash flow to planned cash flow.
- 4.22 The Consultant shall maintain orderly Project files to contain all relevant Project information that includes but is not limited to: 1) Contracts 2) Schedules, 3) Costs/Budget, 4) Shop drawings/Submittals, 5) RFIs, 6) Payment Applications, 7) Correspondence, 8) Meetings/Minutes, 9) Job site reports, 10) Test reports, 11) Jurisdictional inspections/correction reports, 12) Jurisdictional final inspection notices, 13) Punch lists, and 14) Reproductions of original contract documents including all addenda, change orders and supplementary drawings issued subsequent to the award of the construction contract.

5. **POST – CONSTRUCTION PHASE**: During the Post-Construction Phase, the Consultant shall perform the following services:

- 5.1. Coordinate a punch list walk-thru with the Architect and Contractor in accordance with the Project schedule and Project delivery requirements.
- 5.2. Check each item on the punch list as it is corrected after substantial completion along with the project Architect on behalf of the City/OPSO
- 5.3. Insure that all project close-out items (i.e. bonds, warranties, as-built drawings, jurisdictional final inspection reports, certificate of substantial completion, etc.) have been received from the contractor prior to final payment.
- 5.4. Document any possibilities of claims for damage to work completed prior to occupancy if OPSO occupies the Project or a portion thereof prior to final completion of the work by the contractor.
- 5.5. Coordinate and expedite submittals of information from the Contractor to the Designer for preparation of record drawings and specifications, and shall coordinate and expedite the transmittal of such record documents to the Owner.
- 5.6. Assist the Owner and Architect with compiling manufacturers' operations and maintenance manuals, warranties and guarantees, and certificates, and index and bind such documents in an organized manner prior to the final completion of the Project. This information shall then be provided to the Owner.
- 5.7. Assist the Owner in obtaining an occupancy permit by coordinating final testing, preparing and submitting documentation to governmental agencies, and accompanying governmental officials during inspections of the Project.
- 5.8. Prepare an occupancy plan that shall include a schedule for location for furniture, equipment, and the Owner's personnel. This schedule shall be provided to the Owner. The Consultant shall prepare and distribute reports associated with the occupancy plan.
- 5.9. Continue to provide services related to change orders as specified in Section 4, Paragraphs 4.6, 4.7, and 4.8 above.
- 5.10. Prepare and deliver to the Owner final Project accounting and close out reports at the conclusion of the Project. Consultant shall prepare final the Closeout file as prescribed by the City to assist in FEMA grant closeout.

B. MEETINGS: The Consultant shall:

1. Coordinate and facilitate bi-weekly (or as required) meetings to review the Project requirements and update the Owner on the progress of the Project and other matters during all phases of the Project;
2. Conduct periodic progress meetings attended by the Owner, Designer, and others. Such meetings shall serve as a forum for the exchange of information concerning the Project and the review of design progress. The Consultant shall prepare and

distribute minutes of these meetings to the Owner, Designer, and others as necessary.

3. Project Site Meetings during Construction Phase: Periodically or as required or directed by the Owner, the Consultant shall conduct meetings at the Project site with each Contractor, and the Consultant shall conduct coordination meetings with the Contractor, the Owner and the Designer. The Consultant shall prepare and distribute minutes to all attendees, the Owner and Designer.
4. Prepare meeting minutes to include:
 - i. Original contractual completion date;
 - ii. Revised contractual completion date by change order (with number of change order(s));
 - iii. Current projected completion date (per the contractors' schedule);
 - iv. Total float days;
 - v. Percentage completed;
 - vi. Construction activities status (activities in progress, activities started and activities completed);
 - vii. Outstanding actions should note responsible parties and deadlines for actions;
 - viii. Actions carried over completion; and
 - ix. Other relevant discussions, decisions and actions.
5. Participate in community and agency Design Phase presentation meetings as required;
6. Attend and participate in citizen participation meetings as coordinated by the Office of Neighborhood Engagement of the City of New Orleans to become familiar with the views of the neighborhood, as required;
7. Attend internal hearings including, but not limited to, Design Advisory Committee meetings, Conditional Use Hearings, Environmental Approval meetings, executive level approval meetings, City Planning Commission meetings, or meetings with federal or state agencies.
8. Facilitate and/or attend any other meetings as required for the successful completion of the Project.

C. ADDITIONAL SERVICES: At the request of the Owner via written authorization for any additional services by Amendment, the Consultant shall perform Additional Services and the Consultant shall be compensated for same as provided in Article V of this Agreement. The Consultant shall be obligated to perform Additional Services only after the Owner and

Consultant have executed a written amendment to this Agreement providing for performance of such services. Additional Services may include, but are not limited to:

- Services during the design or construction phases related to investigation, appraisal or evaluation of surface or subsurface conditions at or contiguous to the site or other existing conditions, facilities, or equipment that differs from what is indicated in the Contract Documents, or determination of the accuracy of existing drawings or other information furnished by the Owner;
- Services related to the procurement, storage, maintenance and installation of the Owner-furnished equipment, materials, supplies and furnishings;
- Services related to determination of space needs;
- Preparation of space programs;
- Services related to building site investigations and analysis;
- Preparation of financial, accounting or MIS reports not provided under Basic Services;
- Performance of technical inspection and testing;
- Preparation of an operations and maintenance manual;
- Services related to recruiting and training of maintenance personnel;
- Performing warranty inspections during the warranty period of the Project;
- Consultation regarding replacement of Work or property damaged by fire or other cause during construction and furnishing services in connection with the replacement of such;
- Service made necessary by the default of the Construction Contractor;
- Preparation for and serving as a witness in connection with any public or private hearing or arbitration, mediation or legal proceeding;
- Assisting the Owner with procurement and preparation of contracts in connection with the occupancy of the Project, and providing personnel to oversee the location of furniture and equipment; and
- Any other services not otherwise included in this Agreement.

ARTICLE III – REPRESENTATIONS AND WARRANTIES

The Consultant represents and warrants to the City that:

- A.** The Consultant, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
- B.** The Consultant has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

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

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

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

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

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

H. The Consultant shall exercise reasonable, professional care in its efforts to comply with the requirements of all applicable local, state, and federal laws, codes, and regulations in effect as of the Effective Date.

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

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

ARTICLE IV – OWNER'S RESPONSIBILITIES

A. The Owner shall provide full information regarding its requirements for the Project, including the Owner's budget for the cost of the Work.

B. The Owner shall furnish the services of a geotechnical engineer or other Consultants when such services are recommended by the Consultant, including reports, test borings, test pits, soil bearing values, percolation tests, and water pollution tests and other necessary operations for determining subsoil, air, and water conditions, with appropriate professional interpretations thereof.

C. The Owner reserves the right to conduct auditing services as may be required to ascertain how or for what purposes the Consultant has used the monies paid to it under the Contract.

D. If the Owner observes, or otherwise becomes aware of, any fault or defect in the Project that does not conform to the requirements of the Construction Documents, including the Construction Contract, the Owner shall give prompt written notice thereof to the Consultant.

E. The Owner may furnish surveys, legal limitations, proof of ownership, topographic data, and utility locations for, and a legal description of the site of the Project.

F. The Owner shall furnish tests, inspections and reports pertaining to the site, if available. Owner shall also provide hazardous materials report, Phase I environmental report and wetlands determination. Additionally, the Owner shall provide the services of an independent materials testing laboratory.

G. The Consultant shall have the right to rely on the accuracy and completeness of the information provided by Owner as set out above.

ARTICLE V – COMPENSATION

A. BASIC SERVICES

1. Fees for Basic Services performed under this Agreement, unless otherwise noted by the Owner, shall be based on based on the Consultant's fee proposal as follows:

Based on applicable standards and negotiations with the Consultant as appropriate to the project, the fee for Basic Services is **ONE HUNDRED SIXTY-SEVEN THOUSAND, EIGHT HUNDRED FOURTEEN DOLLARS AND NO/100 (\$167,814.00).**

Payment is to be paid in proportion to the services performed in accordance with the submitted fee proposal. This amount includes the cost of any and all direct expenses incurred and allows for a multiplier of 1.1 percent (10%) times the amount of the invoice for such services for independent engineers, architects and other consultants employed by the Consultant and performing services related to the Project.

Direct personnel expenses ("Direct Personnel Expenses") of employees engaged on the Project by the Consultant include cost of salaries and mandatory and customary benefits, such as statutory employee benefits, insurance, sick leave, holidays, vacations, pensions, and similar benefits and applies to architects, engineers, designers, job captains, draftsmen, project manual writers, and typists in consultation, research, and design; in producing drawings, project manuals, and other documents pertaining to the Project; and in services performed during the Construction Phase at the site. Direct Personnel Expenses are included in the sum above.

2. INVOICING. The Consultant must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result

in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

3. **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.
4. The Owner will make payments of the Consultant's monthly invoice of detailed statements for all categories of services rendered under this Agreement and for all authorized reimbursable expenses incurred within in a timely manner.
5. Partial payments to the Consultant for services rendered will be made monthly by the Owner based upon the percentage of completion of services for each Phase as shown in the Consultant submitted progress reports submitted to the Owner by the Consultant. The reports of progress shall show in detail the status of the services, be subdivided into appropriate phases with the estimated percentage for each phase, and be on a form and with a division of items as approved by the Owner. The invoice shall also show the total of previous payments on account of this Agreement and the amount due and payable as of the date of the current invoice. If applicable, the City will also require that invoices identify costs for work related to Hurricane Katrina damages and costs for work required by the City, if applicable.
6. PM's Account Records: Records of the Consultant's personnel expense, independent engineers', architects' and other consultants' fees and direct expenses pertaining to the Project shall be maintained on the basis of generally accepted account practices and shall be available for inspection by the Owner or the Owner's representative at mutually convenient times for a period of three (3) years after completion of the construction phase Basic Services. Three (3) originals of all invoices shall be submitted to the Owner. The Consultant's Project Number and, if applicable, FEMA Project Worksheet ("PW") number shall appear on all invoices for Basic Services.
7. The Consultant's accounting records of all authorized Reimbursable Expenses, authorized Additional Services, and approved services performed on the basis of a multiple of direct personnel expense shall be kept on a generally recognized accounting basis and shall be available to the Owner or its authorized representative at a mutually convenient time.
8. Document reproduction costs for each phase are included under Basic Services, except as specifically excluded herein.

B. ADDITIONAL SERVICES:

1. The Consultant shall be compensated and payments shall be made for performing Additional Services in an amount and on terms mutually agreeable between the Owner and the Consultant. Payment to the Consultant for Additional Services shall be made on the basis of the Consultant's and the Consultant's sub-consultant's current hourly billing rates as noted in the Consultant's proposal for this project. No additional surcharges shall be added to the Owner approved Additional Services hourly billing rates, not for overhead, nor for profit, nor for anything else.

C. REIMBURSABLE EXPENSES

1. Reimbursable expenses ("**Reimbursable Expenses**") are in addition to compensation for Basic Services and Additional Services and include actual expenditures made by the Consultant, its employees, or its professional consultants in the interest of the Project for the expenses listed in Subparagraphs 1 through 6, herein. Reimbursable Expenses must be authorized, in writing, by the Owner. Reimbursable Expenses include:
 - a. Direct expenses of authorized transportation and living subsistence when traveling in connection with the Project for services beyond Basic Services;
 - b. Net reproduction expenses of drawings and project manuals other than those to be provided under each Phase as part of Basic Services, including net reproduction costs of full-size sets of reproducible record documents and an electronic file in the format direct by the Owner;
 - c. Net fees paid by the Consultant for securing approval of authorities having jurisdiction over the Project;
 - d. Costs of site surveys, soil borings, testing, or other special services when such work is authorized by the Owner to be made part of this Agreement rather than paid directly by the Owner; and
 - e. Authorized reimbursable expenses which are not indicated as "direct" or "net" will be billed at a multiple of ONE AND ONE TENTH (1.10) times the amount billed to the Consultant.

D. MAXIMUM AMOUNT. The maximum aggregate amount payable by the City for all services performed under this Agreement is \$167,814.00. This amount is inclusive of all services and cannot be increased except by a validly executed amendment. The City's obligation to compensate the Consultant under this Agreement will not exceed the maximum aggregate amount payable at any time.

ARTICLE VI – CONTRACT TIME

A. INITIAL TERM. The term of this Agreement shall be for one (1) year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from

appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

B. 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.

C. APPROPRIATION AND/OR EXTENSION. This Agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City and the extension of the Agreement facilitates continuity of services provided herein. This Agreement may be extended by the City on an annual basis for no longer than four (4) one-year periods.

D. SUSPENSION. The City may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Consultant. The Consultant will resume work upon 5 business day's written notice from the City.

ARTICLE VII – TERMINATION OR SUSPENSION

A. The terms of the Agreement shall be binding upon the Parties until the services has been completed and accepted by the Owner and all payments required to be made to the Consultant have been made. This Agreement may be terminated in writing under any or all of the following conditions:

1. By mutual agreement and consent of the Parties;
2. By the Owner upon the completion of any Phase;
3. By the Owner due to the departure for whatever reason of any principal member or members of the Consultant's firm;
4. By the Owner for convenience by giving the Consultant written notice of said intention to terminate at least thirty (30) days prior to the date of termination; or
5. By the Owner for cause, effective immediately upon sending written notice to the Consultant. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 30 days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

B. Upon termination, the Consultant shall deliver to the Owner all plans and records of Work compiled up to the date of termination and the Owner shall pay in full for Work

accomplished up to the date of termination, including any retained percentage earned to date.

C. Failure of the Consultant to provide the services to be performed during the Scope Phase, the Schematic Design Phase, or the Design Development Phase within the times stipulated will be deemed as a breach of this Agreement and will subject this Agreement to cancellation by the Owner upon Consultant's receipt of seven (7) days written notice. The Owner will not be liable to the Consultant for payment on any phase of work that has not been completed and delivered to the Owner prior to the Agreement being canceled.

D. Upon termination of this Agreement, the Owner shall be free to use any or all plans, project manuals, or documents, for which compensation has been paid in full, as it desires without further additional compensation to the Consultant. The Consultant shall not be liable for any re-use of plans, designs, specifications, or other construction documents by the Owner if the Consultant is not involved in the re-use project.

E. Should this Agreement be terminated for any reason other than satisfactory completion of all services and obligations described herein, neither party shall be obligated to fulfill any remaining provisions of this Agreement at any future date.

F. In the event of termination by the Owner due to failure of the Consultant to perform satisfactorily, the Consultant shall receive no additional compensation beyond that already due and any Work done shall become the property of the Owner.

G. In the event of the death of any of the principals of the corporation or loss of any key employees engaged in the rendering of design services for this project, the Consultant shall provide the Owner with evidence of Consultant's ability to continue to render unimpaired design services both as to quality and required schedule for completion.

H. The Consultant shall not suspend services at any time under the Agreement unless directed in writing by the Owner or as agreed upon by the Consultant and the Owner. Suspension of services shall be grounds for termination.

I. Should the project be reactivated, the new base fixed fee will be computed on the basis of a revised construction budget. The new base fixed fee may be reduced, based on previous fees paid, but in no case shall the new base fixed fee be reduced by more than the fees paid prior to the termination or suspension.

ARTICLE VIII – RECORDS RETENTION AND ACCESS

A. The Consultant will grant the City, the State of Louisiana, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representative(s) access to any books, documents, papers, and records of the Consultant which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.

B. The Consultant will retain all required records for three (3) years after the City makes final payments and all other pending matters related to the Agreement are closed.

ARTICLE IX – OWNERSHIP OF DOCUMENTS

A full set of final Bid Documents and CD of layouts and flow charts shall be the property of the Owner and shall be delivered to the Owner upon completion of the Project. Upon final payment, all data collected and all products of work prepared, created or modified by Consultant in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Consultant's personnel and administrative records and any tools, systems, and information used by the Consultant to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Consultant's consent and for no additional consideration to the Consultant. Any re-use of the documents by the Owner will be in accordance with as the laws of the State of Louisiana.

ARTICLE X – INDEMNIFICATION

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

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

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

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

ARTICLE XI – INSURANCE

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

a. Minimum Requirements:

- i. **Commercial General Liability (CGL):** Including contractual liability insurance, products and completed operations, person injury, bodily injury, property damage, advertising injury, abuse and molestation, and any other type of liability for which this Contract applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate for personal injury, bodily injury, and property damage. Commercial General Liability Insurance shall be written on an "occurrence" form. .
- ii. **Workers' Compensation:** as required by the State of Louisiana, with Statutory Limits and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- iii. **Professional (Errors and Omissions) Liability Insurance:** Insurance appropriate to the Contractor's profession with limits of liability of not less than \$2,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this Contract.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. The definition of Contractual Liability shall be amended to state that liability under a contract of professional services is covered. The Contractor shall ensure that coverage under this policy continues for a period of thirty-six months.

- iv. **Automobile Liability Insurance:** Using Insurance Services Office (ISO) Form Number CA 00 01 or its substantial equivalent including liability coverage for all autos owned, rented, hired or borrowed as well as liability for mobile equipment subject to compulsory insurance or financial liability laws or other motor vehicle insurance laws with limits of not less than \$500,000 per accident for bodily injury or property damage. Policy to include the Broad Form Transportation Pollution Form CA 99 48, or most current form available.

- v. Umbrella Insurance: Limits of liability excess of Employer's Liability Insurance, Commercial General Liability Insurance, and Automobile Liability Insurance in the amount of not less than \$1,000,000.

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

- i. Additional Insured Status. The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming The City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all of the requirements stated herein.

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 must be marked "Y" for Commercial General Liability coverage. The Subrogation Waiver Box must be marked "Y" for Workers Compensation /Employers Liability and Property

- ii. Primary Coverage. For any claims related to this contract, the Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor's coverage.
- iii. Claims Made Policies. If applicable, the retroactive date must be shown and must be before the date of the contract or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase "extended reporting" coverage for minimum of 3 years after the termination of this agreement
- iv. Waiver of Subrogation. The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by

virtue of the payment of any loss under insurance required by this contract.

- v. Notice of Cancellation. Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except with prior notice to the City of no less than 30 days.
- vi. Acceptability of Insurers. Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best's rating of no less than A:VII, unless otherwise acceptable to the City.
- vii. The obligations of the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the contract/agreement.

c. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: CEA) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

- i. Copies of all policies of insurance, including all policies, forms, and endorsements;

d. Without notice from the City, the Contractor will:

- i. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
- ii. 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.

ARTICLE XII – COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS

The Consultant shall comply with applicable federal, state, and local laws and ordinances, as shall all others employed by the Consultant in carrying out the provisions of this Agreement. As applicable, the Consultant will also comply with the following, each incorporated herein by reference:

- B. Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);
- C. The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);
- D. Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- E. Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. § 1857(h)), section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- B. Mandatory standards and policies relating to the energy efficiency, which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94–163, 89 Stat. 871);
- C. Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5); and

All provisions of the Code of the City of New Orleans and Chapter 2, Article XIII, Section 2-1120, as adopted by City Ordinance No. 22,888 M.C.S. (relative to the operations and the authority of the City Inspector General).

ARTICLE XIII – NON-SOLICITATION STATEMENT

The Consultant warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure the subject contract and that it has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

ARTICLE XIV – SUBCONSULTANTS

The City may require information regarding ownership interests in the subcontractor prior to approval of the subcontractor's retention. The Consultant shall incorporate by reference in all subcontracts the provisions of this Article and shall require all subcontractors in this subsection shall constitute a material breach of this Agreement.

ARTICLE XV - NON-DISCRIMINATION

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Consultant (1) will not discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Consultant's employees are

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

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

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

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

ARTICLE XVI – BAN-THE-BOX

A. Compliance with City's Hiring Requirements - Ban the Box.

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

- iv. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

ARTICLE XVII – INDEPENDENT CONTRACTOR

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

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

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

D. WAIVER OF BENEFITS. The Consultant, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

ARTICLE XVIII – CONFLICT OF INTEREST

In the interest of ensuring that efforts of the Consultant do not conflict with the interests of the City, and in recognition of the Consultant's responsibility to the City, the Consultant agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Consultant. It is incumbent upon the Consultant to notify the City and provide full disclosure of the possible effects of such employment on the Consultant's

independent work on behalf of the City. Final decision on any disputed offers of other employment for the Consultant shall rest with the City Attorney.

ARTICLE XIX – REQUEST FOR INFORMATION

Confidentiality. The Consultant will keep all information concerning the Project confidential, except for communications incident to completion of the Project between the Consultant, Designer, and Contractor, and their independent professional engineers, architects and other consultants and subcontractors, and except for publicity approved by the Owner and communications in connection with filings with governmental bodies having jurisdiction over the design or construction of the Project.

All requests for information from individuals and agencies or any media outlet should be directed to the City's designated Project Manager who will refer them to the Mayor's Office of Communications.

ARTICLE XX – JURISDICTION

The Consultant hereby consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of the Consultant.

ARTICLE XXI – CHOICE OF LAW

This Agreement shall be construed and enforced according to the laws of the State of Louisiana, excepting its conflict of laws provisions.

ARTICLE XXII – AUDIT AND INSPECTION

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

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

ARTICLE XXIII – DISADVANTAGED BUSINESS ENTERPRISE PROGRAM ("DBE")

A. IN GENERAL. The Consultant agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for

the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("OSD") oversees the DBE Program and assigns a DBE Compliance Officer ("DBECO") to ensure compliance.

B. MONITORING. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Consultant's use of DBE subcontractors/suppliers ("DBE Entities") through the following actions:

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

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

C. COOPERATION. The Consultant shall:

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

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

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by OSD.
 - a. The Consultant shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Consultant. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
 - b. Reports are required even when no activity has occurred in a monthly period.
 - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
 - d. The Consultant may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
 - a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
 - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
 - c. The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

D. Post-Award Modification. The OSD may grant a post-award modification request if:

1. For a reason beyond the Consultant's control, the Consultant is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Consultant must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Consultant shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

2. The Consultant reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Consultant shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

ARTICLE XXIV – LIVING WAGES

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

ARTICLE XXV – CONVICTED FELON STATEMENT

The Consultant swears that it complies with Section 2-8 (c) of the Code of the City of New Orleans. No Consultant principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

ARTICLE XXVI – OWNERSHIP INTEREST DISCLOSURE

The Consultant shall provide a sworn affidavit listing all persons, natural or artificial, with an ownership interest in the Consultant and stating that no other person holds an ownership interest in the Consultant via a counter letter. For the purposes hereof, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Consultant fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until the required affidavits are submitted.

ARTICLE XXVII – SUB CONSULTANT REPORTING

The Consultant shall provide a list of persons, natural or artificial, who are retained by the Consultant at the time of the Agreement's execution and who are expected to perform work as sub-consultants in connection with the Consultant's work for the City. In regard to any sub-consultant proposed to be retained by the Consultant to perform work on the Agreement with the City, the Consultant must provide notice to the City within (30) days of the retaining said sub-consultant. If the Consultant fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Consultant, take such action as may be necessary to cause the suspension of any further payments until such the required lists and notices are submitted.

ARTICLE XXVIII – EMPLOYEE VERIFICATION

The Consultant swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State

of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all sub-consultants to submit to the Consultant a sworn affidavit verifying compliance with items (i) and (ii) above. The Consultant acknowledges and agrees that any violation of the provisions of this paragraph may subject this Agreement to cancellation, and may further result in the Consultant being ineligible for any public contract for a period of three years from the date the violation is discovered. The Consultant further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the cancellation of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Consultant agrees to provide to the City a sworn affidavit attesting to the above provisions if requested by the City to do so; failure to provide such affidavit upon request shall give the City the option to cancel this Agreement.

ARTICLE XXIX – NOTICES

Except as otherwise provided, this Agreement contains no requirements pertaining to reporting, patent rights, copyrights, or rights in data.

ARTICLE XXX – REMEDIES AND SANCTIONS AGAINST DEFAULT

The City retains all rights and recourse under Louisiana Law to enforce this Agreement or recover damages in connection with any Consultant breach or violation hereof.

ARTICLE XXXI – PERFORMANCE MEASURES

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

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

ARTICLE XXXIII – NOTICE

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

1. To the City:

Vincent A. Smith, Director
Capital Projects Administration
City of New Orleans
1300 Perdido Street, Suite 6E15
New Orleans, LA 70112

&

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

2. To the Consultant:

Robert Ferguson
Hill International, Inc.
5130 Tchoupitoulas Street, New Orleans, LA 70155

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

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

ARTICLE XXXIV – ADDITIONAL PROVISIONS

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

B. **CONFLICTING EMPLOYMENT.** To ensure that the Consultant's efforts do not conflict with the City's interests, and in recognition of the Consultant's obligations to the City, the Consultant will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Consultant will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Consultant's performance of this

Agreement. The City will make the final determination whether the Consultant may accept the other employment.

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

D. ENTIRE AGREEMENT. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

E. LIMITATIONS OF THE CITY'S OBLIGATIONS. The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

F. NO THIRD PARTY BENEFICIARIES. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement. Nothing contained in this Agreement is intended to benefit any person or party, other than the Designer, but for Designer only under the circumstances as specifically defined herein. In addition, it is expressly agreed that neither the Contractor, its subcontractors and suppliers, any other contractors or consultants of the Owner or PM, nor any other person or party providing any part of the design services or work are intended beneficiaries of this Agreement.

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

H. NON-WAIVER. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

- I. PROHIBITION ON POLITICAL ACTIVITY.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.
- J. 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.
- K. 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.
- L. SPECIAL CONDITIONS FOR FEMA CONTRACTS.** The Special Conditions for FEMA Compliance,” attached as Exhibit “A” to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City’s notice to the Consultant that the City intends to seek reimbursement from the FEMA Program in connection with the work to be performed under this Agreement.
- M. 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.
- N. NON – ASSIGNABILITY.** Neither the Owner nor the Consultant shall assign or transfer its interest in this Agreement without the written consent of the other, except that the Consultant may, without approval of the Owner, assign accounts receivable to a commercial bank for securing loans.
- O. TERMS BINDING.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.
- P. CITY’S RIGHT TO APPROVE PERSONNEL.** The City reserves the right to approve or reasonable disapprove all engineers, workers, and other field personnel assigned to the Project.

ARTICLE XXXV – ELECTRONIC SIGNATURE AND DELIVERY

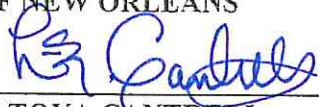
The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to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

[The remainder of this page is intentionally left blank]

[SIGNATURES AND EXHIBIT “A” CONTAINED ON FOLLOWING PAGES]

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

CITY OF NEW ORLEANS

BY: 

LATOYA CANTRELL,
MAYOR

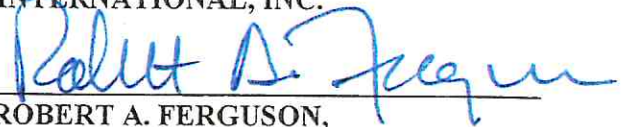
Executed on this 17TH day of January, 2020

FORM AND LEGALITY APPROVED:
Law Department

By: 

Printed Name: Tracy Tyler

HILL INTERNATIONAL, INC.

BY: 

ROBERT A. FERGUSON,
VICE PRESIDENT

 NO.

[EXHIBIT A CONTAINED ON FOLLOWING PAGES]

EXHIBIT "A"

SPECIAL CONDITIONS FOR FEMA COMPLIANCE.

The Consultant is advised that this project is to be funded by FEMA. Notwithstanding any provision of the Agreement to the contrary, the following terms and conditions:

A. **TERMINATION FOR CAUSE:** The City and the Consultant shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefore. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

B. **TERMINATION FOR CONVENIENCE:** The City shall have the right to terminate this Agreement without cause by giving the Consultant written notice of its intent to terminate at least thirty (30) days prior to the date of termination. In the event that the City elects to terminate for convenience, the City shall be obligated to pay the Consultant only for those Services performed up to and through the date of termination.

C. **RECORDS RETENTION AND ACCESS:** Management Agency, the Comptroller General of the United States, or any of their duly

The Consultant shall grant the City, the State of Louisiana, the Federal Emergency authorized representatives, access to any books, documents, papers, and records of the Consultant which are pertinent to this Agreement for the purpose of making audit, examination, excerpts, and

The Consultant shall retain all required records for five (5) years or until such time as the State of Louisiana or the City of New Orleans make final payments and all other pending matters related to the Agreement are closed.

D. **COMPLIANCE WITH APPLICABLE LAWS AND REGULATIONS:** As applicable, the Consultant shall comply with each of the following, all of which are incorporated herein by reference.

- Executive Order 11246 of September 24, 1965, entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967, and as supplemented in Department of Labor regulations (41 CFR chapter 60);
- The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3);

- Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–330) as supplemented by Department of Labor regulations (29 CFR Part 5);
- Standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15);
- 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 (Pub. L. 94–163, 89 Stat. 871)
- Unless duly suspended or revoked, the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5)
- Any and all applicable requirements as required by Federal Uniform Administrative Requirements (Appendix II to 2 CFR Part 200).

E. DEBARMENT, SUSPENSION, AND INELIGIBILITY: The Consultant represents and warrants that it and its sub-recipients are not debarred, suspended, or placed in ineligibility status under the provisions of 24 CFR 24 (government debarment and suspension regulations).

F. REMEDIES AND SANCTIONS AGAINST CONSULTANT'S DEFAULT: The City retains all rights and recourse under Louisiana law to enforce this Agreement or recover damages in connection with any Consultant breach or violation hereof.