

# PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT made and effective as of the \_\_\_\_ day of \_\_\_\_\_, 2024, by and between ST. CHARLES PARISH acting herein by and through its President, who is duly authorized to act on behalf of said Parish, hereinafter called the OWNER, and MB3 INC. D/B/A CIVIX, a Delaware corporation authorized to do and doing business in the State of Louisiana, acting herein by and through its President, hereinafter called CONSULTANT. Whereas the Owner desires to employ a professional consulting firm to perform consulting work and services for RIGHT OF WAY ACQUISITION AND PROGRAM MANAGEMENT Project No. P230901 as described in Ordinance No. \_\_\_\_\_ which is attached hereto and made a part hereof.

## 1.0 GENERAL TERMS

The Owner agrees to employ the Consultant and the Consultant agrees to perform professional services required for the project described above. Consultant will conform to the requirements of the Owner and to the standards of the agencies participating with the Owner in the Project. The Consultant will coordinate all work between the Owner and all participating agencies and regulating agencies, if needed. Written authorization to begin different phases of the project will be given to the Consultant by the Owner, including Conceptual, Preliminary Design, Final Design, Bidding Assistance and Construction and Services. The Owner may terminate the Contract by written notification and without cause per Section 11.0 during any phase of the project.

The Consultant shall at all times during this Agreement maintain a valid Louisiana Consulting License and any other applicable licenses necessary for performance of the Project.

All work shall be under the direction of the Owner, and all plans, specifications, etc. shall be submitted to the Owner and all approvals and administration of this contract shall be through the Owner.

## 2.0 PROJECT

2.1 The Owner hereby contracts with the CONSULTANT to perform all necessary professional services in connection with the project as defined as follows:

RIGHT OF WAY ACQUISITION AND PROGRAM MANAGEMENT  
Project No. P230901

2.2 The Project consist of the scope of services and work as defined in Attachment "A" hereto.

- 2.3 Consultant shall perform all scope of services and work in accordance with the Schedule as defined in Attachment “B” hereto unless otherwise mutually agreed upon by the parties in writing.
- 2.4 The Consultant agrees to comply with all Federal, State, and Local Laws and Ordinances applicable to the scope of services and work or in entering any other agreement with any another party to complete the work.

### **3.0 SERVICES OF CONSULTANT**

- 3.1 Consultant shall provide Owner professional work and services in all phases of the Project to which this Agreement applies and as hereinafter provided to properly plan and execute the work on the project(s) assigned to the Consultant. These services may include but may not be limited to serving as Owner’s professional consulting representative for the Project, providing professional consultation and advice, and furnishing customary civil, surveying, geotechnical, structural, mechanical, electrical, instrumentation and control consulting services and construction consulting and inspection.
- 3.2 Services provided by the Consultant shall be performed in accordance with generally accepted professional consulting practice at the time and the place where the services are rendered.
- 3.3 Consultant shall obtain from Owner authorization to proceed in writing for each phase of the Project.
- 3.4 Consultant shall provide minutes of all meetings with St. Charles Parish regarding any phase of the Project.
- 3.5 Consultant shall provide work and services to complete the project, including all necessary services described herein or usually implied as a prerequisite for the performance of the services whether or not specifically mentioned in this agreement, including attendance by the Consultant at project conferences and public hearings.
- 3.6 The Phases of the Project, if applicable, are as defined in Attachment “A”.

### **4.0 OWNERSHIP OF DOCUMENTS**

- 4.1 Documents including but not limited to plans, specifications, maps, basic survey notes, sketches, charts, computations and all other data prepared or obtained under the terms of this authorization shall become the property of the Owner and shall be made available for Owner’s inspection at any time during the Project and, shall be delivered to the Owner prior to termination or final completion of the Contract. If there is any use of Consultant’s software and documentation, it is licensed for internal purposes, not sold, for the term of this Agreement. Consultant is the sole

and exclusive owner of all right, title, and interest in the software and documentation, including all Intellectual Property Right, and derivatives thereof.

- 4.2 Consultant may retain a set of documents for its files.
- 4.3 Reuse of Documents. Any reuse of documents or materials without written authorization or adaptation by Consultant to the specific purpose intended will be at Owner's sole risk and without liability or legal exposure to Consultant or to Consultant's independent professional associates, subcontractors, and consultants.
- 4.4 No materials, to include but not limited to reports, maps or other documents produced as a result of this Contract, in whole or in part, shall be available to Consultant for copyright purposes. Any such materials produced as a result of this Contract that might be subject to copyright shall be the property of the Owner and all such rights shall belong to the Owner, and the Owner shall be sole and exclusive entity who may exercise such rights.

## **5.0 SUPPLEMENTARY SERVICES**

The Consultant shall provide, when requested in writing by the Owner, supplementary services not included in the basic work and services.

The compensation to the Consultant for the supplemental services, when performed by the Consultant, shall be in the form of a lump sum, billable hours, or "not to exceed" hourly rate which is mutually agreeable to the Owner and the Consultant in writing.

Such supplementary services may include the following:

- A. Soil investigations
- B. Laboratory inspection of materials and equipment
- C. Any major revisions for which the Consultant is not responsible, that are authorized by the Owner after the completion and approval of either the preliminary or final plans and specifications
- D. Services concerning replacement of any work damaged by fire or other causes during construction
- E. Services made necessary by the default of the contractor in the performance of the construction contract
- F. Services as an expert witness in connection with court proceedings
- G. Traffic consulting if necessary
- H. Topographic Survey
- I. Preparation of Environmental Assessment documents and/or Environmental Permits
- J. If all or part of the work is to be financed by a Federal or State Grant, the Consultant shall assist the Owner in the preparation of the Grant application and with the Grant Administration, unless otherwise specifically agreed upon previously herein.

## **6.0 DEFECTIVE WORK**

During such visits and on the basis of such observations, Consultant may disapprove of or reject Contractor's work while it is in progress if Consultant believes that such work will not produce a completed Project that conforms generally to the Contract Documents or that it will prejudice the integrity of the design concept of the Project as reflected in the Contract Documents.

## **7.0 NOTICE TO PROCEED**

The Owner shall notify the Consultant in writing to undertake the services stated in this Agreement, and the Consultant shall commence the services within ten (10) days after receipt of such notification, unless otherwise indicated by Consultant in writing.

If the Owner desires to divide the Project into various parts, a Notice to Proceed shall be issued for each part, and the Owner and the Consultant shall mutually agree upon the period of time within which services for each part of the Project shall be performed.

The Consultant will be given time extensions for delays beyond their control or for those caused by tardy approvals of work in progress by various official agencies, but no additional compensation shall be allowed for such delays.

## **8.0 PAYMENTS**

8.1 Owner shall pay Consultant for the performance of work and services as outlined in Attachment "C" to this Agreement.

8.2 Payment for Consultant work and services on projects that do not require construction services, such as feasibility studies or drainage studies, shall be made based upon a monthly invoice based on the actual hours worked in accordance with the hourly rates provided in Attachment "C".

8.3 If the Project, or any portion thereof, is not completed for any reason, the final fee for consulting work and services shall be negotiated between Owner and Contractor. If the final fee for work and services is not mutually agreed upon, either party may elect in writing to submit the dispute to mediation. If mediation is not mutually agreed upon, written notice will be submitted to the other party of the intent to submit the dispute to the 29<sup>th</sup> Judicial District Court of St. Charles Parish, State of Louisiana.

8.4 If authorized in writing by Owner, for the performance of, or for obtaining from others Additional Services which are not considered normal or customary consulting, the Owner shall pay Consultant based on monthly invoices submitted by the Consultant, within sixty (60) days of receipt of Consultant's invoice. Consultant shall provide written notice to Owner when no services or work have been performed during a given month.

- 8.5 For Additional Authorized Services provided by the Consultant such as, but not limited to, wetlands permitting, land and right-of-way acquisition, surveying, NPDES and LADEQ permit renewal or acquisition work, etc. Owner shall pay Consultant based on an agreed upon hourly rate(s) between the Owner and Consultant. Payment shall be not-to-exceed based on hourly rates and actual hours worked.
- 8.6 The following documentation shall be required for payment to Consultant and shall be attached to the monthly invoice.
- a. A copy of the Owner's written authorization to perform the service.
  - b. Timesheets for all hours invoiced.
  - c. Invoice copies, logs or other substantiation of non-salary expenses.
- 8.7 For Additional Authorized Services that Consultant acquires from subcontractors and/or subconsultants, Owner shall pay Consultant a fixed sum previously agreed upon by Owner and Consultant, such sum to be established in each case when the scope of the work involved has been determined and before any of the Additional Services are provided. The use of subcontractors and/or subconsultants shall be subject to the provisions set forth in this Agreement. The following documentation shall be required for payment to Consultant and shall be attached to the monthly invoice:
- a. A copy of the Owner's written consent for the subcontractor and/or subconsultant to perform the service stating the Owner's and Consultant's agreed upon fixed sum established for the service performed.
  - b. Evidence that the subcontractor and/or subconsultant is insured as required by this Agreement.
- 8.8 For Supplementary Services described in Section 5, Owner shall pay Consultant for the fee negotiated at the time the work is assigned by the method stipulated in the contract amendment.

## **9.0 BUDGET LIMITATIONS**

The budget for this Project shall be determined by the Owner, and the Consultant shall be advised of the budget limitation in writing by the Owner and the Consultant shall indicate his acceptance of same in writing to the Owner. Any subsequent budget revisions shall be confirmed in writing.

## **10.0 FUNDS**

No work shall be authorized until funds are established for each individual task.

## **11.0 TERMINATION OR SUSPENSION**

- 11.1 This Agreement may be terminated for any reason by either party upon thirty (30) days written notice.
- 11.2 The Consultant, upon receipt of such notice, shall immediately discontinue all services in connection with the performance of this Agreement and shall proceed to cancel promptly all existing orders and contracts insofar as such orders or contracts are chargeable to this Agreement.
- 11.3 The Consultant shall, as soon as practicable after receipt of notice of termination, submit a statement showing in detail the services performed and payments received under this Agreement to the date of termination.
- 11.4 The Owner shall then pay the Consultant promptly that portion of the prescribed fee to which both parties agree.
- 11.5 Consultant fully acknowledges that no payment will be made for any work performed or expenses incurred after receipt of the termination by either party unless mutually agreed upon in writing.
- 11.6 Failure to meet agreed delivery dates or authorized extensions are considered substantial failures and breach of this contractual agreement by Consultant.
- 11.7 This agreement shall automatically terminate upon satisfactory completion of all services and obligations described herein or three (3) years from the date of its execution, whichever event occurs first.

## **12.0 INSURANCE**

- 12.1 The Consultant shall secure and maintain at his expense such insurance that will protect him and the Owner, from claims under Workmen's Compensation Acts and from claims for bodily injury, death or property damage which may arise from performance of services under this Agreement. Insurance for bodily injury or death shall be in the unencumbered amount of \$1,000,000.00 for one person and not less than \$1,000,000.00 for all injuries and/or deaths resulting from any one occurrence. The insurance for property damage shall be in the unencumbered amount of \$1,000,000.00 for each accident and not less than \$1,000,000.00 aggregate.
- 12.2 The CONSULTANT shall also secure and maintain at his expense professional liability insurance in the unencumbered sum of \$1,000,000.00.
- 12.3 All certificates of insurance SHALL BE FURNISHED TO THE OWNER and shall provide that insurance shall not be cancelled without ten (10) days prior written notice to the Owner. The Owner may examine the policies.

- 12.4 CONSULTANT shall include all subconsultants as insured under its policies or shall furnish separate certificates for each. All coverages for subconsultants shall be subject to all the requirements stated herein.
- 12.5 CONSULTANT shall secure and maintain at its expense Comprehensive Automobile Liability - Bodily Injury Liability \$1,000,000.00 each person: \$1,000,000.00 each occurrence. Property Damage Liability \$1,000,000.00 each occurrence. The Comprehensive Automobile Liability policy must have coverage for loading and unloading and must include owned, hired and leased autos.
- 12.6 St Charles Parish shall be named as an additional insured on general liability insurance policies.
- 12.7 For all purposes under Louisiana law, the principals of this Contract shall be recognized as the statutory employer of all contract employees as provided in LSA-R.S. 23:1061.
- 12.8 Insurance policies shall be endorsed to provide for a waiver of subrogation in favor of St. Charles Parish for worker's compensation policies. The certificate of insurance shall reference the waiver of subrogation endorsement.
- 12.9 The Worker's Compensation Policy Territory Coverage must include Louisiana.

### **13.0 INDEMNIFICATION**

Consultant shall indemnify and hold harmless the Owner, its employees, agents and representatives, against any and all third party claims, demands, suits or judgments for sums of money to any party for loss of life or injury or damages to person or property growing out of, resulting from or by any reason of any negligent act by the Consultant, its employees, agents, servants or representatives, while engaged upon or in connection with the services required or performed hereunder.

### **14.0 LIMITATION OF LIABILITY**

In no event, shall either Party be liable to the other for any punitive, special, incidental or consequential damages, lost profits or any other indirect damages even if that party has been informed of the possibility thereof. Notwithstanding any provision to the contrary contained in this agreement, and except for indemnification obligations and damages related to a Party's breach of its confidentiality obligations, a Party's maximum liability for any claim, to include breach of contract or tort (including negligence), arising under or otherwise related to this contract shall in no event exceed the value of the prior twelve months of payment for any claim. Nothing in this Section herein shall affect any other rights and remedies of the Parties as set forth in this Agreement, including the indemnification set forth in Section 13.0 above.

**15.0 WARRANTY**

15.1 Consultant warrants that it will perform its design services with the degree of skill and to the standard of care required of the consulting profession to meet all Federal, State and Local requirements.

15.2 The obligations expressed in Section 14 above in no way limit the Consultant's obligations expressed elsewhere in this Contract.

**16.0 EXCLUSIVE JURISDICTION AND VENUE**

For all claims arising out of or related to this agreement, CONSULTANT hereby consents and yields to the exclusive jurisdiction and venue of the Twenty-Ninth Judicial District Court for the Parish of St. Charles, State of Louisiana, and expressly waives any (a) pleas of jurisdiction based upon Consultant's residence and (b) right of removal to Federal Court based upon diversity of citizenship.

**17.0 COMPLIANCE WITH FEDERAL AND STATE LAWS**

CONSULTANT further agrees to comply with all federal and state laws, including those identified in Attachment "D", if applicable

**18.0 OTHER**

This Agreement constitutes the entire agreement between the parties. There are no understandings, agreements, or representations, oral or written, not specified within this Agreement. This Agreement may not be modified, supplemented or amended in any manner, except by written agreement signed by both parties.

IN WITNESS WHEREOF, the parties to these presents have hereunto caused these presents to be executed the day, month and year first above mentioned.

WITNESSES:

ST. CHARLES PARISH

\_\_\_\_\_

\_\_\_\_\_  
By: Matthew Jewell, Parish President

\_\_\_\_\_

\_\_\_\_\_  
Date:

WITNESSES:

MB3 INC. D/B/A CIVIX

\_\_\_\_\_

\_\_\_\_\_  
By: Angele Romig

\_\_\_\_\_

\_\_\_\_\_  
Date:



## **ATTACHMENT “A”**

### **RIGHT OF WAY ACQUISITION AND PROGRAM MANAGEMENT**

**Project No. P230901**

#### **Project Scope:**

CONSULTANT shall perform or engage subconsultants to perform the scope of services described below. The scope of services for each assignment will be defined in the individual Task Order of that assignment.

- a. Right of Entry for Surveys, Exploratory Investigations, and Construction
- b. Title Research, Preparation of Tract Ownership Data/Abstracts of Title, and Mortgage Certificates
- c. Title Opinions
- d. Surveying, Right of Way Maps, Tract Plat Maps, and Legal Descriptions
- e. GIS and Mapping Support Services
- f. Permitting
- g. Appraisal Plan, Appraisal Reports, Appraisal Reviews and Appraisal Updates
- h. Document Preparation
- i. Negotiations
- j. Relocations
- k. Curative Title
- l. Check Requests and Receipts
- m. Recordation
- n. Expropriation Support Services
- o. Cost Accounting
- p. Meetings, Project Management, and Status Reporting

**ATTACHMENT “B”**

**RIGHT OF WAY ACQUISITION AND PROGRAM MANAGEMENT  
Project No. P230901**

**Project Schedule:**

The schedule of services for each Task Order will be established at the time the Task Order is issued.

## ATTACHMENT “C”

### RIGHT OF WAY ACQUISITION AND PROGRAM MANAGEMENT Project No. P230901

#### PROJECT COSTS:

The maximum limitation of this contract is not-to-exceed \$ 150,000.00 . When a Task Order is issued, a fee for the individual services will be identified. The total of all Task Orders cannot exceed the maximum limitation stated above.

#### BILLABLE RATES:

Employee Classifications	Billable Hourly Rate
Principal	\$215.00
Project Manager	\$150.00
Senior GIS/Mapping Technician	\$135.00
Senior Planner	\$145.00
Senior Land Specialist	\$130.00
Land Specialist	\$120.00
GIS/Mapping Technician	\$110.00
Graphics Specialist	\$100.00
Abstractor	\$105.00
Junior Land Specialist	\$85.00
Administrative	\$75.00

The billable hourly rates provided above represent year 1 rates. An increase of three percent will occur in years 2 and 3.

ATTACHMENT “D”

RIGHT OF WAY ACQUISITION AND PROGRAM MANAGEMENT

Project No. P230901

**2 CFR Part 200 - PROVISIONS FOR FEMA PUBLIC ASSISTANCE FUNDING** - Since this contract may be eligible for FEMA reimbursement, the following provisions may be applicable to this bid solicitation and subsequent Contract.

**EQUAL EMPLOYMENT OPPORTUNITY (2 CFR 200 Appendix II(C))** – Applies to all construction contracts - *"During the performance of this contract, the CONSULTANT agrees as follows:* The CONSULTANT will comply with all provisions of Executive Order No. 11246 of Sept. 24, 1965 entitled “Equal Employment Opportunity,” as amended by Executive order 11375 of October 13, 1967, as supplemented in Department of Labor regulation. CONSULTANTS are not to exclude from participation in, deny the benefits of, or subject to discrimination under any program or activity, any person in the United States on the grounds of race, color, religion, sex, sexual orientation, gender identity, national origin, disability, or veteran status; nor discriminate on the basis of age under the Age Discrimination Act of 1975, or with respect to an otherwise qualified handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, or on the basis of religion, except that any exemption from such prohibition against discrimination on the basis of religion as provided in the Civil Rights Act of 1964, or Title VI and VII of the Act of April 11, 1968, shall also apply.

**COMPLIANCE WITH REPORTING REQUIREMENTS (2 CFR 200.327-.329)** – Applies to all contracts - In the event of a declared emergency, CONSULTANTS are subject to FEMA and/or GOHSEP reporting requirements, i.e. program performance, financial and progress reports. CONSULTANT shall complete and submit all reports, in such form and according to such schedule as may be required by the Owner / Agency.

**BYRD ANTI-LOBBYING AMENDMENT (2 CFR 200 Appendix II (I))** – Applies to all contracts - CONSULTANT that apply or bid for a contract must certify that it will not and has not used any Federal funds to influence an employee or member of Congress in obtaining any Federal Award.

**ACCESS TO RECORDS (2 CFR 200.336)** – Applies to all contracts - The State of Louisiana, the Federal agency providing the assistance for this contract, the Comptroller General of the United States, St. Charles Parish, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the CONSULTANT which are directly pertinent to this specific contract, for the purpose of audits, examinations, and making excerpts and transcriptions. All records connected with this contract will be maintained in a central location by the CONSULTANT and St. Charles Parish, respectively, for a period of three (3) years from the date of the submission of the grantee’s final expenditure report.

**RETENTION OF RECORDS (2 CFR 200.333)** – Applies to all contracts - In the event of a declared emergency, CONSULTANT shall retain all required records for three years after the termination date of the contract and all other pending matters are closed.

**ENERGY EFFICIENCY – Appendix II(H) – Applies to all contracts** - CONSULTANT agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan (LA RS 40:1730.49) issued in compliance with the Energy Policy and Conservation Act (Public Law 94-163, as amended).

**PROHIBITIONS OF AWARDS TO DEBARRED AND SUSPENDED PARTIES (2 CFR 200 Appendix II (I)) – Applies to all contracts** - The CONSULTANT represents and warrants that it and its SubCONSULTANTS are not debarred, suspended, or placed in ineligibility status under the provisions of the provisions of E.O.s 12549 and 12689. To ascertain whether a CONSULTANT or SubCONSULTANT has been excluded from participating in a contract or subcontract receiving Federal financial assistance, a search of the Excluded Parties List System can be conducted using the System for Award Management provided by the General Services Administration at <https://www.sam.gov>.

The CONSULTANT must notify the Owner in the event of it and its SubCONSULTANTS being debarred, suspended, or declared ineligible by any department or agency of the Federal Government, or upon receipt of a notice of a proposed debarment or suspension, either prior to or after execution of a contract.

Upon notice of debarment, suspension, or declaration of ineligibility, the CONSULTANT and/or its SubCONSULTANTS is/are ineligible to enter into contracts with the Owner, any department, or agency of the Federal Government. The Owner reserves the right to review cause for said debarment, suspension, or declaration of ineligibility, and to terminate this contract according to the terms of this section.

**PROCUREMENT OF RECOVERED MATERIALS (2 CFR 200 Appendix II (J) See 200.322) – Applies to all contracts** - The CONSULTANT and its SubCONSULTANTS will comply with Section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA). The requirements of Section 6002 include procuring only items designated in the guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the CONSULTANT purchases \$10,000 or more worth of one of these items during the course of the fiscal year or where the cost of such items or of functionally equivalent items purchased during the preceding fiscal year was \$10,000 or more; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for the procurement of recovered material identified in the EPA guidelines.

**BONDING REQUIREMENTS (2 CFR 200.325) – Applies to all construction or facilities improvement contracts in excess of the Simplified Acquisition Threshold (SAT = \$250,000 as of 8/31/2020)** – Bonding requirements include:

- a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon

acceptance of the bid, execute such contractual documents as may be required within the time specified.

- b) A performance bond on the part of the CONSULTANT for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the CONSULTANT’s obligations under such contract.
- c) A payment bond on the part of the CONSULTANT for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

**COPELAND “ANTI-KICKBACK” ACT (2 CFR 200 Appendix II (D)) – Applies to all construction or repair contracts in excess of \$2,000.00** - Whoever, by force, intimidation, or threat of procuring dismissal from employment or by any other manner whatsoever induces any person employed in the construction, prosecution, completion or repair of any public building, public work, or building or work financed in whole or in part by loans or grants from the United States to give up any part of the compensation to which he is entitled under his contract of employment, shall be fined under this title or imprisoned not more than five years, or both. The CONSULTANT shall comply with all applicable “Anti-Kickback” regulations and shall insert appropriate provisions in all subcontracts covering work under this contract to ensure compliance by the subCONSULTANTS with such regulations, and shall be responsible for the submission of affidavits required of subCONSULTANTS thereunder except as the Secretary of Labor may specifically provide for variations of or exemptions from the requirements thereof.

**TERMINATION FOR CAUSE AND CONVENIENCE (2 CFR 200 Appendix II(B)) – Applies to all contracts in excess of \$10,000.00** - If, through any cause, the CONSULTANT shall fail to fulfill in a timely and proper manner his obligations under this contract, or if the CONSULTANT shall violate any of the covenants, agreements, or stipulations of this contract, the Owner shall thereupon have the right to terminate this contract by giving written notice to the CONSULTANT of such termination and specifying the effective date thereof, at least five (5) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, and reports prepared by the CONSULTANT under this contract shall, at the option of the Owner, become the Owner’s property and the CONSULTANT shall be entitled to receive just and equitable compensation for any work satisfactorily completed hereunder. Notwithstanding the above, the CONSULTANT shall not be relieved of liability to the Owner for damages sustained by the Owner by virtue of any breach of the contract by the CONSULTANT, and the Owner may withhold any payments to the CONSULTANT for the purpose of set-off until such time as the exact amount of damages due the Owner from the CONSULTANT is determined.

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

**ADMINISTRATIVE AND LEGAL REMEDIES FOR VIOLATION OR BREACH OF CONTRACT (2 CFR 200 Appendix II (A)) – Applies to all contracts in excess of the Simplified Acquisition Threshold (SAT = \$250,000 as of 8/31/2020)** - Any violation or breach

of terms of this contract on the part of the CONSULTANT or the CONSULTANT's subCONSULTANTS may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this contract. The duties and obligations imposed by the contract documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

**CONTRACT WORK HOURS AND SAFETY STANDARDS ACT (2 CFR 200 Appendix II(E)) – Applies to all construction contracts greater than \$100,000.00 where mechanics and laborers are employed** - CONSULTANT shall be in compliance with section 40 U.S.C. 3702 and 3704 of the Contract Work Hours and Safety Standards Act as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each CONSULTANT must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

**CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL (CLEAN WATER) ACT (2 CFR 200 Appendix II (G)) – Applies to all contracts greater than or equal to \$150,000** - CONSULTANT shall be in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

**PROHIBITION ON CONTRACTING FOR COVERED TELECOMMUNICATIONS EQUIPMENT OR SERVICES (2 C.F.R. § 200.216) - Applies to all contracts**

- (a) Definitions. As used in this clause, the terms backhaul; covered foreign country; covered telecommunications equipment or services; interconnection arrangements; roaming; substantial or essential component; and telecommunications equipment or services have the meaning as defined in FEMA Policy 405-143-1, Prohibitions on Expending FEMA Award Funds for Covered Telecommunications Equipment or Services (Interim), as used in this clause—
- (b) Prohibitions.
  - 1. Section 889(b) of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115-232, and 2 C.F.R. § 200.216 prohibit the head of an executive agency on or after Aug.13, 2020, from obligating or expending grant, cooperative agreement, loan, or loan guarantee funds on certain telecommunications products or from certain entities for national security reasons.
  - 2. Unless an exception in paragraph (c) of this clause applies, the CONSULTANT and its subCONSULTANTS may not use grant, cooperative agreement, loan, or loan guarantee funds from the Federal Emergency Management Agency to:

- i. Procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- ii. Enter into, extend, or renew a contract to procure or obtain any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology of any system;
- iii. Enter into, extend, or renew contracts with entities that use covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system; or
- iv. Provide, as part of its performance of this contract, subcontract, or other contractual instrument, any equipment, system, or service that uses covered telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system.

(c) Exceptions.

- 1. This clause does not prohibit CONSULTANTs from providing—
  - i. A service that connects to the facilities of a third-party, such as backhaul, roaming, or interconnection arrangements; or
  - ii. Telecommunications equipment that cannot route or redirect user data traffic or permit visibility into any user data or packets that such equipment transmits or otherwise handles.
- 2. By necessary implication and regulation, the prohibitions also do not apply to:
  - i. Covered telecommunications equipment or services that: i. Are not used as a substantial or essential component of any system; and ii. Are not used as critical technology of any system.
  - ii. Other telecommunications equipment or services that are not considered covered telecommunications equipment or services.

(d) Reporting requirement.

- 1. In the event the CONSULTANT identifies covered telecommunications equipment or services used as a substantial or essential component of any system, or as critical technology as part of any system, during contract performance, or the CONSULTANT is notified of such by a subCONSULTANT at any tier or by any other source, the CONSULTANT shall report the information in paragraph (d)(2) of this clause to the recipient or subrecipient, unless elsewhere in this contract are established procedures for reporting the information.
- 2. The CONSULTANT shall report the following information pursuant to paragraph (d)(1) of this clause:
  - i. Within one business day from the date of such identification or notification: The contract number; the order number(s), if applicable; supplier name; supplier unique entity identifier (if known); supplier



Commercial and Government Entity (CAGE) code (if known); brand; model number (original equipment manufacturer number, manufacturer part number, or wholesaler number); item description; and any readily available information about mitigation actions undertaken or recommended.

- ii. Within 10 business days of submitting the information in paragraph (d)(2)(i) of this clause: Any further available information about mitigation actions undertaken or recommended. In addition, the CONSULTANT shall describe the efforts it undertook to prevent use or submission of covered telecommunications equipment or services, and any additional efforts that will be incorporated to prevent future use or submission of covered telecommunications equipment or services.

(e) Subcontracts. The CONSULTANT shall insert the substance of this clause, including this paragraph (e), in all subcontracts and other contractual instruments.”

**DOMESTIC PREFERENCE FOR PROCUREMENTS (2 C.F.R. § 200.322) - Applies to all contracts and purchase orders for work or products** - As appropriate, and to the extent consistent with law, the CONSULTANT should, to the greatest extent practicable, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States. This includes, but is not limited to iron, aluminum, steel, cement, and other manufactured products. For purposes of this clause:

Produced in the United States means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

Manufactured products mean items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.