

ATTACHMENT – DRAFT AGREEMENT

The following Agreement is a sample provided for purposes of illustration. Final terms and conditions of the Agreement are subject to negotiation by SWBNO and the Consultant.

**PROFESSIONAL SERVICES AGREEMENT
SEWERAGE AND WATER BOARD OF NEW ORLEANS
AND
[CONSULTANT]
FOR
PROGRAM MANAGEMENT FOR LEAD LINE REPLACEMENT PROGRAM**

THIS AGREEMENT (“Agreement”) is made and entered into as of _____, 2026, by and between the **SEWERAGE AND WATER BOARD OF NEW ORLEANS (“SWBNO” or “Board”)**, herein represented by **RANDY HAYMAN**, its **EXECUTIVE DIRECTOR**, and **[CONSULTANT]**, herein represented by **[REPRESENTATIVE]**, duly authorized representative (the **“Consultant”**).

WHEREAS, the Sewerage and Water Board of New Orleans (“Board”) is a political subdivision organized under the law of the State of Louisiana, responsible for providing safe and reliable water, sanitary sewerage and drainage and drainage services throughout New Orleans; and

WHEREAS,; and

WHEREAS, and

WHEREAS,; and

WHEREAS,; and

WHEREAS,; and

NOW THEREFORE, both the Board and the Consultant desire to execute this Agreement to commemorate the engagement and performance by Consultant of the professional services described herein related to Program Management for Lead Line Replacement Program and provide more fully relative thereto, and therefor agree as follows:

I. THE CONSULTANT’S OBLIGATIONS

Consultant’s obligations are fully described in this Agreement and **Exhibit B** attached hereto and hereby made a part of this agreement upon execution by all parties.

A. Services. The Consultant will, accordance with the schedule approved by the Board:

1. Perform all other services and obligations as set forth in herein and in **Exhibit B**.
2. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Consultant as set forth in the Agreement.
3. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the Board, at no additional compensation.
4. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf.
5. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the Board within thirty (30) days after the approval of the associated plan change or amendment; and
6. Provide a project organizations chart depicting the production staff proposal for the work under this agreement. Board approval will be required for the initial version including any subconsultant services and any proposed revisions.
7. Provide a corporate resolution attesting to the authority of the execution of this agreement on its behalf.
8. Cooperate with the Board and any person performing work for the Board.

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

B. Standards. The Consultant, and any person performing work on its behalf, will perform all work under this Agreement in accordance with applicable industry standards.

C. Compliance with Laws. The Consultant, and any person performing work on its behalf, will perform all work under this Agreement in accordance with applicable industry standards.

D. Schedule.

1. The Consultant will perform all work under this Agreement according to the schedule detailed in the applicable Consultant Work Order Proposal.

The Consultant will submit a proposed progress schedule to the Board within fourteen (14) calendar days of receiving written authorization to proceed from the Board and then monthly with each invoice thereafter. As a minimum, the schedules must include a description of the work completed during the reporting period, an update of the remaining work to be complete in the form of an estimate of the fee necessary to complete the balance of the work remaining, explanation of any extra work completed beyond the scope of services along with documentation authorizing such services

2. The Board has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.
3. The Consultant acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Consultant will submit monthly invoices for work performed under this Agreement to the Board no later than ten (10) calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the Board is not liable. All invoices must be signed by an authorized representative of the Consultant under penalty of perjury attesting to the validity and accuracy of the invoice.
2. All invoices will be in a form approved by the Board and shall be accompanied by labor and expense documentation. All direct expenses charged shall be itemized and in accordance with No. 3 below. The Board may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.
3. The Consultant will submit to the Board one (1) original invoice and four (4) copies with any back-up or verification documentation required by the Board. The invoices will be in a form previously approved by the Board and must show at a minimum all services performed in the prior month, all time expended in the performance of those services, the rates for each service provided, the costs for which Consultant seeks reimbursement, and the amount that the Consultant claims is due for those services.
4. Any reimbursement for travel expenses, if allowed, will be capped at the CONUS rates set by the United States General Services Administration for the applicable locality in question (primarily New Orleans unless travel is to another location for Board business and is pre-approved in writing by Board Management).
5. Personal vehicle mileage shall be reimbursed in accordance with the current IRS standard.
6. Air travel must be at the least expensive of published advance-fare coach fares based upon travel times which minimize the total costs to the Board of the air fares and any associated labor expense. Any last-minute airfare ticket purchases will be reimbursed at the applicable 14-day advance fare unless pre-approved by Board Management. Seating upgrades are not reimbursable.

F. Records and Reporting.

1. The Consultant will maintain all books, documents, papers, accounting records, invoices, materials, records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of three years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Consultant will deliver to the Board all plans and records of work compiled through the date of termination.
2. The Consultant will provide reports as requested by the Board.
3. The Consultant is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the Board.

G. Audit and Inspection.

1. The Board shall have the right to audit by its personnel or its authorized representative at all reasonable times, any and all records pertaining to the administration of this contract by the consultant, including its records of any subconsultant(s) employed on the contract. Such records shall be made and kept by the consultant in accordance with generally accepted accounting principles and practices. Records shall include, but are not limited to, accounting records, daily reports, correspondence and subcontract files (hard copies as well as computed readable data, if it can be made available).
2. Records subject to the audit shall also include, but not be limited to, those records necessary to evaluate and verify direct and indirect costs (including overhead allocations) as they may apply to cost and/or change order requests associated with this contract. The Board also reserves the right to interview employees, make photocopies, and inspect any and all records at a reasonable time for a minimum of five (5) years after completion of the project or formal acceptance by the Board of the contract. Consultant shall retain such files of the project as described herein for a minimum of five (5) years after completion of the project or formal acceptance of the contract of the Board.
3. 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. Consultant agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

H. Quality Assurance & Quality Control

1. All Consultant project deliverables and/or contract documents must undergo a quality assurance/quality control including constructability reviews (where construction documents are part of the project deliverables) before documents are submitted to the Board. These reviews yield more accurate deliverables, including but not limited to cost estimates and schedule projections, fewer Consultant contract amendments, higher quality bid documents, responsive and project submittals, fewer change orders during construction, and fewer consultant claims. Quality Assurance/Quality Control-Constructability (QA/QC-C) review costs are part of the project budget.
2. The primary responsibility for this task falls on the Consultant to ensure that necessary coordination is occurring between the Board and the Consultant as well as the various project Subcontractors and Stakeholders. The Consultant must submit a Quality Control Plan (QCP) before beginning work on the project. The QCP is the document against which the Consultant's QA/QC-C compliance efforts are measured.
3. The Consultant must assign QA/QC-C review tasks to a qualified person(s) that are not engaged in day-to-day activities related to the project. If the firm does not have an independent person available, they should retain a QA/QC-C Subconsultant.

Please note that the Board's review of the Consultant's QA/QC-C program in no way releases the Consultant of their professional liability regarding the project submittals and deliverables.

Key Terms Include:

Quality Assurance — A comprehensive program that verifies a process, software application, hardware system, project organization, facility, structure, system or component will perform satisfactorily and safely in service. A recognized benchmark is International Organization for Standardization (ISO) Standard 9001 "Quality Management Systems".

Quality Control — The process of identifying and applying appropriate technical and professional standards when producing project documents that meet or exceed the user's requirements.

Constructability — A review process using experienced persons with extensive construction knowledge early and throughout the design phase to ensure projects are buildable, while also being cost-effective, biddable, and maintainable.

I. Insurance.

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

Consultant shall maintain at its own expense and in good standing, such insurance as will protect the Board, the City of New Orleans, their officers, officials, employees, boards, commissions, and volunteers, and the Consultant itself, from and against any and all claims or damages to public or private property or personal injury, including death, to employees or the public, which may arise from any operations under this contract or any of its subcontracts. The coverage shall contain no special limitations on the scope of protection afforded to the Board or the City. Both the Board and the City shall appear as "Additional Insured" on all Commercial General Liability and Business Automobile Insurance. Any failure to comply with reporting provisions of the policy shall not affect coverage provided to the Board and the City, their officers, officials, employees, boards and commissions, and volunteers. The Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Consultant and its insurers shall agree to waive all rights of subrogation, except on their Professional Liability Policy, against the Board, the City, and their officers, officials, employees, boards and commissions, and volunteers for losses arising from work performed by the Consultant for the Board and the City. Each insurance policy required by this contract shall be endorsed to state that coverage shall not be suspended, voided or canceled by either party, or reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, that has been given to the Risk Manager of the Board. In general, insurance is to be placed with insurers with a Best's

rating of at least A- V, although this requirement may be reviewed and modified by the Risk Manager of the Board in the best interest of the Board. The Risk Manager may also consider performing such review upon written request from Consultant. Consultant shall furnish the Board with certificates of insurance affecting coverage required by this contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

The certificates of insurance are to be received and approved by the Risk Manager of the Board before work commences. In the event of a claim, Consultant shall make applicable insurance policies available for review by the Board. Consultant shall retain its rights to restrict disclosure of Consultant's proprietary information.

The following are the types of insurance policies and the minimum limits of insurance coverage which shall be maintained by Consultant during the entire term of the Contract:

- a) **WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE**, as will protect it from claims under Workers' Compensation Laws. The Workers' Compensations section of the policy shall afford statutory limits and be in accordance with all Louisiana Worker's Compensation Statutes. The Employers' Liability limit shall not be less than \$1,000,000 each accident for bodily injury by accident and \$1,000,000 each employee/policy limits for bodily injury by disease. Whenever any vessel or floating equipment is involved, the insurance shall afford coverage under the Federal Longshoremen's and Harbor Workers' Act, and shall also include protection for injuries and/or death to Masters and Members of the crews of vessels with statutory limits in accordance with the Jones Act.
- b) **COMMERCIAL GENERAL LIABILITY INSURANCE**, with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 general aggregate, including Explosion, Collapse, and Underground Property Damage Hazards. The Products-Completed Operations aggregate limit shall not be less than \$1,000,000 each occurrence. The general aggregate limit shall apply separately to this project.
- c) **BUSINESS AUTOMOBILE INSURANCE**, which shall cover liability arising out of any auto (including owned, hired, and non-owned vehicle). The limit of liability shall not be less than \$1,000,000 each accident for all injuries, property damage, and/or death resulting from any one occurrence.
- d) **ERRORS AND OMISSIONS/PROFESSIONAL LIABILITY INSURANCE**, with a limit of not less than \$2,000,000 each Claim/Aggregate and sufficient to protect the Consultant, the Board, and the City, for a five (5) year period from completion of this contract, against any and all claims which may arise from the Consultant's negligent performance of work described herein.

In addition, Consultant shall be required to furnish to the Risk Manager of the Board all copies of investigative reports with regard to any and all claims filed with the Consultant and his insurance carriers relative to the contract, with the exception of claims filed against its Workers' Compensation Insurance. Such reports shall include date, location, and description of loss as well as amounts of settlements or

judgments in order that annual aggregate limits may be monitored by the Board for Consultant's compliance with these specifications.

The furnishing of insurance as provided above shall not relieve Consultant of its responsibility for losses not covered by insurance. Prior to the signing of the contract, evidence of all such applicable insurance satisfactory to the Board shall be filed with the Risk Manager of the Board. All policies shall be in insurance companies authorized to do business in Louisiana and shall remain in full force and effect until the final completion of the work and acceptance thereof by the authority of the Board. Consultant and/or its insurer shall notify the Risk Manager of the Board at least thirty (30) days in advance of any insurance coverage to be canceled or of any insurance coverage that will expire.

Consultant shall simultaneously furnish the Board evidence of new coverage to be effective the same day and hour of the expired or canceled coverage. In the event Consultant fails to submit this evidence of new coverage five (5) days prior to cancellation date or expiration date of any policy or policies, the Board will obtain the required coverage to become effective on date of cancellation or expiration of said policies. The cost of such new coverage shall be at the expense of Consultant and any expenditure incurred by the Board of this coverage will be deducted from any balance due to Consultant.

2. The Consultant will provide the Board with the following documents within ten (10) calendar days of this Agreement's effective date and at any other time at the Board's request:
 - a. Proof of coverage for each policy of insurance required by this Agreement;
 - b. Copies of all policies of insurance, including all policies, forms and endorsements; and
 - c. Statements disclosing any policy aggregate limit.

3. Without notice from the Board, the Consultant will:
 - a. Replenish policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 - b. Substitute insurance coverage acceptable to the Board within thirty (30) calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
 - c. Notify the Board's Risk Manager in writing within forty-eight (48) hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

J. Indemnity.

1. To the fullest extent permitted by law, the Consultant will indemnify, defend, and hold harmless the Board, 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 Released Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Consultant, its agents, subconsultants, 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.
2. 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, subconsultants, or employees contributed to such gross negligence or willful misconduct.
3. The Consultant has an immediate and independent obligation to, at the Board's option: (a) defend the Board from or (b) reimburse the Board 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.

K. Safety.

1. If this engagement requires the Consultant or subconsultant's employees to enter the Board's facilities or job sites, a senior employee of the Consultant and/or any subconsultant will review the Board's Safety Orientation Notice (Notice) and will explain this Notice to every employee who will enter Board facilities. This Notice is included as a part of the specifications for this contract. In addition, the Consultant shall provide proof of its own safety plan and documentation of its application of Consultant's safety plan to this contract.

II. REPRESENTATIONS AND WARRANTIES.

A. The Consultant represents and warrants that:

1. The Consultant, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement.
2. The Consultant has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
3. The Consultant is bonded, if required by law, and full and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omission of the Consultant, its employees, or its subconsultants in the performance of this Agreement;
4. The Consultant is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Consultant's performance of this Agreement;

5. The Consultant has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the Board and incorporated into this Agreement;
6. The Consultant is not in breach of any federal, state, or local statute or regulation applicable to the Consultant or its operations;
7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Consultant's most favored customer for the same or substantially similar services;
8. The Consultant has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and
9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Consultant and the execution of this Agreement by the Consultant's representative constitutes a sworn statement, under penalty of perjury, by the Consultant as to the truth of the foregoing representations and warranties.

B. Convicted Felon Statement. The Consultant complies with City Code § 2-8(c) and no principal, member, or officer of the Consultant has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

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

D. Employee Verification. The Consultant swears that (i) it is 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 subconsultants to submit to the Consultant a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Consultant being ineligible for any public contract for a period of 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 Board occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Consultant will provide to the Board a sworn affidavit attesting to the above provisions if requested by the Board. The Board may terminate this Agreement for cause if the Consultant fails to provide such the requested affidavit or violates any provision of this paragraph.

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

III. THE BOARD'S OBLIGATIONS.

A. Administration. The Board will:

1. Administer this Agreement through the Business Services Department;
2. Administer the procurement process for lead line replacement contractors;
3. Provide the Consultant documents deemed necessary for the Consultant's performance of any work required under this Agreement; and
4. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Consultant.

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

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

IV. COMPENSATION.

A. Rate of Compensation.

1. Compensation will be paid in accordance with the terms of this Agreement.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the Board in accordance with the terms and conditions of this Agreement.
3. The stated compensation is inclusive, and includes no additional amounts for, the Consultant's costs, including without limitation all expenses relating to overhead, administration, subconsultants, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The Board will not consider or be obligated to pay or reimburse the Consultant any other charges or fees and the Consultant will not be entitled to any additional compensation or reimbursement, except as otherwise specifically provided in any approved Consultant Work Orders made a part of this Agreement.

B. Maximum Amount. The maximum amount payable by the Board under this agreement is **[to be included based on final negotiated contract amount] DOLLARS.**

V. DURATION AND TERMINATION.

A. Initial Term. The initial term of this Agreement is two (2) years from the Effective Date.

B. Extension. The Board may extend the term of this Agreement for no more than eight (8) one-year (1-year) periods pursuant to validly executed amendments, provided that: any extension of this Agreement is subject to and contingent upon the encumbrance of funds; the Board determines that the extension facilitates the continuity of services provided under this Agreement; and the total aggregate term of this Agreement does not exceed ten (10) years.

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

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

E. Termination for Cause. The Board may terminate this Agreement immediately for cause by sending written notice to the Consultant. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the Board's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code §2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

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

VI. DECLARED DISASTER

- A. Declaration.** During the declaration of an emergency by federal, state, and/or local government, the Consultant shall provide support to SWBNO on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Consultant will vary and may need to be adjusted as needs are identified. The Consultant may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours /7 days per week) during the declaration of an emergency.
- B. Task Order. Notification and Personnel.** Prior or during the declaration of an emergency, the SWBNO will notify the Consultant via task order if SWBNO requires the Consultant's support. Upon activation by task order, the Consultant will provide SWBNO with contact information of personnel assigned to the task order; and coordinate with SWBNO to identify any personnel available to meet SWBNO's needs.
- C. Purchase Order.** Once services are identified, SWBNO will issue a purchase order to the Consultant. SWBNO will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.
- D.** The Consultant will ensure that SWBNO is provided with timely and accurate reports and other documentation, as requested.

VI. PERFORMANCE MEASURES

- A. Factors.** SWBNO 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, SWBNO will notify the Consultant. If there is a continued lack of performance after notification, SWBNO 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, SWBNO will invoice the defaulting Consultant for any increase in costs and other damages sustained by SWBNO. Further, SWBNO will seek full recovery from the defaulting Consultant.

VIII. NON-DISCRIMINATION

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

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

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

IX. INDEPENDENT CONSULTANT

- A. Independent Consultant Status.** The Consultant is an independent consultant and shall not be deemed an employee, servant, agent, partner, or joint venture of the Board and will not hold itself or any of its employees, subconsultants or agents to be an employee, partner, or agent of the Board.
- B. Exclusion of Workers' Compensation Coverage.** The Board will not be liable to the Consultant, as an independent consultant as defined in La. R.S. 23:1021(7), for any benefits or coverage as provided by the Workers' 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 Board for the purpose of Worker's Compensation coverage.
- C. Exclusion of Unemployment Compensation Coverage.** The Consultant, as an independent consultant, is being hired by the Board 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 Board 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 Board 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 Board's usual business; and (c) the Consultant has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.
- D. Waiver of Benefits.** The Consultant, as an independent consultant, will not receive from the Board 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 Board under this Agreement.

X. NOTICE

- A.** 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 Board:

General Superintendent
Sewerage and Water Board of New Orleans
625 St Joseph Street, Room 311
New Orleans, LA 70165
(504) 585-2365

AND

8800 South Claiborne Avenue, Room 102
New Orleans, LA 70118
(504) 865-0412

&

Office of Special Counsel
Sewerage & Water Board of New Orleans
625 St. Joseph St., Room 201
New Orleans, Louisiana 70165
(504) 585-2236

2. To the Consultant:

Representative
Consultant Firm Name
[Address 1]
[Address 2]

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. Each party is responsible for notifying the other in writing that references this Agreement of any changes in its address(es) set forth above. Email addresses if set forth are for convenience purposes only.

XI. ADDITIONAL PROVISIONS

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

- C. **Subconsultant Reporting.** The Consultant will provide a list of all natural or artificial persons who are retained by the Consultant at the time of the Agreement's execution and who are expected to perform work as subconsultants in connection with the Consultant's work for the Board. For any subconsultant proposed to be retained by the Consultant to perform work on the Agreement with the Board, the Consultant must provide notice to the Board within 30 days of retaining that subconsultant. If the Consultant fails to submit the required lists and notices, the Board may, after 30 days' written notice to the Consultant, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.
- D. **Prohibition of Financial Interest in Agreement.** No appointed or elected official or employee of the Board shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any appointed or elected official or employee of the Board shall be deemed to be a financial interest of such appointed or elected official or employee of the Board. Any willful violation of this provision, with the expressed or implied knowledge of Consultant, shall render this Agreement voidable by the Board and shall entitle the Board to recover, in addition to any other rights and remedies available to the Board, all monies paid by the Board to Consultant pursuant to this Agreement without regard to Consultant's otherwise satisfactory performance of the Agreement.
- E. **Conflicting Employment.** To ensure that the Consultant's efforts do not conflict with the Board's interests, and in recognition of the Consultant's obligations to the Board, 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 Board 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 Board will make the final determination whether the Consultant may accept the other employment.
- F. **Non-Exclusivity.** This Agreement is non-exclusive and the Consultant may provide services to other clients, subject to the Board's approval of any potential conflicts with the performance of this Agreement and the Board may engage the services of others for the provision of some or all of the work to be performed under this Agreement.
- G. **Assignment.** This Agreement and any part of the Consultant's interest in it are not assignable or transferable without the Board's prior written consent.
- H. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.
- I. **Jurisdiction.** The Consultant consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Consultant.
- J. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of law provisions.
- L. **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 Board

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.

- M. Order of Documents.** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; the Consultant Work Order Proposal; the Task Cost Report.
- N. Limitations of the Board's Obligations.** The Board has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.
- O. 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.
- P. 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.
- Q. Survival of Certain Provisions.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.
- R. 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.
- S. Amendment.** No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.
- T. 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.
- U. 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.

XII. SUPPLEMENTAL TERMS AND CONDITIONS

- A. Permits.** The Consultant shall pay for all necessary permits required to complete the work as defined in this Agreement and the Scope of Work. The Board will assist the Consultant, as needed, to acquire the permits. The Consultant shall remain in compliance to local and state regulations during the entirety of the project. The Board has the authority to terminate the contract if the Consultant does not remain in compliance.

- B. Hazardous Materials Encountered During Excavation.** The Consultant shall not be responsible for any hazardous materials encountered during subsurface excavation that could not reasonably be discovered during construction preparation. The Consultant shall stop all work when hazardous materials are identified and notify the proper authorities. The Consultant shall take any corrective action required by a qualified expert. The Consultant shall not resume work until it is safe to do so and any required permit to continue work under these conditions is obtained.
- C. Key Performance Indicators.** In addition to performance measures detailed in Article VIII of this Agreement, SWBNO will measure the performance of the Consultant through KPIs. The KPIs will be re-negotiated each year with the Board.
1. Production
 - a. Ensure replacement of **1,500** LSLs and GRRs in the **first** year of the program, including schools and licensed childcare facilities.
 - b. Ensure replacement of **7,500** LSLs and GRRs annually, beginning in the **second** year of the program, including schools and licensed childcare facilities.
 - c. Ensure temporary paving is in place, **within the same day** as the service line replacement at a property.
 - d. Ensure restoration of paving, permanently, **within 45 working days of a service line replacement**.
 - e. Ensure replacement of all LSLs and GRRs identified at schools and licensed childcare facilities by end of **2027**.
 - f. Maintain an annual replacement rate in disadvantaged communities that is above the overall annual replacement rate.
 2. Funding
 - a. Identify _____ potential grant and loan opportunities per year, in addition to State Revolving Fund (SRF) and Water Infrastructure Finance and Innovation Act (WIFIA).
 - b. Assist SWBNO with _____ funding applications per year.
 - c. Submit invoices to SWBNO within _____ days of the end of the month, with accounts receivable no more than 90 days.
 3. Equity
 - a. Provide an updated and approved Communications Plan each year, 60 days before year-end, demonstrating a focus on disadvantaged communities.
 - b. Deliver **35%** of the contract value annually using SWBNO Certified DBE firms.
 4. Local economy and workforce development
 - a. Deliver _____ of the labor hours annually using residents of the Orleans Parish.
- D. Privacy and Data Sharing.** The Consultant shall not discuss the program with any member of the media and must direct all questions to the appointed Public Relations contact. The Consultant shall implement necessary safety measures for protecting the personal privacy information of the customers. No data sharing shall occur outside of the approved Consultant team unless authorized by the Board.
- E. Future Regulations.** In addition to the regulations mentioned in this Agreement, the Consultant must also comply with any future regulations that may impact the work done under this Agreement.

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[SIGNATURES CONTAINED ON NEXT PAGES]

IN WITNESS WHEREOF, the **SEWERAGE AND WATER BOARD OF NEW ORLEANS** and **[CONSULTANT FIRM NAME]**, through their duly authorized representatives, execute this Agreement.

SEWERAGE AND WATER BOARD OF NEW ORLEANS

RANDY HAYMAN, EXECUTIVE DIRECTOR

FORM AND LEGALITY APPROVED:
Legal Department

THERON LEVI, LEGAL COUNSEL

CONSULTANT FIRM

[SIGNATORY, POSITION]

FEDERAL TAX I.D.#