

CITY OF NEW ORLEANS
SPECIALTY PAVEMENT AND STREETSCAPE
IMPROVEMENTS CONTRACT
STATE OF LOUISIANA



FINANCIAL AUDIT SERVICES
ISSUED JUNE 6, 2022

**LOUISIANA LEGISLATIVE AUDITOR
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FIRST ASSISTANT LEGISLATIVE AUDITOR
ERNEST F. SUMMERVILLE, JR., CPA

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LOUISIANA LEGISLATIVE AUDITOR
MICHAEL J. "MIKE" WAGUESPACK, CPA

June 6, 2022

The Honorable Patrick Page Cortez,
President of the Senate
The Honorable Clay Schexnayder,
Speaker of the House of Representatives

Dear Senator Cortez and Representative Schexnayder:

This report provides the results of our evaluation of the City of New Orleans' (City) contract for specialty pavement and streetscape and improvements.

We conducted our procedures because an opinion was requested from our office as to whether the City's practice of utilizing an existing pavement maintenance contract as a mechanism for contracting additional public work complied with the Louisiana Public Bid Law (Louisiana Revised Statute 38:2211, et seq). We examined the contracting process and related payments awarded by the City to determine if the contract was appropriately let in accordance with the Public Bid Law and disbursements made under the contract were adequately supported, reasonable, agreed to the terms and specifications of the contract, and properly approved.

Based on Attorney General Opinion 21-0059 issued on July 1, 2021, we found that the City did not comply with Louisiana Revised Statute (R.S) 38:2212, which prohibits a political subdivision from using an annual requirements or delivery order contract process when advertising and letting out a public works project, when it contracted for specialty pavement rehabilitation services for projects in and around the New Orleans area.

We reviewed all expenditures provided by the City that were made under the contract through January 25, 2022, and found instances in which the support provided for the expenditure did not provide adequate detail; amounts charged did not appear to be reasonable based on the scope of the contract; invoices contained charges for items that were either not included on or did not agree to the unit cost per the original bid tabulation or the change order plan; the support did not include evidence of approval by the project manager and/or the City's Fiscal section; and the support did not include a purchase order (PO) or notice to proceed (NTP) or the PO/NTP was dated after the invoice period.

We would like to express our appreciation to the City of New Orleans for its assistance during this engagement.

Respectfully submitted,

Michael J. "Mike" Waguespack, CPA
Legislative Auditor

MJW/aa
NEW ORLEANS STREET IMPROVEMENTS CONTRACT

Louisiana Legislative Auditor

Michael J. “Mike” Waguespack, CPA

City of New Orleans

Specialty Pavement and Streetscape Improvements Contract

June 2022



Audit Control # 80210103

Introduction

The primary purpose of our procedures was to examine the contract and related payments awarded by the City of New Orleans (City) for specialty pavement and streetscape improvement projects on an as-needed basis to determine if the City complied with applicable laws and regulations.

We conducted our procedures because an opinion was requested from our office as to whether the City’s practice of utilizing an existing pavement maintenance contract as a mechanism for contracting additional public work complied with the Louisiana Public Bid Law (R.S. 38:2211, *et seq.*).

Results of Our Procedures

We examined the City’s Specialty Pavement and Streetscape Improvements contract with Hard Rock Construction, L.L.C. (contractor) and reviewed the applicable laws and regulations to determine if the contract was appropriately bid and awarded in accordance with the Public Bid Law. In addition, we reviewed the disbursements made under the contract to determine that payments were for costs that were adequately supported, reasonable, agreed to the cost per unit included in the bid documents, and approved by the appropriate personnel.

Public Works Contract

The City did not comply with R.S. 38:2212, which prohibits a political subdivision from using an annual requirements or delivery order contract process when advertising and letting out a public works project, when it contracted for specialty pavement rehabilitation services for projects in and around the New Orleans area. This appears to be a legal error, as the contracts entered into were for public works projects, not purchasing materials and supplies.

Louisiana Public Bid Law governs the letting of contracts by a local public entity for the completion of a public works project or purchasing materials and supplies. The Public Bid Law does not define “materials and supplies,” but it does define “public works” as the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity [R.S. 38:2211(13)]. The process for letting contracts for

public works is contained in R.S. 38:2212, and the process for letting contracts for purchasing materials and supplies is contained in R.S. 38:2212.1.

In 2017, the City let what it termed to be a “Job Order” contract for specialty pavement rehabilitation services, containing a scope of work related to surface pavement repairs and maintenance on an as-needed basis. The original bid had a total cost of approximately \$3.97 million. See Appendix B for contract and related amendments. This contract was not let out as a public works contract.

Per Section 1.02 of the *Bid Proposal and Construction Specifications*, the scope of the work encompasses removal and reconstruction work accomplished in accordance with construction documents and shall include but is not limited to the following:

- (1) Removing existing pavement and excavating. Hauling and legally disposing of existing pavement and surplus materials from the project site.
- (2) Constructing new concrete curbs or curbs and gutter bottoms.
- (3) Construction of specialty pavement (brick, slate, cobblestone).
- (4) Construction of concrete pavement.
- (5) Repair and/or replacement of drain lines and drainage structures.
- (6) Replacing concrete, brick, slate, cobblestone sidewalks, and driveway aprons.
- (7) Constructing concrete handicap ramps.
- (8) Placing thermoplastic roadway striping.
- (9) Other work incidental to the project.
- (10) Replacing bike racks, benches, and bollards.

All of the above items appear to be public works. Rather than advertise and award separate contracts for each project, the City used the Job Order contract process to extend the original contract while incorporating the additional phases of renovations. To date, it does not appear that the City has let out these public works projects in accord with the Public Bid Law.

The City appears to have used the Job Order contract as an “annual requirements” or “delivery order” contract. Requirements or delivery order contracts are authorized for the purchase of material and supplies pursuant to R.S. 38:2212.1 (*AG Op. Nos. 21-0059, 94-54*). Public entities use requirements or delivery order contracts when they estimate that they will need an unspecified amount of a commodity, such as paper, gravel, food, auto parts, or asphalt, during the course of a fiscal year and the estimated need exceeds the threshold amount that requires the purchase of these materials and supplies be let out for bid [R.S. 38:2212.1(A)(1)(a)]. In this case, the City’s use of the Job Order contract for public works appears to be improper.

We requested an opinion from the Attorney General’s Office regarding whether a political subdivision may use the customary practices that apply to recurring purchases of materials and supplies for public works projects as the City was doing with the Job Order contract process. In response, the Attorney General issued *Opinion 21-0059* on July 1, 2021. In that opinion, the

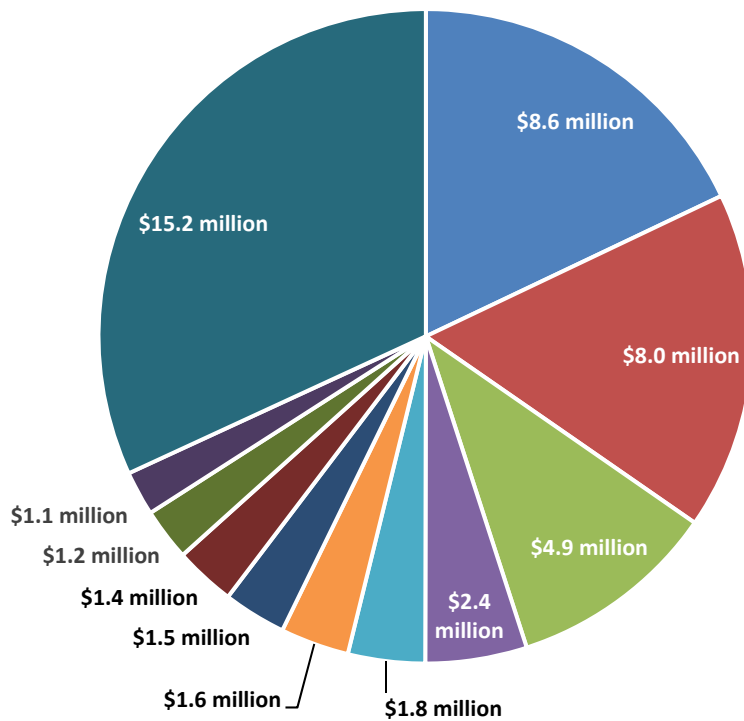
Attorney General notes that the Public Bid Law requires that public entities estimate the probable construction costs of public works based on the scope of work of the project. Public entities must, in good faith, determine if sufficient funds have been budgeted for the construction costs associated with such a project. The Public Bid Law also requires that all public works exceeding \$250,000 per project, including labor, materials, and equipment, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder. The Attorney General distinguished public works contracts from annual requirement contracts for unspecified amounts for materials and supplies, stating that while material and supplies and public works were both “definite and describable,” public works are also “quantifiable.” The Attorney General noted that public works must be quantifiable in order for a public entity to be able to determine the probable construction costs associated with the project as required by the Public Bid Law. For these reasons, the Attorney General concluded that the Public Bid Law prohibits a political subdivision from substituting an annual requirements or delivery order contract process when engaging in public works projects. See Appendix C for *Attorney General Opinion 21-0059*.

Review of Payments

We requested all invoices paid under the contract through January 25, 2022, and reviewed the invoices provided by the City to determine if the invoices were accompanied by supporting documentation; charges on the invoices appeared reasonable within the scope of the contract; the cost per unit for materials agreed to the contractor’s bid tabulation or change order plan; and the invoices or payment requests were approved by the Project Manager and the Department of Public Works (DPW) Fiscal prior to payment processing.

Based on the information provided by the City, there were 277 expenditures totaling \$47,735,157 made under the contract for various projects as shown in Exhibit 1.

Exhibit 1 Expenditures by Project



- Emergency Catch Basin Repairs (\$8,562,823)
- French Quarter Safety Bourbon Street Infrastructure Repairs (\$7,977,587)
- Bocage Maintenance Improvements (\$4,945,335)
- Specialty Pavement & Rehabilitation Services - various streets (\$2,397,134)
- Wall Boulevard (General DeGualle-Pace) (\$1,817,209)
- 2017-2018 Drainage Point Repairs - Dedicated Millage (2019) (\$1,618,251)
- 2020-1 - General Repairs - Dedicated Millage (2020) (\$1,484,556)
- Park Timbers (Maintenance- Westbank) (\$1,433,622)
- Specialty Pavement Rehabilitation Services (General Meyer - Sullen, Bennett) (\$1,234,022)
- Specialty Pavement Rehabilitation Services - Garden Oaks Bike Lane (\$1,048,939)
- Various other projects with expenditures less than \$1 million (\$15,215,679)

In a review of the 277 expenditure transactions provided by the City, we noted the following:

- In three instances (or 1%), the support provided did not provide adequate detail of the amounts charged.
 - In two of the three instances, totaling \$1,447,069, there was no itemized invoice provided to determine the actual items, quantity, and costs per unit charged. However, in both instances, the City provided task orders for plan changes, which included a breakdown of approved items as well as a cost analysis. In addition, an engineering consultant confirmed the items and quantities billed and verified unit prices agreed to the bid tabulation and/or plan change.
 - For one expenditure, the itemized invoices for four work sites totaled \$231,487; however, the total invoice paid was \$251,246, a difference of \$19,759. The City subsequently provided an Excel spreadsheet listing the breakdown of items purchased totaling \$19,759 for the 6200 block of Ponchartrain Boulevard.
- In nine instances (or 3%), the amounts charged did not appear to be reasonable based on the scope of the project.
 - One invoice for the period of 3/9/2020 – 3/15/2020 included a charge of \$188,987 for police detail. Per the change order log, the cost per hour was \$53.95 at 3,503 hours, which does not appear reasonable for a seven-day period. Per discussion with the project manager, this was an estimate of the hours that would be needed over the remaining life of the project based on previous hours charged to date. The City subsequently provided additional support, including email correspondence, timesheets, and invoices. Per the email correspondence, based on an incident that occurred, the City agreed to provide funding for the services of one police officer per day for the project. Timesheets provided as support for the invoice includes an “inspector” for which total hours were 1,972 from January 2019 through November 2019, which totals only \$106,389 at \$53.95 per hour. The City also provided invoices from the City’s Office of Police Secondary Employment totaling \$179,817 and including a 5% administrative fee to recalculate the invoice total. However, the invoices included multiple officers and did not specify the projects or locations for the hours billed. Therefore, the information subsequently provided by the City was not consistent with the invoice for the March 2020 period above totaling \$188,987.
 - One invoice included an expenditure of \$70,525 to remove a pedestrian bridge for which no details were provided as to how the cost was determined.

- There was one invoice for bike racks and installation totaling \$60,583 where only \$7,000 related to bike rack costs was included on the bid tabulation. The remainder of the invoice comprised of \$51,962 for furnishing and installing bike racks in downtown New Orleans and \$1,621 for replacement of bike racks. The amount charged for assembly and installation of downtown New Orleans bike racks (\$3,464 per unit times 15 units) appears excessive. Per its website, ylnola.org, the Young Leadership Council will install bike corrals for \$2,500. The City provided a plan change that included a DPS Independent Cost Estimate and Cost Reasonable Analysis for the items included in the task order. The City stated that it facilitated the bike corral installations through the contract because it was the closest match for the required scope of work.
- There were four expenditures for projects that might be considered outside the scope of the project as listed in the original contract. Those projects included Mardi Gras preparations (\$45,395 in 2018, \$13,266 in 2019, and \$13,266 in 2020), and bundle and stage Christmas Tree for helicopter pickup (\$59,414 per invoice dated April 6, 2021). The City represents that it considers Mardi Gras preparation incidental work to the original scope of the contract as these activities protect the existing drainage system and catch basins from collecting debris/beads.
- There were two invoices that contained “contingency fees” totaling \$22,088 for which no detail was provided as to what materials these amounts included. The City represented that it allowed 10% as contingency to existing items since each site varies and excavation sometimes identifies additional work needed.
- 76 (or 27%) of the invoices contained charges for items that were either not included on or did not agree to the unit cost per the original bid tabulation, plan change log, or change order plans provided. These items totaled approximately \$12.6 million.
- For 40 (or 14%) of the invoices provided, the support did not include evidence that the charges were approved by the Project Manager and/or DPW Fiscal. Per the City’s *Policy Memorandum 113(R)* dated December 14, 2016, the invoice process for job order contracts requires the Project Manager to verify the amount due and approve the request by signing and dating the invoice. The invoice is then sent to the Requisition and Invoice team for review and approval prior to processing payment. These items totaled approximately \$3.4 million.
- For 38 (or 14%) of the transactions, the supporting documentation did not include a purchase order (PO) or notice to proceed (NTP) or the PO/NTP was dated after the invoice period. Per the Standard Operating Procedures of the City’s Project Delivery Unit, after the contract is completed, the Purchasing Buyer shall issue the PO and the requesting department issues an NTP, which acts as the official

authorization to begin work as needed. These items totaled approximately \$6.2 million.

Management's Response

Management acknowledged the concerns raised with this report. Consequently, the City is currently preparing new contract specifications for public works contracts that will provide a definite, describable, and quantifiable scope of work. In addition, the City provided additional support for exceptions originally noted. This documentation was considered and the report was revised accordingly. See management's response at Appendix A.

Under Louisiana Revised Statute 24:513, this report is a public document, and it has been distributed to appropriate public officials.


APPENDIX A: MANAGEMENT'S RESPONSE



DEPARTMENT OF PUBLIC WORKS

CITY OF NEW ORLEANS

TO: Michael J. "Mike" Waguespack, CPA Louisiana Legislative Auditor

FROM: Josh Hartley, P.E., Acting Director 

SUBJECT: CITY OF NEW ORLEANS SPECIALTY PAVEMENT AND STREETScape IMPROVEMENTS
CONTRACT – STATE OF LOUISIANA REPORT RESPONSE MEMO

DATE: May 16, 2022

Mr. Waguespack:

The City of New Orleans Department of Public Works (DPW) has reviewed the Louisiana Legislative Auditor (LLA) report provided on April 29, 2022, regarding the use of the Specialty Pavement and Streetscape Improvements Contract (Contract). The DPW followed City Policy Memorandum No. 113(R) – *Procurement of Public Works and Construction* to advertise a formal bid for the execution of the Contract. Following the formal bid procedures outlined in section II – Formal Bid Procedure of attachment 1 of the policy, the DPW prepared construction specifications, defined a scope of work, and obtained an estimated probable construction cost prior to advertising for public bid.

The scope of work and estimated costs was established using prior work orders of previous contracts, the City's 311 system of resident requests/complaints, and the General Specifications for Street Paving 2015 Edition (Specifications). This allowed the DPW to estimate quantities to be used by the Contract that were definite, describable, and quantifiable. By utilizing the City's 311 requests and previous work orders, the DPW was able to clearly define and quantify the scope of work necessary for the Contract. The Specifications were part of this Contract, as defined in the contract terms, which provided a clear description on the scope of work, including the general scope of work statements provided in the LLA report.

The DPW, following Policy 113(R) received all necessary approvals from the CAO, City Attorney's Office, and Procurement Office, prior to executing the Contract. The lowest responsive and responsible bidder was selected, as defined by the policy and Public Bid Law, to award the Contract. After contract execution, task orders and/or notice to proceeds (NTP) were issued for specific scopes of work as required based on known right-of-way failures and safety hazards to the public. Currently, the DPW must route all task orders/NTPs through the City's Project Delivery Unit and Office of Procurement for approval. The City

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Attorney's Office is not part of this process. In response to the LLA report, the City will revise existing City and/or Departmental policies to incorporate the City Attorney's Office for review and approval of all procurement items, including task orders and NTPs. This will ensure that public bid law is being followed as required on all procurement items and contracts the DPW will utilize in the future.

For the Contract, task orders/NTPs were issued for specific scopes of work as shown in the LLA report. As mentioned, the DPW responded to the LLA, providing the requested invoices and support documentation for the Contract. The DPW has the following statements regarding the concerns in the Review for Payments section of the report:

Bullet 1 - In four instances (or 1%), the support provided did not provide adequate detail of the amounts charged.

Item 1 - Invoice #8499 for \$92,505.77 is provided with itemized breakdown.

Item 2 - The \$19,759 was for work completed on the 6200 block of Pontchartrain Blvd., we have provided an itemized spreadsheet of quantities used on that block.

Bullet 2 - In 16 instances (or 6%), the amounts charged did not appear to be reasonable based on the scope of the project.

Item 1 - A resident was threatening the project team onsite with gun violence. DPW immediately authorized the Police detail for the protection of the workers while the plan change was being prepared and executed. The contractor could not bill against the NTP until the Plan Change was executed, which is why the invoice covers the entire amount charged from 1/2019 to 10/2019. The back up for the number of hours of police detail charged is provided in file named *NSP228 Invoice 7945 \$188,986.85 Police detail back up*. Since then DPW has revised the project specifications to make the contractor responsible for the security of their staff and supplies on each project site.

Item 2 - The invoice and Plan Change 16 XC-039 with the breakdown of the traffic control devices that justify the cost \$33,385 for the bridge closure has been provided.

Item 3 - The plan change with the DPW Independent Cost Estimate and Cost Reasonable Analysis has been provided. The task order included two items that were added as plan changes that did not appear in the original bid. These are the X items. The entire cost of the task order included more than just the original bid item (CS number) for single post and loop installations. It included bike corrals and installation only items. The comparison to a Young Leadership Council bike corral is not an apples-to-apples comparison as YLC is a non-profit organization and the contractor is for profit. While the City does have an agreement with YLC it does not allow the City to fund YLC for installations. Instead, the City facilitated these installations through the Specialty Paving and Streetscape contract because it was the closest match for the required scope of work.

Item 4 - Mardi Gras preparation is considered incidental work to the original scope of work. Mardi Gras preparation activities protect the existing drainage system and catch basins from collecting debris/beads which may lead to clogged drain lines which may cause a need for additional



drainage point repairs. NTP2020-03 is provided to show a breakdown of the incidental work included in Mardi Gras Prep and NTP2020-01 is provided to show scope of work from the original contract.

Item 5 – Section C136.03 of the General Specs which governs this contract states “When the Contractor engages Subcontractors to perform certain portions of the work, he will be paid his actual cost of subcontracting to which ten (10%) percent shall be added for his superintendence, overhead and profit. The Director reserves the right to approve the sub-Contractor for any extra work for the contractor to charge a 10% contingency on subcontractor work.” We have provided invoices with breakdown the individual items listed in the contingency for the invoices totaling \$117,896.06 and \$6,982.00.

Item 6 - Invoice #8499 for \$92,505.77 is provided with itemized breakdown.

Bullet 3 - 116 (or 42%) of the invoices contained charges for items that were either not included on or did not agree to the unit price per the original bid tabulation or change order plan. These items totaled approximately \$14.5 million.

Item 1 – The items on these invoices can be justified by the Plan Changes and NTPs specific to the items. We have collected the majority of the plan changes associated with the work on the 116 invoices and have provided them in the folder named Bullet 3. See spreadsheet for the PC/NTP associated with each invoice.

Bullet 4 - For 74 (or 27%) of the invoices provided, the support did not include evidence that the charges were approved by the Project Manager and/or DPW Fiscal. Per the City’s Policy Memorandum 113(R) dated December 14, 2016, the invoice process for job order contracts requires the Project Manager to verify the amount due and approve the request by signing and dating the invoice. The invoice is then sent to the Requisition and Invoice team for review and approval prior to processing payment. These items totaled approximately \$6.7 million.

Item 1 – Signed invoices are provided for this Bullet. For many of the more recent invoices we do have an initials or signatures from our PM on the actual invoice document. The older invoices may only have the routing sheet or request for payment voucher signed (all that was required at that time for processing). We have recently updated our invoicing process to require signatures on each invoice and routing sheet.

Bullet 5 - For 106 (or 38%) of the transactions, the supporting documentation did not include a purchase order (PO) or notice to proceed (NTP) or the PO/NTP was dated after the invoice period. Per the Standard Operating Procedures of the City’s Project Delivery Unit, after the contract is completed, the Purchasing Buyer shall issue the PO and the requesting department issues an NTP, which acts as the official authorization to begin work as needed. These items totaled approximately \$23 million.

Item 1 – The invoices listed in this item were compared to the City’s Fiscal software and a PO# has been provided where previously missing on the spreadsheet. The Task Order and/or NTP associated with the items within each invoice has been listed in the spreadsheet and provided in



the folder for Bullet 5. In emergency situations, DPW may provide a request to start services prior to the execution of the NTP causing some of invoicing to be out of sequence with the NTP date.

In conclusion, the DPW understands the concerns raised by the LLA report. The DPW is currently preparing new contract specifications for public works contracts that will provide a definite, describable, and quantifiable scope of work. Six (6) contracts, one for each city council district, and a dedicated one to the French Quarter/Central Business District, will be advertised. The DPW will follow revised City Policy 113 (R) – *Procurement of Public Works and Construction* and public bid laws (R.S. 38:2211 and 38.2212). All contracts will have a financial ceiling or maximum allowable amount that can be spent, which will be solely based on what the DPW has allocated from its budget for each contract. The contract duration will be valid for one (1) year and will not have the option to extend the duration in any way. As mentioned above, the City Attorney’s Office will be included on the approval process of the new contracts and NTPs being issued to ensure public bid law is being followed.

This [link](#) will provides access to supporting documentation.

Any follow-up questions may be directed to jwhartley@nola.gov.

Cc: LaToya Cantrell, Mayor City of New Orleans
Norman L. White, Chief Financial Officer/Director of Finance
Joseph W. Threat Sr., Director Project Delivery Unit
Donesia D. Turner, City Attorney



APPENDIX B: CONTRACT AND AMENDMENTS

K17-252

BOND NO. 43BCSHP5636

**REQUIREMENTS CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
HARD ROCK CONSTRUCTION, L.L.C.**

**BID NO. 5001 - 02131
SPECIALTY PAVEMENT REHABILITATION SERVICES**

THIS CONTRACT (the “Contract”) is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “City”), and **Hard Rock Construction, L.L.C.**, represented by Jeffrey D. Young, Member/ Vice President (the “Contractor”). This Contract is effective as of the date of execution by the City (the “Effective Date”).

RECITALS

WHEREAS, on December 22, 2016, the City issued Invitation to Bid Proposal No. 500C – 02131 and its Addendum 1 dated January 24, 2017 (collectively, the “**Invitation to Bid**”), seeking a contractor to provide specialty pavement rehabilitation services at various locations in Orleans Parish as requested by the City (the “**Work**”); as provided in the Invitation to Bid;

WHEREAS, the Contractor submitted a bid dated January 24, 2017 (the “**Contractor’s Bid**”) in response to the City’s Invitation to Bid;

WHEREAS, the City tabulated responsive bids and identified the Contractor as the lowest responsive and responsible bidder to receive the contract to perform the **Work**.

NOW THEREFORE, the City grants and confirms to the Contractor the Contract to perform the Work in strict accordance with the Invitation to Bid and the Contractor’s Bid, and the City and the Contractor, for good and valuable consideration, agree as follows:

A. Obligations of the Contractor. The Contractor will perform all obligations of the Contractor, and be subject to all terms and conditions set forth in this Contract and in the following documents that are incorporated fully into this Contract: the Invitation to Bid; the Contractor’s Bid; and all documents, plans drawings, and specifications incorporated or referenced in the Invitation to Bid and the Contractor’s Bid, including without limitation the Special Specifications and the City’s General Specifications for Street Paving (1999 ed. (rev. 10/1/2001)).

B. Obligations of the City. The City will pay the Contractor at the rates set forth in the Contractor's Bid for the satisfactory performance of this Contract and will perform all obligations of the City and be subject to all terms and conditions set forth in this Contract and any incorporated documents.

C. Obligations of the Surety. Hartford Fire Insurance Company (the "Surety") intervenes in this Contract and binds itself as surety for:

- (1) The faithful performance of all work required of the Contractor by this Contract in the full sum of **THREE MILLION NINE HUNDRED SIXTY – FIVE THOUSAND FIFTY AND 00/100 DOLLARS (\$3,965,050.00)**, and
- (2) The full payment by the Contractor of all payments to be made by the Contractor under this Contract in the full sum of **THREE MILLION NINE HUNDRED SIXTY – FIVE THOUSAND FIFTY AND 00/100 DOLLARS (\$3,965,050.00)**.

Each of these bonds is to be considered separate and distinct, and no payment made by the Surety under either bond shall in any way reduce the obligations of the Surety under the other.

The Surety represents and warrants that it has fully read and understands the terms of the Contract between the City and the Contractor, including all incorporated documents.

The Surety's bonds shall remain in full force and effect, and shall survive the termination of this Contract, but shall be null and void if the Contractor: (a) well and faithfully performs all and each of the obligations assumed by the Contractor in this Contract; (b) promptly pays all wages of laborers, workmen, or mechanics to be employed by the Contractor for all work done or labor performed by the Contractor or by any sub-contractors; or furnished to sub-contractors, and used in the construction, erection, alteration, performance or repairs of the work required by the Contract; (c) promptly pays for all materials or supplies furnished to the Contractor, or by any subcontractor, or to any subcontractor, for the use in machines used in the construction, erection, alteration, performance or repair of the work required by the Contract; (d) fully secures and protects the City, its legal successor(s) and representatives, from all loss or expense of any kind, including premises, including all court costs and attorneys' fees, made necessary or arising from the failure, refusal, or neglect of the Contractor to comply with all of the obligations assumed by it; and (e) promptly delivers all the work required by the Contract to the City, free from any and all claims, liens, and expenses.

The obligations of the Surety will not be affected in any way by any modifications, omissions, or additions in or to the terms of this Contract, the plans or specifications, or in the

manner and mode of payment.

D. Convicted Felon Statement. The Contractor swears that it complies with City Code § 2-8(c). No Contractor 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.

E. Non-Solicitation Statement. The Contractor swears 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 this Contract. The Contractor 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 Contract.

F. Entire Agreement. This Contract, 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 Contract and are without effect to vary or alter any terms or conditions of this Contract.

(Signatures on the following page)

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the City, the Contractor, and the Surety, through their authorized representatives, execute this Contract.

CITY OF NEW ORLEANS

BY: 
MITCHELL J. LANDRIEU,
MAYOR


Executed on this 3rd day of April, 2017.

FORM AND LEGALITY APPROVED:
LAW DEPARTMENT

By: 

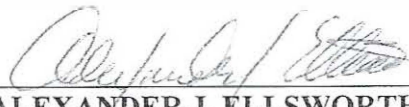
Printed Name: Mitchell Landrieu

HARD ROCK CONSTRUCTION, L.L.C.

BY: 
JEFFREY D. YOUNG,
MEMBER/ VICE- PRESIDENT

TAX ID NO.: 

HARTFORD FIRE INSURANCE COMPANY

BY: 
ALEXANDER J. ELLSWORTH,
ATTORNEY-IN-FACT

K18-383

AMENDMENT NO. 1 TO A REQUIREMENTS CONTRACT
 BETWEEN
 THE CITY OF NEW ORLEANS
 AND
 HARD ROCK CONSTRUCTION, L.L.C.
 BID NO.: 5001-02131
 SPECIALTY PAVEMENT REHABILITATION SERVICES

THIS AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the "City"), and Hard Rock Construction, L.L.C., represented by Jason Juneau, its duly authorized Agent/Officer (the "Contractor"). The City and the Contractor may sometimes be collectively referred to as the "Parties." This Amendment is effective as of April 3, 2018 (the "Effective Date").

RECITALS

WHEREAS, the City and the Contractor are parties to a requirements contract dated April 3, 2017 (the "Contract") for the provision of specialty pavement rehabilitation services on an as-needed basis in accordance with the City's Invitation To Bid No. 5001-02131 (the "Services"); and

WHEREAS, the City and the Contractor, both having the authority to do so, now desire to amend for the Contract for the first time to extend its duration for continuity of services.

NOW THEREFORE, the City and the Contractor amend the Contract as follows:

- 1) **Extension:** The term of the Contract is extended for one (1) year from April 3, 2018 through April 2, 2019.
- 2) **Price:** This is a price protection contract and is not binding insofar as to any specific quantity. The City and the Contractor reaffirm the price proposal dated January 27, 2017 submitted by the Contractor in response to the City's Invitation To Bid No. 5001-02131.
- 3) **Convicted Felon Statement:** The Contractor swears that it complies with City Code § 2-8(c). No Contractor 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.
- 4) **Non-Solicitation Statement:** The Contractor swears 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 this Amendment. The Contractor 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 Amendment.

5) **Electronic Signature and Delivery:** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. 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 Amendment.

6) **Prior Terms Binding:** Except as otherwise provided by this Amendment, the terms and conditions of the Contract remain in full force and effect.

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: 

MITCHELL J. LANDRIEU, MAYOR

Executed on this 19th day of April, 2018.

FORM AND LEGALITY APPROVED:
Law Department

By: 

Name: _____

HARD ROCK CONSTRUCTION, L.L.C.

BY: 

JASON JUNEAU, AGENT/OFFICER


CORPORATE TAX I.D.

K19-108

AMENDMENT NO. 2 TO A REQUIREMENTS CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
HARD ROCK CONSTRUCTION, L.L.C.

BID NO.: 5001-02131
SPECIALTY PAVEMENT REHABILITATION SERVICES

THIS SECOND AMENDMENT (the "Amendment") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and Hard Rock Construction, L.L.C., represented by Jason Juneau, Member/Estimator (the "Contractor"). The City and the Contractor may sometimes be collectively referred to as the "Parties." This Amendment is effective as of April 3, 2019 (the "Effective Date").

RECITALS

WHEREAS, the City and the Contractor are parties to a requirements contract dated April 3, 2017 (the "Contract") for the provision of specialty pavement rehabilitation services on an as-needed basis in accordance with the City's Invitation To Bid No. 5001-02131 (the "Services");

WHEREAS, on April 19, 2018, the City and the Contractor amended the Contract for the first time to extend its term for continuity of services; and

WHEREAS, the City and the Contractor, both having the authority to do so, now desire to further amend for the Contract to extend its term for continuity of services.

NOW THEREFORE, the City and the Contractor amend the Contract as follows:

- 1) **Extension:** The term of the Contract is extended for one (1) year from the Effective Date through April 2, 2020.
- 2) **Price:** This is a price protection contract and is not binding insofar as to any specific quantity. The City and the Contractor reaffirm the price proposal dated January 27, 2017 submitted by the Contractor in response to the City's Invitation To Bid No. 5001-02131.
- 3) **Convicted Felon Statement:** The Contractor swears that it complies with City Code § 2-8(c). No Contractor 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.
- 4) **Non-Solicitation Statement:** The Contractor swears 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 this Amendment. The Contractor 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 Amendment.

5) **Electronic Signature and Delivery:** The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. 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 Amendment.

6) **Prior Terms Binding:** Except as otherwise provided by this Amendment, the terms and conditions of the Contract, as amended, remain in full force and effect.

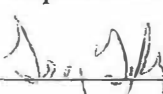
IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL, MAYOR

Executed on this 11 day of February, 2019.

FORM AND LEGALITY APPROVED:
Law Department

By: 
Name: Tracy Tyler

HARD ROCK CONSTRUCTION, L.L.C.

BY: 
JASON JUNEAU, MEMBER/ ESTIMATOR

CORPORATE TAX I.D. NO. 

AMENDMENT NO. 3 TO A REQUIREMENTS CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
HARD ROCK CONSTRUCTION, L.L.C.

BID NO. 5001-02131
SPECIALTY PAVEMENT REHABILITATION SERVICES

THIS THIRD AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented herein by LaToya Cantrell, Mayor (the “**City**”) and Hard Rock Construction, LLC, represented by Jason Juneau, Member/ Estimator (the “**Contractor**”). The City and the Contractor may sometimes be referred to as the “**Parties**”. This Amendment is effective as of April 3, 2020 (the “**Effective Date**”).

RECITALS

WHEREAS, the City and the Contractor are parties to a professional services agreement dated April 3, 2017 (the (“**Agreement**”) for the provision of specialty pavement rehabilitation services on an as-needed basis in accordance with the City’s Invitation to Bid No. 5001-02131. (the “**Services**”);

WHEREAS, on April 19, 2018, the City and the Contractor amended the Agreement for the first time to extend its term for continuity of services;

WHEREAS, on February 11, 2019, the City and the Contractor amended the Agreement for the second time to extend its term for continuity of services;

WHEREAS, the City and the Contractor, both having the authority to do so, now seek to amend the Agreement for a third time to extend its term for continuity of services;

NOW THEREFORE, the City and the Contractor, for good and valuable consideration, agree as follows:

A. Extension: The term of the Agreement is extended for one (1) year from April 3, 2020 through April 2, 2021.

B. Price: This is a requirements contract and is non-binding as to any specific quantity. The parties reaffirm the rates in the Contractor’s bid form dated January 27, 2017, submitted in response to the City’s Invitation to Bid No. 5001-02131.

C. Compliance with the City’s Hiring Requirements – Ban the Box: 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, the 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. 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 the Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Consultant remains noncompliant, the City may move to suspend payments to the Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement. 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. 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.

D. Convicted Felon Statement: The Contractor swears that it complies with City Code § 2- 8(c). No Contractor 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.

E. Non-Solicitation Statement: The Contractor swears 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 this Amendment. The Contractor 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 Amendment.

F. Prior Terms Binding: Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, remain in full force and effect.

(Signatures contained on the following page)

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY: 
LATOYA CANTRELL,
MAYOR

Executed on this 20th day of February, 2020.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

HARD ROCK CONSTRUCTION, L.L.C.

BY: 
JASON JUNEAU,
MEMBER/ ESTIMATOR

FEDERAL TAX I.D. NO. 

K21-080

**AMENDMENT NO. 4 TO A REQUIREMENTS CONTRACT
BETWEEN
THE CITY OF NEW ORLEANS
AND
HARD ROCK CONSTRUCTION, L.L.C.**

**BID NO. 5001-02131
SPECIALTY PAVEMENT REHABILITATION SERVICES**

THIS FOURTH AMENDMENT (the “**Amendment**”) is entered into by and between the City of New Orleans, represented herein by LaToya Cantrell, Mayor (the “**City**”) and Hard Rock Construction, LLC, represented by Jason Juneau, Member/ Estimator (the “**Contractor**”). The City and the Contractor may sometimes be referred to as the “**Parties**”. This Amendment is effective as of April 3, 2021 (the “**Effective Date**”).

RECITALS

WHEREAS, the City and the Contractor are parties to a professional services agreement dated April 3, 2017 (the “**Agreement**”) for the provision of specialty pavement rehabilitation services on an as-needed basis in accordance with the City’s Invitation to Bid No. 5001-02131. (the “**Services**”);

WHEREAS, on April 19, 2018, the City and the Contractor amended the Agreement for the first time to extend its term for continuity of services;

WHEREAS, on February 11, 2019, the City and the Contractor amended the Agreement for the second time to extend its term for continuity of services;

WHEREAS, on February 20, 2020, the City and the Contractor amended the Agreement for the third time to extend its term for continuity of services;

WHEREAS, the City and the Contractor, both having the authority to do so, now seek to amend the Agreement for a fourth time to extend its term for continuity of services;

NOW THEREFORE, the City and the Contractor, for good and valuable consideration, agree as follows:

A. Extension: The term of the Agreement is extended for one (1) year from April 3, 2021 through April 2, 2022.

B. Price: This is a requirements contract and is non-binding as to any specific quantity. The parties reaffirm the rates in the Contractor’s bid form dated January 27, 2017, submitted in response to the City’s Invitation to Bid No. 5001-02131.

C. Convicted Felon Statement: The Contractor swears that it complies with City Code § 2- 8(c). No Contractor 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.

D. Non-Solicitation Statement: The Contractor swears 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 this Amendment. The Contractor 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 Amendment.

E. Prior Terms Binding: Except as otherwise provided by this Amendment, the terms and conditions of the Agreement, as amended, remain in full force and effect.

F. Electronic Signature and Delivery: The Parties agree that a manually signed copy of this Amendment and any other document(s) attached to this Amendment delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Amendment. 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 Amendment.

(Signatures contained on the following page)

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the City and the Contractor, through their duly authorized representatives, execute this Amendment.

CITY OF NEW ORLEANS

BY:



LATOYA CANTRELL,
MAYOR

Executed on this 18th day of FEBRUARY, 2021.

FORM AND LEGALITY APPROVED:
Law Department

By:



Printed Name:



HARD ROCK CONSTRUCTION, L.L.C.

BY:



JASON JUNEAU,
MEMBER/ ESTIMATOR

FEDERAL TAX I.D. NO. 

APPENDIX C: ATTORNEY GENERAL OPINION



Jeff Landry
Attorney General

State of Louisiana

DEPARTMENT OF JUSTICE
CIVIL DIVISION
P.O. BOX 94005
BATON ROUGE
70804-9005

July 1, 2021
OPINION 21-0059

Michael J. "Mike" Waguespack, CPA
Louisiana Legislative Auditor
P.O. Box 94397
Baton Rouge, LA 70804-9397

90-A-1 PUBLIC FUNDS & CONTRACTS

La. R.S. 38:2211 La. R.S. 38:2212
La. R.S. 38:2212.1 La. R.S. 38:2222

Public Bid Law prohibits a political subdivision from using an annual requirements or delivery order contract process when advertising and letting out a public works project.

Dear Mr. Waguespack:

You have requested an opinion from our office regarding whether a political subdivision may use the customary practices that apply to recurring purchases of materials and supplies for public works projects. You would like to know this as your office oversees local government audits, which includes reviewing of public entity's compliance with the Public Bid Law, La. R.S. 38:2211 *et seq.* Your request has been assigned to me for research and reply.

Public Bid Law governs the letting of contracts by a public entity for the completion of a public works project or purchase of materials and supplies. While the phrase "materials and supplies" is not defined within Public Bid Law, a "public work" is defined as the erection, construction, alteration, improvement, or repair of any public facility or immovable property owned, used, or leased by a public entity.¹ The appropriate process for letting contracts for a public works project is contained within La. R.S. 38:2212 while La. R.S. 38:2212.1 governs the process for purchasing materials and supplies. The object pursued by the public entity is the determining factor in whether the public entity should follow La. R.S. 38:2212 or La. R.S. 38:2212.1 for a particular contract.

The "annual requirements" or "delivery order" contract process discussed in La. Atty. Gen. Op. No. 94-54 ensures compliance with the Public Bid Law for recurring purchases of materials and supplies. Political subdivisions use requirements contracts when it knows that it will need an unspecified volume of specific goods such as paper, gravel, food, auto parts, sand, tires, asphalt, or other such commodities during the course of a fiscal year.² In these instances, it is appropriate for the public entity to advertise for bids at, or prior to, the beginning of the fiscal year for vendors to meet all of the public entity's anticipated requirements for such identifiable commodities at a fixed price per unit.³ The solicitation for bids will usually indicate the total dollar value of the usage of such contract for the prior fiscal year as a guide to potential bidders, without any assurance of a specific volume

¹ La. R.S. 38:2211(13).

² See La. Atty. Gen. Op. Nos. 94-54, 95-140, and 02-0122.

³ La. Atty. Gen. Op. No. 94-54.

during the upcoming year.⁴ Thereafter, the public entity commits to purchase all of its requirements for that commodity by entering into a contract with the lowest responsive and responsible bidder.⁵ After award, and as the year progresses, purchase orders are issued against the contract for specified quantities with delivery dates, places, and prices in accordance with the terms of the contract.⁶

The basis for using the annual requirements contract process for the purchase of materials and supplies is that purchases of materials and supplies that exceed the sum of thirty thousand dollars must be advertised and let to the lowest responsible bidder.⁷ Any division of purchases into small individual orders which results in avoiding the Public Bid Law is a violation of La. R.S. 38:2212.1(A)(1)(a).⁸

Louisiana courts have long recognized that Louisiana's Public Bid Law is a prohibitory law founded on public policy.⁹ The Public Bid Law was enacted in the interest of the taxpaying citizens to protect them against contracts of public officials entered into because of favoritism and involving exorbitant and extortionate prices.¹⁰ Furthermore, Louisiana courts have recognized that a political entity has no authority to take any action that is inconsistent with the Public Bid Law.¹¹

Currently, all public work exceeding two hundred fifty thousand dollars per project, including labor, materials, and equipment, to be done by a public entity shall be advertised and let by contract to the lowest responsible bidder.¹² Every public entity that advertises a public works project must estimate the probable construction costs of the public work or obtain an estimate from the project designer prior to advertising such public work for bids.¹³ A public entity may not advertise a public work for bids unless funds that meet or exceed the estimate of the probable construction costs have been budgeted by the public entity for the project.¹⁴ "Probable construction costs" is defined by La. R.S. 38:2211(A)(10) to mean "the estimate for the cost of the project as designed that is determined by the public entity or the designer."

In order for a public entity or project designer to estimate the costs of a public works project, a project must first be designed. This means that a public entity or project designer must design the erection, construction, alteration, improvement, or repair of any

⁴ La. Atty. Gen. Op. No. 94-54.

⁵ *Id.*

⁶ *Id.*

⁷ La. R.S. 38:2212.1(A)(1)(a).

⁸ La. Atty. Gen. Op. No. 95-140. See also La. Atty. Gen. Op. Nos. 95-123, 96-98 and 02-0122.

⁹ *Broadmoor, L.L.C. v. Ernest N. Morial New Orleans Exhibition Hall Auth.*, 04-0211 (La. 3/18/04), 867 So. 2d 651, 656.

¹⁰ *Airline Construction Company, Inc. v. Ascension Parish School Board*, 568 So. 2d 1029, 1032 (La. 1990).

¹¹ *Broadmoor*, 867 So.2d 651; *Louisiana Associated Gen. Contractors, Inc. v. Louisiana Dep't of Agric. & Forestry*, 05-0131 (La.2/22/06), 924 So. 2d 90, 95.

¹² La. R.S. 38:2212(A)(1)(a) and La. R.S. 38:2212(C)(1).

¹³ La. R.S. 38:2212(H).

¹⁴ *Id.*

public facility or immovable property that may be completed by the public entity. Typically, bid specifications contain a section dedicated to the design of the public work, customarily found within a section labeled "scope of the work." However, the design of a public work is not limited to this area of the bid specifications.

The scope of work clause,¹⁵ or similar section in the bid specifications, is used to define the limiting parameters and requirements necessary to complete a public work. Without such limits, a public entity or project designer is incapable of estimating in good faith the cost of such public works project. Absent a good faith estimate, a public entity is unable to determine whether it has budgeted a sufficient amount to fund the probable construction costs of the public works project as required by Public Bid Law. Without this knowledge, a public entity is prohibited from advertising the public works project.¹⁶

The annual requirements or delivery order contract process is used when an unspecified volume of a particular material or supply is needed by a public entity for an upcoming fiscal year, but it is estimated or known that the total purchases of the particular material or supply for the year will exceed the threshold amount that requires it to be let out for bid. In these instances, the object purchased by a public entity is definite and describable. Similarly, the object of a public works project is definite and describable; however, it is also quantifiable and does not require multiple purchases throughout a fiscal year. If a public works project were not quantifiable, then a public entity would be incapable of determining the probable construction costs associated with such a project. As referenced above, the inability to determine the probable construction costs would prohibit a public entity from advertising for the particular public works project.

It is necessary to point out that a public works project is capable of being modified through a change order so long as the change order is within the scope of the contract. In order for the change order to be within the scope of the contract, it must not alter the nature of the thing to be constructed and must be an integral part of the project objective.¹⁷ When a change order is determined to be within the scope of the contract it may be negotiated or let out for bid.¹⁸ If negotiated, the public entity must fully document the change order and itemize the costs, including material quantities, taxes, insurance, employee benefits, profit, and overhead.¹⁹ If unit prices are contained in the original contract, no deviations from those prices set forth in the original contract are allowed in computing the negotiated change order.²⁰ Certain change orders to public works contracts are required to be recorded by the public entity in the office of the recorder of mortgages in the parish where the work is to be done.²¹ Any change order outside of the scope of the contract that is

¹⁵ "Scope-of-work clause" is defined by *Black's Law Dictionary* (11th ed. 2019) as a contractual provision that details what work is to be performed under the contract.

¹⁶ La. R.S. 38:2212(H).

¹⁷ La. R.S. 38:2211(A)(3).

¹⁸ La. Atty. Gen. Op. No. 06-0304.

¹⁹ *Id.*

²⁰ La. R.S. 38:2212(M)(5).

²¹ La. R.S. 38:2222.

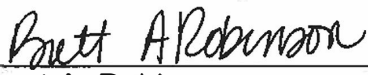
considered a public work and over two hundred fifty thousand dollars must also be let out for bid and comply with La. R.S. 38:2212.²²

Considering the foregoing, it is the opinion of this office that La. R.S. 38:2212 prohibits a political subdivision from using an annual requirements or delivery order contract process when advertising and letting out a public works project.

We hope that this opinion has addressed the issues that you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
Brett A. Robinson
Assistant Attorney General

JL/BAR

²² La. R.S. 38:2212(M)(4).

APPENDIX D: SCOPE AND METHODOLOGY

We performed certain procedures to evaluate the contracting process and the payments made through January 25, 2022, that were provided by the City of New Orleans (City) for the Specialty Pavement and Streetscape Improvements contract between the City of New Orleans and Hard Rock Construction, L.L.C. Our objective was to determine if the City complied with state and city laws, regulations and policies related to the awarding of the contract and payment for services provided.

The scope of our procedures, which is summarized below, was significantly less than an audit conducted in accordance with *Government Auditing Standards*, issued by the Comptroller General of the United States.

- We obtained an understanding of the City's operations and system of internal controls related to the contracting and payment process through inquiry with the City's Department of Public Works and review of its policies and procedures.
- We examined the City's Specialty Pavement and Streetscape Improvements contract and supporting documentation provided by the City to determine if the contract was appropriately let in accordance with the Public Bid Law and disbursements made under the contract were supported, reasonable, agreed to the terms and specifications of the contract, and properly approved.

The purpose of this report is solely to describe the scope of our work at the City related to a particular contract and not to provide an opinion on the City's Annual Fiscal Reports or on the effectiveness of internal control over financial reporting or on compliance. Accordingly, this report is not intended to be, and should not be, used for any other purpose.