CITY OF NEW ORLEANS

# PURCHASING FORMS

# FORMS

1. Informal Bid Quote Form
2. Micro Purchase Professional Services Form
3. Small Purchase Professional Services Form
4. Bid Procurement Authorization Form for Construction
5. Bid Procurement Authorization Form – Not for Construction
6. Request for Professional Services Form
7. RFP/RFQ Template
8. Independent Cost Estimate Form (ICE)
9. Cost Reasonableness Form
10. Change Order Recommendation for Approval Form
11. Plan Change Recommendation for Approval Form

THIS FORM AND ATTACHMENTS MUST BE COMPLETED AND RETURNED TO THE PURCHASING BUREAU, CITY HALL, ROOM 4W07, PHONE 658-1550

# CITY OF NEW ORLEANS
# DEPARTMENT OF FINANCE
# PURCHASING BUREAU

_____
**REQUISITION NUMBER**

# INFORMAL BID QUOTE FORM

**DEPARTMENTS MUST ATTACH WRITTEN CONFIRMATION OF THE ACCEPTED OFFER (VIA FAX, EMAIL OR MAIL) AND REASONS FOR NOT ACCEPTING THE LOWEST QUOTE.**

| **Date of Quote(s):** | **Department Name** | **Organization Code** |
|---|---|---|

**Description of Needed Goods:**

**Delivery Time, Performance, Warranty & Other Requirements:**

| **How Solicited?** (Check One) | ADDITIONAL INFORMATION: |
|---|---|
| **Phone ☐** | |
| **Fax ☐** | ***JUSTIFICATION IF LOWEST PRICE NOT SELECTED:** |
| **Online ☐** | |
| | **Debarment Check: If using federal funds for Public Works under $150K / Goods, Non-Professional Services Materials under $20K) SAM ☐ Status: Active ☐ Inactive ☐ Debarred ☐** |

**Quotes Received:**

| QUOTE NO. | BUSINESS NAME | NAME OF PERSON PROVIDING THE QUOTE | COMPLETE ADDRESS, PHONE NUMBER FAX NO. & EMAIL ADDRESS IF USED | FEDERAL TAX ID NO. FOR SELECTED QUOTE | $ DOLLAR QUOTE |
|---|---|---|---|---|---|
| 1 | | | | | |
| 2 | | | | | |
| 3 | | | | | |
| 4 | | | | | |
| 5 | | | | | |

Add additional sheet if needed for quotes.

_____ _____ _____ _____
**PRINTED NAME OF CONTACT PERSON** **CONTACT PHONE NUMBER** **SIGNATURE OF DEPARTMENT HEAD** **DATE SIGNED**

**CPO SIGNATURE (REQUIRED IF USING FEDERAL FUNDS)** _____

*City Organizations will select the vendor quoting the lowest price for the specified materials, supplies, equipment or equipment lease. Organizations will enter a requisition in the financial purchasing system to encumber funds in advance and complete the purchase by approved purchase order for the quoted price. For good cause and with Bureau of Purchasing approval, City Organizations may reject lowest quotes, but in such cases will provide a written justification above. By completing this form, all parties agree to the LA Code of Government Ethics pursuant to LA R.S.42:1170A.

Revised 11/3/16

CONTENTS SUBJECT TO PERIODIC AUDIT

# REQUEST FOR MICRO PURCHASES PROFESSIONAL SERVICES SOLICITATION[1] FORM UNDER $3,000

1. Director or Manager _____ User Entity: _____ Date: _____
*(circle one)* *(print name & initial)*

To: CHIEF PROCUREMENT OFFICER (CPO)

Attachment(s): (a) Contractor Quotes
(b) Additional Documents (if applicable)

Pursuant to Executive Order MJL 10-05, this requests your approval of the professional services solicitation under $3,000 described below.

**Describe the need or purpose (supplement as needed):**

1. State how the needed services are professional services:[2]

2. State the maximum permissible compensation and expenses payable under the contract:

Total

Estimated Cost _____

3. Source of funding: _____ General Fund _____
_____ CDBG Funding
_____ Other (Specify) _____

4. Vendor: _____

5. Justification for selecting vendor:

6. Contractor's SAM Status: (if Federal funded) Active ☐ Inactive ☐ Debarred ☐

7. Requisition Number: _____

**CPO ACTION:**
Solicitation: ( ) APPROVED ( ) DISAPPROVED.
Remarks: _____ Initial & Date: _____

---

[1] Professional Services procurements costing $15,000 or less may only contract with a particular contractor for a maximum amount of $15,000 per calendar year.

[2] "Services that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skill…" (Ex. Order MJL 10-05)

**MAINTAIN THIS APPROVED FORM WITH ALL LATER RECOMMENDATIONS, APPROVALS, DOCUMENTS, AND CONTRACTS.**

Date Modified 12.12.16

# REQUEST FOR SMALL PURCHASES PROFESSIONAL SERVICES SOLICITATION[1] FORM

1. Director or Manager _____ User Entity: _____ Date: _____
*(circle one)* *(print name & initial)*

To: CHIEF PROCUREMENT OFFICER (CPO)

Attachment(s): (a) Contractor Quotes
(b) Additional Documents (if applicable)

Pursuant to Executive Order MJL 10-05, this requests your approval of the professional services solicitation under $15,000 described below.

**Describe the need or purpose (supplement as needed):**

1. State how the needed services are professional services:[2]

2. State the maximum permissible compensation and expenses payable under the contract:

Total

Estimated Cost _____

3. Source of funding: _____ General Fund _____
_____ CDBG Funding
_____ Other (Specify) _____

4. Vendor: _____

Departments are required to reach out to qualified entities to obtain at least three (3) quotes. (Provide documentation with this form)

5. Justification for selecting vendor:

6. Contractor's SAM Status: (if Federal funded) Active ☐ Inactive ☐ Debarred ☐

7. Requisition Number: _____

**CPO ACTION:**
Solicitation: ( ) APPROVED ( ) DISAPPROVED.
Remarks: _____ Initial & Date: _____

_____

[1] Professional Services procurements costing $15,000 or less may only contract with a particular contractor for a maximum amount of $15,000 per calendar year.

[2] "Services that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skill…" (Ex. Order MJL 10-05)

**MAINTAIN THIS APPROVED FORM WITH ALL LATER RECOMMENDATIONS, APPROVALS, DOCUMENTS, AND CONTRACTS.**

# CONSTRUCTION
# BID PROCUREMENT AUTHORIZATION FORM

**TYPE OF REQUEST:**

☐ **NEW CITY CONSTRUCTION PROCUREMENT (CAO Approval)**
**LA CONTRACTOR'S LICENSE CLASSIFICATION(S)**_____

| | | |
|---|---|---|
| **REQUESTOR:** | | |
| | DEPARTMENT HEAD PRINTED NAME AND SIGNATURE | DATE |
| **PROJECT FUNDING ANALYSIS AND APPROPRIATION INFO ATTACHED (FEMA, CDBG, BONDS, ETC)?** | ☐ **YES** ☐ **NO** | |
| **REQUESTING DEPARTMENT:** | | |
| | NAME AND ORGANIZATION CODE | |
| **DESIGNER'S COST ESTIMATE:** $ | **BUDGETED AMOUNT:** $ | **REQUISITION #** |
| **APPROVED DBE CONTRACT GOAL** _____% | **SAM VERIFICATION** ☐ **YES** ☐ **NO** | |
| **Hire NOLA Required?** ☐ Yes ☐ No **Participation Goals Required?** ☐ Yes ☐ No<br>**Approved Hire NOLA Participation Goals** _____% | | |
| **REQUESTED CONSTRUCTION PROJECT:** ***(Required Resources)W*** | | |
| | | |
| **JUSTIFICATION AND PROPOSED USE:** | | |
| | | |
| **IS THIS A CONSTRUCTION PROJECT?** ☐ **Yes** ☐ **No**<br>**Will this procurement likely require a contract?** ☐ **Yes** ☐ **No** | | |
| **SPECIAL CONSIDERATION:** | | |
| **PROJECT CONTACT NAME:** | | |
| **OFFICE PHONE:** | **CELL PHONE:** | |
| **E-MAIL:** | **OFFICE LOCATION:** | |
| **DEPUTY MAYOR REVIEW/APPROVAL** ***(Initial or Sign and Date)*** | **SIGNATURE:** | **DATE:** |
| **CAO ACTION: DBE waived?** ☐ **Yes** ☐ **No** **Initials & Date:**_____<br>**Remarks:** **Jeffrey P. Hebert, First Deputy Mayor/Chief Administrative Officer**<br>**PROCUREMENT APPROVED BY:**<br>***(Initial or Sign and Date)*** | | |
| | **Jeffrey P. Hebert, First Deputy Mayor/Chief Administrative Officer - DATE** | |
| **PROCUREMENT DISAPPROVED BY:**<br>***(Initial or Sign and Date)*** | | |
| | **Jeffrey P. Hebert, First Deputy Mayor/Chief Administrative Officer - DATE** | |
| If approved forward to Purchasing | | |
| **APPROVED BY:** | ***(Initial or Sign)*** | |
| | **Mary Kay Kleinpeter-Zamora Chief Procurement Officer - DATE** | |

Revised - NC 11/8/16

# BID PROCUREMENT AUTHORIZATION FORM
# ***NOT CONSTRUCTION***

**TYPE OF REQUEST (Check One and Complete):**

☐ **NEW CITY PROCUREMENT (CAO Approval)**

☐ **PIGGYBACK OR INTER-GOVERNMENTAL OR STATE CONTRACT USE**
**NAME OF POLITICAL OR STATE SUBDIVISION:** _____
**(Chief Procurement Officer Approval Only)**

☐ **GSA SCHEDULE ON STATE OF LA CONTRACT (Chief Procurement Officer Approval Only)**

☐ **OTHER (EXPLAIN)** _____ **(CAO Approval)**

**REQUESTOR:** _____
DEPARTMENT HEAD NAME & SIGNATURE

**REQUESTING DEPARTMENT:** _____
NAME AND ORGANIZATION CODE

**COST ESTIMATE:** **$** _____ **BUDGETED:** ☐ **YES** ☐ **NO** **REQUISITION #**
**(IF NO, EXPLAIN)**

**REQUESTED MATERIALS, SUPPLIES, EQUIPMENT OR SERVICES:** ***(Required Resources)***

**JUSTIFICATION AND PROPOSED USE:**

**Will this procurement likely require a contract?** ☐ **Yes** ☐ **No**

**Is there an existing valid City contract or BuySpeed item for use?** ☐ **Yes** ☐ **No**
*(If **yes**, identify the City contract and state why it is not being used.)*

**SPECIAL CONSIDERATION:**

**DEPARTMENT CONTACT NAME:**

**OFFICE PHONE:** **CELL PHONE:**

**E-MAIL:** **OFFICE LOCATION:**

| | | |
|---|---|---|
| **DEPUTY MAYOR REVIEW/APPROVAL** ***(Initial or Sign and Date)*** | **SIGNATURE:** | **DATE:** |
| **PROCUREMENT APPROVED BY:** ***(Initial or Sign)*** | **Jeffrey P. Hebert, First Deputy Mayor/Chief Administrative Officer** | |
| **PROCUREMENT DISAPPROVED BY:** ***(Initial or Sign)*** | **Jeffrey P. Hebert, First Deputy Mayor/Chief Administrative Officer** | |
| If approved forward to Purchasing | | |

| | | |
|---|---|---|
| **APPROVED BY:** | ***(Initial or Sign)*** **Mary Kay Kleinpeter-Zamora** | **Chief Procurement Officer** |
| **DISAPPROVED BY:** | ***(Initial or Sign)*** **Mary Kay Kleinpeter-Zamora** | **Chief Procurement Officer** |

**REQUEST FOR M PROFESSIONAL SERVICES SOLICITATION FORM**
**Over $15,000**

1. Director or Manager _____ User Entity: _____ Date: _____
*(circle one)* *(print name & initial)*

To: CHIEF PROCUREMENT OFFICER (CPO)

Attachment(s): (a) Contractor Quotes
(b) Additional Documents (if applicable)

Pursuant to Executive Order MJL 10-05, this form requests approval to solicit professional services for over $15,000.

**Describe the need or purpose (supplement as needed):**

1. State how the needed services are professional services:[1]

2. State the maximum permissible compensation and expenses payable under the contract:

Total

Estimated Cost _____

3. Source of funding: General Fund _____
CDBG Funding _____
Other (Specify) _____

4. Contractor's SAM Status: (if Federal funded) Active ☐ Inactive ☐ Debarred ☐

5. Requisition Number: _____

**CPO ACTION:**
Solicitation: ( ) APPROVED ( ) DISAPPROVED.
Remarks: _____ Initial & Date: _____

_____

[1] "Services that include work rendered by an independent contractor who has a professed knowledge of some department of learning or science used by its practical application to the affairs of others or in the practice of an art founded on it, which independent contractor shall include but not be limited to attorneys, doctors, dentists, nurses, veterinarians, architects, engineers, land surveyors, landscape architects, accountants, actuaries, appraisers, business consultants, investment advisors, and claims adjusters. A profession is a vocation founded upon prolonged and specialized intellectual training which enables a particular service to be rendered. The word "professional" implies professed attainments in special knowledge as distinguished from mere skill…" (Ex. Order MJL 10-05)
**MAINTAIN THIS APPROVED FORM WITH ALL LATER RECOMMENDATIONS, APPROVALS, DOCUMENTS, AND CONTRACTS.**

Date Modified: 12.12.16

# City of New Orleans, Louisiana
# Request for Proposals
# "TITLE"
# "DATE"

**Request for Proposals**: The City of New Orleans desire to obtain a [*"Title"] ["Brief summary of requested service (s)"]*. As provided below, and incident to City Charter Section 6-308(5) and Executive Order MJL 10-05, it requests proposals from experienced firms to provide the needed services.

**Instructions**: Respondent shall submit the following to the *Bureau of Purchasing* directed Attention: Chief Procurement Officer ("CPO"), *1300 Perdido St., Suite 4W07, New Orleans, Louisiana 70112,* 504-658-1550, not later than [*"deadline"] ["time*"(CT)*]*:

a. Six (6) signed hardcopies of the proposal in a sealed envelope, marked["***preferred title of* proposals**"] and one (1) digitally signed proposal (maximum of three files) on a CD or Flash Drive, in Microsoft Word format or as a PDF file, marked ["***preferred title of* proposals**"];

b. Six (6) printed hard copies of the related **cost** proposal enclosed in a separate sealed envelope, marked **"[*preferred title of proposals*"]**;

c. A signed cover letter including the company's name, address and primary contact for the proposal. The primary contact information shall include submitter name, telephone, and email address.

d. Proposers must complete all required attachments and submit along with both electronic and hardcopy proposal submissions.

Proposals should clearly demonstrate the Respondent's qualifications to perform the needed services and attend all factors applicable in a professional relationship. Proposals should include detailed resumes or curricula vitae for the principals performing the services. Copies of the solicitation and related information are available from the City's purchasing website at http://www.purchasing.nola.gov/bso/login.jsp.

The City will not accept proposals submitted by fax. All proposals **must be received** by the City on or before the Delivery Deadline. The City will not accept proposals delivered after the said deadline. The City will not credit delivery claims not clearly documented by original receipt.

Anticipated Proposal Timetable

| | |
|---|---|
| RFP Release | Date |
| Deadline for Submitting Questions | Date |
| Proposal Submission | Date |
| Evaluation Committee Selection | Date |
| Notification | Date |

If the City identifies a likely service provider, it may negotiate a final agreement with the provider and fix the relationship by Professional Services contract. The contract will contain the standard City provisions shown in Attachment "B" and the "Disadvantaged Business Enterprise" ("DBE") provisions shown in Attachment "C."

# City of New Orleans, Louisiana
# Request for Qualifications
# "TITLE"
# "DATE"

**Request for Qualifications**: The City of New Orleans desires to obtain [*"Title"] ["Brief summary of requested service (s)"]*. As provided below, and incident to City Charter Section 6-308(5) and Executive Order MJL 10-05, it requests qualification from experienced firms to provide the needed services.

**Instructions**: Respondent shall submit the following to the *Bureau of Purchasing* directed Attention: Chief Procurement Officer ("CPO"), *1300 Perdido St., Suite 4W07, New Orleans, Louisiana 70112*, 504-658-1550, not later than ["*deadline"] ["time*"(CT)*]*:

a. Six signed hardcopies of the qualification in a sealed envelope, marked["***preferred title of qualifications***"] and one (1) digitally signed response (maximum of three files) on a CD or Flash Drive, in Microsoft Word format or as a PDF file, marked ["***preferred title of qualifications***"];

b. A signed cover letter including the company's name, address and primary contact for the request for qualification. The primary contact information shall include submitter name, telephone, and email address.

c. Respondents must complete all required attachments and submit along with both electronic and hardcopy proposal submissions.

Respondents should clearly demonstrate the applicant's qualifications to perform the needed services and attend all factors applicable in a professional relationship. Respondents should include detailed resumes or curricula vitae for the principals performing the services. Copies of the solicitation and related information are available from the City's purchasing website at http://www.purchasing.nola.gov/bso/login.jsp.

The City will not accept qualifications submitted by fax. All solicitations **must be received** by the City on or before the Delivery Deadline. The City will not accept qualifications delivered after the deadline. The City will not credit delivery claims not clearly documented by original receipt.

Anticipated Qualification Timetable

| | |
|---|---|
| RFQ Release | Date |
| Deadline for Submitting Questions | Date |
| Qualification Submission | Date |
| Evaluation Committee Selection | Date |
| Notification | Date |

If the City identifies a likely service provider, it may negotiate a final agreement with the provider and fix the relationship by Professional Services contract. The contract will contain the

standard City provisions shown in Attachment "B" and the "Disadvantaged Business Enterprise" ("DBE") provisions shown in Attachment "C."

A DBE contract goal of 35 percent has been established for this RFQ. The respondent shall agree to use its best efforts, as determined by the DBE Compliance Officer to assure that all respondents comply with the factors set forth in the DBE Program, to meet the contract goal for DBE participation in the performance of this solicitation.

Please direct all questions related to DBE compliance prior to the Delivery Deadline to *Office of Supplier Diversity, 1340 Poydras Street, 10th Floor, New Orleans, LA 70112, telephone: 658-4220, email: kfgross@nola.gov*.

**By responding to this RFQ, respondent agrees to the City's Required Contract Provisions as provided in Attachment "B" and therefore waives any future right to contest the required provisions."**

1. **Services Needed**: Attachment "A" describes the needed services.

2. **Selection Committee**: The Chief Procurement Officer must establish Selection Committees with relevant subject-matter expertise in reviewing and evaluating responses to the RFQ. Each response to the RFQ for the award of a professional service must be evaluated by a committee of five individuals consisting of:

- The manager of the User Entity requesting the service, or his designee;
- The First Deputy Mayor-Chief Administrative Officer, or his designee;
- The employee who will manage and monitor the contract;
- A professional from within local government who possesses expertise in the relevant field; and
- The Chief Financial Officer, or his designee.

The Selection Committee shall evaluate the qualifications on the basis of technical criteria. The members on the Selection Committee shall either complete the numerical grading and provide a written explanation stating the reasons for the rating for each criteria, or if using the wholly qualitative evaluation criteria, the members shall provide a rating of a qualification as highly advantageous, advantageous, not advantageous, or unacceptable and state the reasons for the rating for each criteria.

3. **Selection**: The City will select a Respondent generally according to the procedures described in Executive Order MJL 10-05. The Selection Committee will first evaluate and rank responsive RFQ Responses on the following selection Technical criteria and weighting factors listed below and provide an assessment of that score. A Respondent may receive the maximum percentage, a portion of this score, or no percentage at all, depending upon the merit of its response, as judged by the Selection Committee in accordance with:

Technical Criteria (sample)

( %) Specialized experience and technical competence;

( %) Performance history, including, without limitation, competency, responsiveness, cost control, work quality and the ability to meet schedules and deadlines;

(%) Maintenance of an office, residence or domicile in Orleans Parish, to the extent permitted by law;

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Respondents at time of qualification submission shall complete and submit a DBE Participation Plan. If a DBE Participation Plan is not submitted, it shall be determined that the respondent was non-responsive to the DBE provisions and the submittal will not be evaluated by the selection committee.

(%) Respondent complies with contract DBE participation goal of **35%** or will conduct good faith efforts to do so.

(%) Respondent submitted a quality DBE Participation Plan that includes innovative strategies and approaches to achieve and maintain compliance over the contract term, including firm's past performance on meeting DBE goals, technical assistance and supportive services designed to increase participation and build capacity in the DBE community.

Shortlist

The City at its sole discretion may recommend a selection of Respondents for a short list based on the overall ranking.

During the review of any Submission, the Evaluation Committee may:

- conduct reference checks relevant to the Project with any or all of the references cited in a Submission to verify any and all information, and rely on or consider any relevant information from such cited references in the evaluation of Submissions;
- seek clarification of a Submission from any or all Respondents and consider such supplementary information in the evaluation of Submissions; and
- request interviews/presentations with any, some or all Respondents or Team Members to clarify any questions or considerations based on the information included in Submissions during the evaluation process, and consider any supplementary information from interviews/presentations in the evaluation.

4. **Ownership**: All qualifications and/or documentation submitted therewith are City property for all purposes. Respondents will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption. The City will not credit any blanket exemption claims lacking specific justification. The City does not guarantee the confidentiality of submissions.

5. **Effect**: This RFQ and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The City may cancel or modify this solicitation at any time at will, with or without notice. Anything to the contrary notwithstanding, the Professional Services contract

executed by the City and the selected applicant, if any, is the exclusive statement of rights and obligations extending from this solicitation.

6. **Point of Contact**: All correspondence and other communications regarding this procurement should be directed to the attention of: Nat Celestine, City of New Orleans, Bureau of Purchasing, 1300 Perdido Street, 4W07, New Orleans, Louisiana 70112.

Substantive questions must be submitted by proposers in writing to the person at the address provided above or emailed to Procurement@nola.gov no later than (7) days before submittal deadline.

Any request received after that time may not be reviewed for inclusion in this RFQ. The request shall contain the requester's name, address, and telephone number.

The Bureau of Purchasing will issue a response to any inquiry if it deems it necessary, by written addendum to the RFQ, posted on the City's website, and issued prior to the RFQ's Delivery Deadline. The Respondents shall not rely on any representation, statement or explanation other than those made in this RFQ or in any addendums issued. Where there appears to be a conflict between this RFQ and any addendum issued, the last addendum issued will prevail.

From the time of advertising, and until the final award, there is a prohibition on communication by Respondents (or anyone on their behalf) with the City's staff, board members and elected officials. This does not apply to oral communications at Pre-Submittal conferences, oral presentations before evaluation committees, contract negotiations, or communications in writing at any time with any City employee or elected official regarding matters not concerning this RFQ.

Breaking the established prohibition on communication may result in a disqualification of your submittal.

7. **Review**: In accordance with the Mayor's Executive Order. MJL-10-05, the review committee will evaluate each qualification submitted. The City will make every effort to administer the qualification process in accordance with the terms and dates discussed in the RFQ. However, the City reserves the right to modify the qualification process and dates as deemed necessary.

The City may request an online demonstration of specific vendors' solutions prior to the qualifications review completion date. Respondents should be prepared to provide such a demonstration in a timely fashion.

8. **In-Process Technical Review**: Contractor's performance of the Work shall be subject to in-process technical review by the City's Technical Representative or such other person(s) as may be designated in writing by INSERT NAME OF DEPARTMENT provided such actions are not unreasonable and does not interfere with the progress of the work.

9. **Required Attachments**: **Respondents are required to complete the following Attachments and submit along with their Qualification submittal**:

1) Attachment "C" **DISAVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN**

2) Attachment "F" **CITY OF NEW ORLEANS CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

All other Attachments are supplied by the City as information. The following Attachments will only be requested of the successful Proposer prior to obtaining a contract:

- Attachment "D" Tax Clearance Certificate
- Attachment "E" Identification of Subcontractors

Information Only:
- Attachment "G" Sample Contract Agreement

**FAILURE TO COMPLETE THE REQUIRED ATTACHMENTS COULD RESULT IN THE DISQUALIFICATION OF A QUALIFICATION SUBMITTAL.**

10. **Submission Requirements:**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the qualifications be organized in the manner specified below. The qualification shall include all of the following:

**1) Title Page**

Show the RFQ number and subject, the name of your firm, address, email address, telephone number(s), facsimile machine number(s), name of contact person and date.

**2) Table of Contents**

Clearly identify the materials by section, page number, and tabs.

**3) Letter of Transmittal (Limited to One Page)**

Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide services as specified. Give the name(s) of the person(s) who is/are authorized to make representations for your firm, their title, address, email address, telephone number(s) and facsimile number(s).

**4) Qualification Contents**

Qualifications should contain a clear and comprehensive response to all requirements/questions in the order contained herein.

11. **Insurance:**

**MINIMUM SCOPE OF INSURANCE (Contact the City's Risk Manager Adolph "AL" Delaparte)**

12. **Disadvantaged Business Enterprise (DBE) Requirements**

**I - DBE PROGRAM COMPLIANCE**

The requirements of the City of New Orleans ("City") Disadvantaged Business Enterprise ("DBE") Program apply to this Agreement. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agree to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the City's Office of Supplier Diversity ("OSD"), shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program

## II - DBE CONTRACT GOAL

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation.

Participation shall be counted toward meeting the contract goal based on the following:

1. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
2. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
3. A Bidder/Proposer can count 100 % of the DBE's participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
4. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier's participation and 60 % of DBE Non-Manufacturer supplier's participation toward its contract goal.
5. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.
6. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Usefully Function.

   "DBE Commercially Useful Function means" a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:

   a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
   b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;

**c.** Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.

**d.** Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

**III - DBE DIRECTORY**

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City's DBE Program goals.

**a.** Contractors agree to utilize the City's SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board and Harrah's New Orleans. The SLDBE directory is available at www.nola.gov.

**b.** The Louisiana Unified Certification Program ("LA UCP") directory is available at www.dotd.louisiana.gov.

Information on locating these directories may also be requested from the OSD at supplierdiversity@nola.gov.

IV - GOOD FAITH EFFORT POLICY

In accordance with Sec.70-461 of the City Code, the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the Bidder's or Proposer's responsiveness to fulfilling the City's DBE Program goals prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

**A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR**:

i. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project

ii. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

**B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES**:

i. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.

ii. Bidder/Proposer included a copy of each announcement or notification.

**C. INITIAL SOLICITATION & FOLLOW-UP**:

i. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.

ii. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

**D. NEGOTIATE IN GOOD FAITH**:

i. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.

ii. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/Proposer fails to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at supplerdiversity@nola.gov.

## V - REQUIRED DBE FORMS for BIDs/RFPs/RFQs

### A. BIDs:

In accordance with Louisiana Public Bid Law, the two apparent lowest bidders on an invitation to bid shall complete and submit all required post bid documents within three (3) business days of the bid opening. If the required post bid documents are not received within three (3) business days of the bid opening it shall be determined that bidder was non-responsive.

The following DBE documents must be received within three (3) business days of the bid opening:

1. DBE Compliance Form-1: This form is used to establish your DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s).

   If the Bidder has attained the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.

2. DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

3. After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts.

   Thereafter, the Bidder/Contractor shall be bound by the established percentage, as approved by the OSD.

**B. <u>Request for Proposals ("RFP") / Request for Qualifications ("RFQs"):</u>**

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

1. **DBE Participation Plan (Attachment "C"):** A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.

   a. If a DBE Participation Plan (Attachment "C") is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.

2. Within ten (10) days of the City's issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1**:** This form is used to establish your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).

   a. If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

## VI - <u>CONTRACTOR COOPERATION</u>

The Contractor shall:

1. Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE subcontractors/suppliers ("DBE Entities").

2. Execute written contracts with DBE Entities that meet the applicable DBE goals.

   a. The Contractor shall provide the DBE Compliance Officer ("DBECO") with copies of said contracts within thirty (30) days from the date the Agreement is fully executed between the City and the Contractor.

**b.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

**3.** Establish and maintain the following records for review upon request by the OSD:

**a.** Copies of written contracts with DBE Entities and purchase orders;

**b.** Documentation of payments and other transactions with DBE Entities;

**c.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

**d.** Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the Agreement. Such records are necessary to determine compliance with their DBE obligations.

**4.** Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

**a.** The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth ($15^{th}$) day of each month until all DBE subcontracting work is completed.

**b.** Reports are required even when no activity has occurred in a monthly period.

**c.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

**d.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**5.** Conform to the established percentage as approved by the OSD.

**a.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

**b.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

**c.** The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

## VII - <u>POST-AWARD MODIFICATION</u>

The OSD may grant a post-award modification request if:

**a.** for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the

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

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

## VIII - MONITORING DBE PARTICIPATION

To ensure compliance with DBE requirements during the term of the Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

**1.** Job site visits;

**2.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

**3.** Routine audits of contract payments to all subcontractors;

**4.** Reviewing of records and reports; and/or

**5.** Interviews of selected personnel.

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

## IX - FAILURE TO COMPLY

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of the Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

**All DBE Compliance forms are maintained by the OSD and are subject to change.**

**Please contact the OSD at supplierdiversity@nola.gov to request a copy of all DBE referenced documents.**

END OF DOCUMENT

# City of New Orleans, Louisiana
# Request for Qualifications

## "TITLE"
## "DATE"

### Attachment "A"

### <u>Needed Services</u>

# City of New Orleans, Louisiana
# Request for Proposals/Qualifications
# "TITLE"
# "DATE"

**Attachment "B"**

**CONTRACT TERMS AND CONDITIONS**

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**44. WAIVER OF BENEFITS.**

**1. <u>ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE</u>.** The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Agreement for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Agreement, or agreement for hire, and in connection with unemployment compensation only, that:

a. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this agreement; and

b. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and

c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Agreement.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

**2. <u>ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE</u>.** The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Agreement, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**3. <u>AMENDMENT</u>.** The Agreement shall not be modified except by written amendment executed by duly authorized representatives of the parties.

**4. <u>ASSIGNABILITY</u>.** The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the City.

**5. <u>AUDIT AND INSPECTION</u>:**

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

***B.*** The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor 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 Agreement. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**6.** **CHOICE OF LAWS**. This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

**7.** **CONFLICT OF INTEREST**. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

**8.** **CONSTRUCTION OF AGREEMENT**. Neither party will be deemed to have drafted the Agreement. The Agreement has been reviewed by all parties and will 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 the Agreement will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of the Agreement. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

**9.** **CONVICTED FELON STATEMENT**. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**10.** **COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

**11.** **DECLARED DISASTER**.

**A.** ***Declaration.*** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City 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 Contractor will vary and may need to be adjusted as needs are identified. The Contractor 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 City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

**C.** ***Purchase Order***. Once services are identified, the City will issue a purchase order to the Contractor. The City 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 Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

**12. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM**.

**A.** ***In General*.** The Contractor agrees to abide by the City Code sections 70-496, *et seq*., to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

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

**6.** Job site visits;

**7.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

**8.** Routine audits of contract payments to all subcontractors;

**9.** Reviewing of records and reports; and/or

**10.** Interviews of selected personnel.

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

**C.** ***Cooperation***. The Contractor shall:

**6.** Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.

**7.** Execute written contracts with DBE Entities that meet the applicable DBE goals.

**c.** The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.

**d.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

**8.** Establish and maintain the following records for review upon request by the OSD:

**e.** Copies of written contracts with DBE Entities and purchase orders;

**f.** Documentation of payments and other transactions with DBE Entities;

**g.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

**h.** Any other records required by the OSD.

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

**9.** Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

**e.** The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth ($15^{th}$) day of each month until all DBE subcontracting work is completed.

**f.** Reports are required even when no activity has occurred in a monthly period.

**g.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

**h.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**10.** Conform to the established percentage as approved by the OSD.

**d.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

**e.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

**f.** The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

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

**c.** for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable

to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

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

**E.** ***Failure to Comply During the term of the Agreement***. If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

**13.** **DURATION**. The term of this agreement shall be for one (1) year, beginning the effective date hereof, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**14.** **ELECTRONIC SIGNATURE AND DELIVERY**. The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by 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 Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**15.** **EMPLOYEE VERIFICATION.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor 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 Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit

attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

**16.** **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.

**17.** **EQUAL EMPLOYMENT OPPORTUNITY**. In all hiring or employment made possible by, or resulting from this agreement, there (1) will not be any discrimination 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, affirmative action will be taken to ensure that the Contractor'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.

**18.** **EXCLUSIVE JURISDICTION AND VENUE**. For all claims arising out of or related to this Agreement, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

**19.** **EXTENSION**. This Agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City of New Orleans and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for four (4) additional one-year terms.

**20.** **INCORPORATION INTO SUBCONTRACTS**. The Contractor will incorporate these Agreement Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

**21.** **INDEMNIFICATION**.

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

and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

**B. *Limitation***. The Contractor'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 Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

**C. *Independent Duty***. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

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

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

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

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

**25. NO THIRD PARTY BENEFICIARIES**. The Agreement is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Agreement.

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

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

**28. NON-SOLICITATION**. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Agreement.

**29. NON-WAIVER**. The failure of the City to insist upon strict compliance with any provision of the Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor 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 the City'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.

**30. OWNERSHIP INTEREST DISCLOSURE**. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor 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 Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**31. OWNERSHIP OF RECORDS**. Upon final payment, all data collected and all products of work prepared, created or modified by Contractor 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 Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

**32. PERFORMANCE MEASURES**.

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

**33. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT**. No elected official or employee of the City shall have a financial interest, direct or indirect, in the Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Agreement without regard to the Contractor's satisfactory performance.

**34. PROHIBITION ON POLITICAL ACTIVITY**. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**35. 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.

**36. SEVERABILITY**. If a court of competent jurisdiction finds any provision of the 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 will be fully severable and the remaining provisions of the Agreement will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Agreement.

**37. SUBCONTRACTOR REPORTING**. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action

it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**38.** **SURVIVAL OF CERTAIN PROVISIONS**. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Agreement and continue in full force and effect.

**39.** **SUSPENSION**. The City may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

**40.** **TERMINATION FOR CAUSE**. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 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.

**41.** **TERMINATION FOR CONVENIENCE**. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the City's intention to terminate at least thirty (30) days before the date of termination.

**42.** **TERMINATION FOR NON-APPROPRIATION**. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**43.** **TERMS BINDING**. The terms and conditions of the Agreement are binding on any heirs, successors, transferees, and assigns.

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

**[END OF ATTACHMENT "B"]**

**City of New Orleans, Louisiana**
**Request for Qualifications**
**"TITLE"**
**"DATE"**

**Attachment "C"**

**DISADVANTAGED BUSINESS ENTERPRISE DBE) REQUIREMENTS**

(Must be submitted with proposal)

**(Purchasing will attach DBE Participation Plan)**

**Attachment "D"**

# CITY OF NEW ORLEANS
# TAX CLEARANCE AUTHORIZATION

According to Section 2-8 of the Code of the City of New Orleans, Louisiana 1995, the City may not enter into or make payments under a contract, grant or cooperative endeavor agreement with any person, corporation, or entity delinquent in City taxes. This form supplies the needed tax clearance. This clearance is issued without prejudice to any tax liabilities discovered by audit.

**Please refer to the instructions on the back of this form**

*BUSINESS NAME:*

*OWNER'S NAME:*

*TYPE OF BUSINESS:*

*BUSINESS ADDRESS:*

*MAILING ADDRESS:*

*CONTACT TELEPHONE:*

*FAX NUMBER:*

*E-MAIL ADDRESS:*

*REAL ESTATE TAX NUMBER:*

*PERSONAL PROPERTY TAX NUMBER:*

*SALES TAX/OCCUPATIONAL LICENSE NUMBER:*

**PRINT NAME:** **TITLE:**

**AUTHORIZED SIGNATURE:** **DATE SIGNED:**

**I certify that I have the authority to execute this form with respect to the tax matters covered and that the above is true and correct. The City of New Orleans is authorized to inspect and/or receive confidential tax information.**

**BUREAU OF REVENUE (Room 1W15)**

This clearance covers Occupational License and Sales/Use taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20_____. The above clearance may be revoked for failure to pay sales tax.

**COLLECTOR OF REVENUE** **DATE**

**BUREAU OF TREASURY (Room 1W37)**

This clearance covers Ad Valorem taxes for Real Estate and Business Property taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20_____.

**TREASURY CHIEF** **DATE**

I attest that the taxpayer named above **is not** delinquent in any taxes owed to the city.

**DIRECTOR OF FINANCE** **DATE**

Revised 10-25-16 NC

# CITY OF NEW ORLEANS
# TAX CLEARANCE AUTHORIZATION

## INSTRUCTIONS

1. To complete this form, provide all of the information requested. Failure to fill in ALL information requested will delay processing. If the form is not signed and dated, the form will not be processed.

2. Complete, sign and date the authorization form and submit to the Department with whom you are contracting.

3. This form authorizes the City of New Orleans to inspect and/or receive your confidential tax information.

4. This Tax Clearance Authorization will not be honored for any purpose other than contracting with the City of New Orleans.

5. The following requirements must be met in order for a Tax Clearance Authorization form to be approved by the City of New Orleans. It is recommended that all outstanding tax and business registration be completed prior to processing the form to expedite contract execution.

**Real Estate/Personal Property Tax**

- Businesses are required to be current in payment of all Real Estate Tax and Personal Property Tax.
- A business can visit the City of New Orleans' website, www.nola.gov at the Bureau of Treasury webpage to pay outstanding Real Estate and Personal Property taxes due.
- A business can mail outstanding tax payments to City of New Orleans, Bureau of the Treasury 1300 Perdido St., Room 1W38, New Orleans, La. 70112.

**Sales Tax/Occupational License**

- All businesses are required to have a City of New Orleans Sales Tax number.
- If the business is located within Orleans Parish, an Occupational License is also required. If the business is domiciled outside of Orleans Parish, a registration is required to be completed to obtain a Revenue account number.
- If a business is not registered, a New Business Application must be completed. The application can be found on the City of New Orleans' website, www.nola.gov, at the Bureau of Revenue webpage. Under Online Revenue Documents, an application can be downloaded and returned to the City of New Orleans, Bureau of Revenue, 1300 Perdido St., Room 1W15, New Orleans, LA 70112. Any questions may be forwarded to Revenue Administration, 658-1695 or 658-1666.
- Non-profit organizations must comply with the Occupational License requirements by completing a New Business Application. The application can be found on the City of New Orleans' website, www.nola.gov, at the Bureau of Revenue webpage. Under Online Revenue Documents, an application can be downloaded and returned to the City of New Orleans, Bureau of Revenue, 1300 Perdido St., Room 1W15, New Orleans, LA 70112. Any questions may be forwarded to Revenue Administration, 658-1695 or 658-1666.
- Once exempt status is confirmed for the non-profit organization, the organization is exempt from Occupational License fees.

Revised Tax Clearance Authorization, April 20, 2012

**Attachment "E"**
**CITY OF NEW ORLEANS**
**IDENTIFICATION OF SUBCONTRACTORS**

**STATE OF LOUISIANA**

**PARISH OF _____**

Before me, the undersigned authority, came and appeared_____ _____, who, being first duly sworn, deposed and said that:

1. He/She is the_____and authorized representative of _____ _____, hereafter called "Respondent."

2. The Respondent submits the attached proposal in response to City of New Orleans Proposal #_____.

3. The Respondent hereby identifies the following persons, natural or artificial, who are retained by Respondent at the time the attached proposal is submitted and who are expected to perform work as subcontractors in connection with the Respondent's work for the City. Respondent hereby acknowledges and agrees that when new subcontractors not previously named are added to the project, they must be promptly identified to the City User Department within 48 hours of the change. The official change may not take place unless and until the City provides its written approval.

_____
Person(s) and Company Name (if applicable

_____

_____

_____
Respondent Representative (Signature)

_____
(Print or type name)

_____
(Address)

Sworn to and subscribed before me, _____, Notary Public, this _____day of _____,

2011___.

_____
Notary Public (signature)
Notary ID#/Bar Roll #

**Attachment "F"**

**CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

**STATE OF LOUISIANA**

**PARISH OF _____**

Before me, the undersigned authority, came and appeared_____ _____, who, being first duly sworn, deposed and said that:

4. He/She is the_____and authorized representative of _____ _____, hereafter called "Respondent."

5. The Respondent submits the attached proposal in response to City of New Orleans Proposal #_____.

6. The Respondent hereby confirms that a conflict(s) of interest exists/does not exist/may exist in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with city officials or employees. (*If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form*).

_____
Respondent Representative (Signature)

_____
(Print or type name)

_____
(Address)

Sworn to and subscribed before me, _____, Notary Public, this _____day of _____,

20___.

_____
Notary Public (signature)
Notary ID#/Bar Roll #

**Attachment "G"**

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**NAME OF CONTRACTOR**

**RFP NUMBER AND TITLE**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "**Agreement**") is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the "**City**"), and **NAME OF CONTRACTOR**, represented by **NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY** (the "**Contractor**"). The City and the Contractor may sometimes collectively referred to as the "**Parties**." The Agreement is effective as of the date of execution by the City (the "**Effective Date**").

## RECITALS

**WHEREAS**, on **DATE OF RFQ**, the City issued a request for qualifications **RFQ NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the "**RFQ**");

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFQ.

**WHEREAS**, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** to qualified contractors under the RFQ to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the "**RFP**"); and

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

**or**

**WHEREAS**, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the "**RFP**"); and

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

**NOW THEREFORE**, the City and the Contractor agree as follows:

## ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

**A.** ***Services*****.** The Contractor will, in accordance with the schedule approved by the City:

1. **INSERT SCOPE OF SERVICES, TASKS, DELIVERABLES, AND/OR PERFORMANCE MEASURES IN ACCORDANCE WITH EITHER THE RFP OR CONTRACTOR'S PROPOSAL**;

2. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFP; the Contractor's proposal dated **DATE OF PROPOSAL**.

3. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

4. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

5. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

6. 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 City within thirty (30) days after the approval of the associated plan change or amendment; and

7. Cooperate with the City and any person performing work for the City.

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

**B. *Standards*.** The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with **IDENTITY ANY PROFESSIONAL OR OTHER STANDARDS YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES**.

**C. *Compliance with Laws*.** The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances, including, without limitation, **IDENTIFY ANY LEGAL REQUIREMENTS THAT YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES**.

**D. *Schedule*.**

1. The Contractor will perform all work under this Agreement according to the following schedule:

**INSERT APPLICABLE SCHEDULE**

The Contractor will submit a proposed progress schedule to the City within fourteen (14) calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed: **INSERT ANY APPLICABLE SCHEDULE REQUIREMENTS**.

2. The City 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 Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

**E. *Invoices*.**

1. The Contractor will submit **INSERT CHOICE BETWEEN MONTHLY – QUARTERLY – OR OTHER** invoices for work performed under this Agreement to the City 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 City is not liable. At a minimum, each invoice must include the following information and supporting documentation: **LIST INFORMATION AND DOCUMENTS REQUIRED TO BE SUBMITTED WITH INVOICE**.

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

**F. *Records and Reporting*.**

1. The Contractor 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 XXXX 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 Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor 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 City.

**G. *Audit and Inspection*.**

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

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

**H. *Insurance*.**

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

**INSERT ANY APPLICABLE INSURANCE REQUIREMENTS APPROVED BY THE CITY'S RISK MANAGER**

**a.** Minimum Requirements**:**

**i.** Commercial General Liability ("CGL"):

**ii.** Worker's Compensation:

**iii.** Professional Liability (Errors and Omissions):

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

**i.** Additional Insured Status.

**ii.** Primary Coverage.

**iii.** Claims Made Policies.

**iv.** Waiver of Subrogation.

**v.** Notice of Cancellation.

**vi.** Acceptability of Insurers.

2. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: RFP or RFQ No. xxxxxx) within ten (10) calendar days of the Effective Date and at any other time at the City's request the following documents:

a. Proof of coverage for each policy of insurance required by this Agreement;

b. Copy of the fully executed Agreement;

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

d. Statements disclosing any policy aggregate limit.

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

a. Replenish any 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 City 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 City'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.

**I. *Indemnity*.**

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

2. The Contractor'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 Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of

any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

## ARTICLE II - REPRESENTATIONS AND WARRANTIES

**A.** The Contractor represents and warrants to the City that:

**1.** The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

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

**4.** The Contractor 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 Contractor's performance of this Agreement;

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

**6.** The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor 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 Contractor's most favored customer for the same or substantially similar services;

**8.** The Contractor 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 Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

**B. *Convicted Felon Statement*.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor 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 Contractor 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 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 Agreement.

**D. *Employee Verification*.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this

Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor 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 Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

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

## ARTICLE III - THE CITY'S OBLIGATIONS

**A.** ***Administration*****.** The City will:

**1.** Administer this Agreement through the **NAME OF THE CITY DEPARTMENT RESPONSIBLE FOR MONITORING THIS AGREEMENT**;

**2.** Provide the Contractor **IDENTIFY ANY SPECIFIC DOCUMENTS TO BE PROVIDED** and other documents deemed necessary for the Contractor's performance of any work required under this Agreement;

**3.** Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and

**4. INSERT ANY ADDITIONAL OBLIGATIONS FOR THE CITY**.

**B.** ***Payment*****.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

**1.** The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;

**2.** The City, 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 City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

**4.** All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

**5.** The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor 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 City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

**6.** If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

## ARTICLE IV - COMPENSATION

**A. *Rate of Compensation*.**

**1.** The City will pay the Contractor in accordance with the following rate: **INSERT RATE OF COMPENSATION**.

**2.** This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

**3.** The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, 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 City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement

**4.** The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

**B. *Maximum Amount*.** The maximum aggregate amount payable by the City under this Agreement is **INSERT WRITTEN MAXIMUM DOLLAR AMOUNT** Dollars and **INSERT WRITTEN MAXIMUM CENTS AMOUNT** Cents ($**INSERT NUMERICAL MAXIMUM DOLLAR AMOUNT**).

## ARTICLE V - DURATION AND TERMINATION

**A. *Initial Term*.** The term of this agreement shall be for one (1) year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**B. *Extension*.** This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for four (4) additional one-year terms.

**C. *Termination for Convenience*.** The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor 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 City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**E. *Termination for Cause*.** The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 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 City may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

## ARTICLE VI – DECLARED DISASTER

**E. *Declaration.*** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City 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 Contractor will vary and may need to be adjusted as needs are identified. The Contractor 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.

**F. *Task Order. Notification and Personnel*.** Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

**G. *Purchase Order*.** Once services are identified, the City will issue a purchase order to the Contractor. The City 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.

**H.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

## ARTICLE VII - PERFORMANCE MEASURES

**A. *Factors*.** the City will measure the performance of the Contractor 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 Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other

damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

## ARTICLE VIII – LIVING WAGES

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

## ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

**F.** ***In General*.** The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

**G.** ***Monitoring*.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

**11.** Job site visits;

**12.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

**13.** Routine audits of contract payments to all subcontractors;

**14.** Reviewing of records and reports; and/or

**15.** Interviews of selected personnel.

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

**H.** ***Cooperation***. The Contractor shall:

**11.** Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.

**12.** Execute written contracts with DBE Entities that meet the applicable DBE goals.

**e.** The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.

**f.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

**13.** Establish and maintain the following records for review upon request by the OSD:

**i.** Copies of written contracts with DBE Entities and purchase orders;

**j.** Documentation of payments and other transactions with DBE Entities;

**k.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each

certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

**l.** Any other records required by the OSD.

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

**14.** Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

**i.** The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth ($15^{th}$) day of each month until all DBE subcontracting work is completed.

**j.** Reports are required even when no activity has occurred in a monthly period.

**k.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

**l.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**15.** Conform to the established percentage as approved by the OSD.

**g.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

**h.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

**i.** The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

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

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

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

## ARTICLE X - NON-DISCRIMINATION

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

**C.** ***Incorporation into Subcontracts*.** The 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.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

## ARTICLE XI - INDEPENDENT CONTRACTOR

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

**B.** ***Exclusion of Worker's Compensation Coverage*.** The City will not be liable to the

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

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

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

## ARTICLE XII - NOTICE

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

1. To the City:

   **NAME AND ADDRESS OF THE CITY DEPARTMENT RESPONSIBLE FOR MONITORING THIS AGREEMENT**

   &

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

2. To the Contractor:

   **NAME AND ADDRESS OF POINT OF CONTACT FOR CONTRACTOR TO RECEIVE NOTICES**

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

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

## ARTICLE XIII - ADDITIONAL PROVISIONS

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

**B. *Assignment*.** This Agreement and any part of the Contractor's interest in it are not

assignable or transferable without the City's prior written consent.

**C.** ***Choice of Law*****.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**D.** ***Conflicting Employment*****.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor 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 Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

**E.** ***Construction* of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor 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.

**F.** ***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.

**G.** ***Exhibits.*** The following exhibits will be and are incorporated into this Agreement: **INSERT LIST OF ALL EXHIBITS**.

**H.** ***Jurisdiction*****.** The Contractor 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 Contractor.

**I.** ***Limitations of the City's Obligations*****.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

**J.** ***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.

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

**L.** ***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.

**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; **INSERT ANY APPLICABLE**.

**N.** ***Ownership Interest Disclosure*****.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor 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 Contractor fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**O.** ***Prohibition of Financial Interest in Agreement***. No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

**P.** ***Prohibition on Political Activity*****.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**Q.** ***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.

**R.** ***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.

**IN CASE OF USE OF CDBG FUNDS, ADD THIS PROVISION:**

**S.** ***Special Conditions for CDBG Contracts*****. The "CDBG Compliance Provisions for Professional Services Contracts," attached as Exhibit "___" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to the Contractor that the City intends to seek reimbursement from the Community Development Block Grant Program in connection with the work to**

**be performed under this Agreement.**

**T.** ***Subcontractor Reporting*****.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**U.** ***Survival of Certain Provisions*****.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and **IDENTIFY ANY OTHER PROVISIONS THAT SHOULD SURVIVE TERMINATION** shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

**V.** ***Terms Binding*****.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

## ARTICLE XIV - COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

## ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by 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 Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

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

**[SIGNATURES CONTAINED ON NEXT PAGE]**

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

**CITY OF NEW ORLEANS**

**BY: _____**
**MITCHELL J. LANDRIEU, MAYOR**

**Executed on this _____ of _____, 201__**

**FORM AND LEGALITY APPROVED:**
**Law Department**

**By: _____**

**Printed Name: _____**

**NAME OF CONTRACTOR**

**BY: _____**
**NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY**

**_____**
**FEDERAL TAX I.D. OR SOCIAL SECURITY NO.**

A DBE goal of 35 percent has been established for this RFP. The respondent shall agree to use its best efforts, as determined by the DBE Compliance Officer to assure that all respondents comply with the factors set forth in the DBE Program, to meet the goal for DBE participation in the performance of this solicitation.

Please direct all questions related to DBE compliance prior to the Delivery Deadline to *Office of Supplier Diversity, 1340 Poydras Street, 10th Floor, New Orleans, LA 70112, telephone: 658-4220, email: kfgross@nola.gov*.

**By responding to this RFP, respondent agrees to the City's required provisions as provided in Attachments "B" and therefore waives any future right to contest the required provisions.**

1. **Services Needed**: Attachment "A".

2. **Selection Committee**: The CPO must establish a Selection Committee with relevant subject-matter expertise in reviewing and evaluating proposals to the RFP. Each proposal to the RFP must be evaluated by a committee of five individuals consisting of:

- The manager of the User Entity requesting the service, or his designee;
- The First Deputy Mayor-Chief Administrative Officer, or his designee;
- The employee who will manage and monitor the contract;
- A professional from within local government who possesses expertise in the relevant field; and
- The Chief Financial Officer, or his designee.

The Selection Committee shall first evaluate the proposals on the basis of criteria other than price. The members on the Selection Committee shall either complete the numerical grading and provide a written explanation stating the reasons for the rating for each criteria, or if using the wholly qualitative evaluation criteria, the members shall provide a rating of a proposal as highly advantageous, advantageous, not advantageous, or unacceptable and state the reasons for the rating for each criteria.

3. **Selection**: The City will select a Respondent generally according to the procedures described in Executive Order MJL 10-05. The Selection Committee will first evaluate and rank responsive RFP Responses on the criteria listed below and provide an assessment of that score. A Respondent may receive the maximum percentage, a portion of this score, or no percentage at all, depending upon the merit of its response, as judged by the Selection Committee in accordance with:

Technical Criteria (sample)

( %) Specialized experience and technical competence;

( %) Performance history, including, without limitation, competency, responsiveness, cost control, work quality and the ability to meet schedules and deadlines;

(%) Maintenance of an office, residence or domicile in Orleans Parish, to the extent permitted by law;

DBE Participation

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan. If a DBE Participation Plan is not submitted, it shall be determined that the proposer was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.

(%) Proposal complies with contract DBE participation goal of **35%** or will conduct good faith efforts to do so.

(%) Proposal submitted a quality DBE Participation Plan that includes innovative strategies and approaches to achieve and maintain compliance over the contract term, including firm's past performance on meeting DBE goals, technical assistance and supportive services designed to increase participation and build capacity in the DBE community.

Price Proposal

The Selection Committee will then evaluate and rank responsive Proposals on Price. **Price proposals must be submitted in a separate envelope marked "Price Proposal".** A Proposer may receive the maximum percentage, a portion of this score, or no percentage at all, depending upon the merit of its Price Proposal, as judged by the Selection Committee in accordance with:

(%) Cost

Shortlist

The City at its sole discretion may recommend a selection of Respondents for a short list based on the overall ranking.

During the review of any proposal, the Evaluation Committee may:

- Conduct reference checks relevant to the System with any or all of the references cited in a Proposal to verify any and all information, and rely on or consider any relevant information from such cited references in the evaluation of Proposals;
- Seek clarification of a Proposal from any or all Respondents and consider such supplementary information in the evaluation of Proposals;
- Request interviews/presentations with any, some or all Respondents or Team Members to clarify any questions or considerations based on the information included in Proposals during the evaluation process, and consider any supplementary information from interviews/presentations in the evaluation; and

4. **Ownership**: All proposals and/or documentation submitted therewith are City property for all purposes. Respondents will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption. The City will not credit any blanket exemption claims lacking specific justification. The City does not guarantee the confidentiality of submissions.

5. **Effect**: This RFP and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The City may cancel or modify this solicitation at any time at will, with or

without notice. The contract executed by the City and the selected Respondent, if any, is the exclusive statement of rights and obligations extending from this solicitation.

6. **Point of Contact**: All correspondence and other communications regarding this procurement should be directed to the attention of: Nathaniel Celestine, City of New Orleans, Bureau of Purchasing, 1300 Perdido Street, 4W07, New Orleans, Louisiana 70112.

Substantive questions must be submitted by Respondents in writing to the person at the address provided above or emailed to Procurement@nola.gov no later than) Purchasing will provide date.

Any request received after that time may not be reviewed for inclusion in this RFP. The request shall contain the requester's name, address, and telephone number.

The Bureau of Purchasing will issue a response to any inquiry if it deems it necessary, by written addendum to the RFP, posted on the City's website, and issued prior to the RFP's Delivery Deadline. The Respondents shall not rely on any representation, statement or explanation other than those made in this RFP or in any addenda issued. Where there appears to be a conflict between this RFP and any addendum issued, the last addendum issued will prevail.

From the time of advertising, and until the final award, there is a prohibition on communication by Respondents (or anyone on their behalf) with the City's staff, Selection Committee members and elected officials. This does not apply to oral communications at Pre-Proposal conferences, oral presentations before evaluation committees, contract negotiations, or communications at any time with any City employee or elected official regarding matters not concerning this RFP.

Breaking the established prohibition on communication may result in a disqualification of the proposal.

7. **Proposal Review**: In accordance with the Mayor's Executive Order, MJL-10-05, the review committee will evaluate each proposal submitted. The City will make every effort to administer the proposal process in accordance with the terms and dates discussed in the RFP. However, the City reserves the right to modify the qualification process and dates as deemed necessary.

The City may request an online demonstration of specific vendors' solutions prior to the qualifications review completion date. Respondents should be prepared to provide such a demonstration in a timely fashion.

8. **In-Process Technical Review**: The selected Respondent's performance of the services shall be subject to in-process technical review by the City's Technical Representative or such other person(s) as may be designated in writing by INSERT NAME OF DEPARTMENT provided such actions are not unreasonable and does not interfere with the progress of the work.

9. **Required Attachments**: **Proposers are required to complete the following Attachments and submit along with their hardcopy and electronic Proposal submission**:

- Attachment "C" **DISAVANTAGED BUSINESS ENTERPRISE PARTICIPATION PLAN**
- Attachment "F" **CITY OF NEW ORLEANS CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

The following Attachments will only be requested of the successful Proposer prior to obtaining a contract:

- Attachment "D" Tax Clearance Certificate
- Attachment "E" Identification of Subcontractors

Information Only:

- Attachment "G" Sample Contract Agreement

**FAILURE TO COMPLETE THE REQUIRED ATTACHMENTS MAY RESULT IN THE DISQUALIFICATION OF A PROPOSAL.**

10. **Proposal and Submission Requirements:**

To achieve a uniform review process and obtain the maximum degree of comparability, it is required that the proposals be organized in the manner specified below. Proposal shall include all of the following:

**1) Title Page**

Show the RFP number and subject, the name of your firm, address, email address, telephone number(s), facsimile machine number(s), name of contact person and date.

**2) Table of Contents**

Clearly identify the materials by section, page number, and tabs.

**3) Letter of Transmittal (Limited To One Page)**

Briefly state your firm's understanding of the services to be performed and make a positive commitment to provide services as specified. Give the name(s) of the person(s) who is/are authorized to make representations for your firm, their title, address, email address, telephone number(s) and facsimile number(s).

**4) Proposal Contents**

Proposals should contain a clear and comprehensive response to all requirements/questions in the order contained herein.

11. **Insurance:**

**MINIMUM SCOPE OF INSURANCE (Contact the City's Risk Manager Adolph "AL" Delaparte)**

12. **Disadvantaged Business Enterprise (DBE) Requirements**

## I - DBE PROGRAM COMPLIANCE

The requirements of the City of New Orleans ("City") Disadvantaged Business Enterprise ("DBE") Program apply to this Agreement. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agree to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the City's Office of Supplier Diversity ("OSD"), shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program

## II - DBE CONTRACT GOAL

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation.

Participation shall be counted toward meeting the contract goal based on the following:

1. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
2. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
3. A Bidder/Proposer can count 100 % of the DBE's participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
4. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier's participation and 60 % of DBE Non-Manufacturer supplier's participation toward its contract goal.
5. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.
6. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Usefully Function.

"DBE Commercially Useful Function means" a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:

**a.** Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;

**b.** Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;

**c.** Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.

**d.** Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

## III - DBE DIRECTORY

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City's DBE Program goals.

**a.** Contractors agree to utilize the City's SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board and Harrah's New Orleans. The SLDBE directory is available at www.nola.gov.

**b.** The Louisiana Unified Certification Program ("LA UCP") directory is available at www.dotd.louisiana.gov.

Information on locating these directories may also be requested from the OSD at supplierdiversity@nola.gov.

## IV - GOOD FAITH EFFORT POLICY

In accordance with Sec.70-461 of the City Code, the City shall reject any bid and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the Bidder's or Proposer's responsiveness to fulfilling the City's DBE Program goals prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

**A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR**:

i. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project

ii. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

**B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES**:

i. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.

ii. Bidder/Proposer included a copy of each announcement or notification.

**C. INITIAL SOLICITATION & FOLLOW-UP**:

i. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.

ii. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

**D. NEGOTIATE IN GOOD FAITH**:

i. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.

ii. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/Proposer fails to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at supplerdiversity@nola.gov.

## V - REQUIRED DBE FORMS for BIDs/RFPs/RFQs

### A. BIDs:

In accordance with Louisiana Public Bid Law, the two apparent lowest bidders on an invitation to bid shall complete and submit all required post bid documents within three (3) business days of the bid opening. If the required post bid documents are not received within three (3) business days of the bid opening it shall be determined that bidder was non-responsive.

The following DBE documents must be received within three (3) business days of the bid opening:

1. DBE Compliance Form-1: This form is used to establish your DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s).

If the Bidder has attained the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.

**2.** DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

**3.** After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts.

Thereafter, the Bidder/Contractor shall be bound by the established percentage, as approved by the OSD.

**B. <u>Request for Proposals ("RFP") / Request for Qualifications ("RFQs"):</u>**

To ensure the full participation of DBE's in all phases of the City's procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

**1. DBE Participation Plan (Attachment "C"):** A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.

**a.** If a DBE Participation Plan (Attachment "C") is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.

**2.** Within ten (10) days of the City's issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1**:** This form is used to establish your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).

**a.** If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

## VI - <u>CONTRACTOR COOPERATION</u>

The Contractor shall:

**1.** Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE subcontractors/suppliers ("DBE Entities").

**2.** Execute written contracts with DBE Entities that meet the applicable DBE goals.

**a.** The Contractor shall provide the DBE Compliance Officer ("DBECO") with copies of said contracts within thirty (30) days from the date the Agreement is fully executed between the City and the Contractor.

**b.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

**3.** Establish and maintain the following records for review upon request by the OSD:

**a.** Copies of written contracts with DBE Entities and purchase orders;

**b.** Documentation of payments and other transactions with DBE Entities;

**c.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

**d.** Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the Agreement. Such records are necessary to determine compliance with their DBE obligations.

**4.** Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

**a.** The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth ($15^{th}$) day of each month until all DBE subcontracting work is completed.

**b.** Reports are required even when no activity has occurred in a monthly period.

**c.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

**d.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**5.** Conform to the established percentage as approved by the OSD.

**a.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

**b.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

**c.** The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

## VII - <u>POST-AWARD MODIFICATION</u>

The OSD may grant a post-award modification request if:

**a.** for a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work.

The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or

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

## VIII - MONITORING DBE PARTICIPATION

To ensure compliance with DBE requirements during the term of the Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

**1.** Job site visits;

**2.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

**3.** Routine audits of contract payments to all subcontractors;

**4.** Reviewing of records and reports; and/or

**5.** Interviews of selected personnel.

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

## IX - FAILURE TO COMPLY

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of the Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

**All DBE Compliance forms are maintained by the OSD and are subject to change.**

**Please contact the OSD at supplierdiversity@nola.gov to request a copy of all DBE referenced documents.**

END OF DOCUMENT

**City of New Orleans, Louisiana**
**Request for Proposals**
**"TITLE"**
**"DATE**

**Attachment "A"**

**NEEDED SERVICES**

## Pricing/Cost

### Vendor's Fee Proposal Requirements

This page must be completed by department.

Please specify how the project is to be priced, example: Fixed Fee, Monthly Fee, One-Time cost, etc.

# City of New Orleans, Louisiana
# Request for Proposals/Qualifications
# "TITLE"
# "DATE"

**Attachment "B"**

**CONTRACT TERMS AND CONDITIONS**

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**43. TERMS BINDING.**

**44. WAIVER OF BENEFITS.**

**1. <u>ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE</u>**. The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Agreement for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Agreement, or agreement for hire, and in connection with unemployment compensation only, that:

a. The Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this agreement; and

b. Services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and

c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Agreement.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

**2. <u>ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE</u>**. The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Agreement, that the City shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City for the purpose of Worker's Compensation coverage.

**3. <u>AMENDMENT</u>**. The Agreement shall not be modified except by written amendment executed by duly authorized representatives of the parties.

**4. <u>ASSIGNABILITY</u>**. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in the same without prior written consent of the City.

**5. <u>AUDIT AND INSPECTION</u>**:

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

***B.*** The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor 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 Agreement. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**6. <u>CHOICE OF LAWS</u>**. This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

**7. CONFLICT OF INTEREST**. In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City, and in recognition of the Contractor's responsibility to the City, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the City. Final decision on any disputed offers of other employment for the Contractor shall rest with the City.

**8. CONSTRUCTION OF AGREEMENT**. Neither party will be deemed to have drafted the Agreement. The Agreement has been reviewed by all parties and will 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 the Agreement will be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of the Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of the Agreement. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

**9. CONVICTED FELON STATEMENT**. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding five (5) years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**10. COUNTERPARTS**. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement, but all of which, when taken together, shall constitute one and the same agreement.

**11. DECLARED DISASTER**.

**A.** ***Declaration.*** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City 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 Contractor will vary and may need to be adjusted as needs are identified. The Contractor 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 City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

**C.** ***Purchase Order***. Once services are identified, the City will issue a purchase order to the Contractor. The City 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 Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

**12. <u>DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM</u>.**

**A. *<u>In General</u>*.** The Contractor agrees to abide by the City Code sections 70-496, *et seq*., to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

**B. *<u>Monitoring</u>*.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

**6.** Job site visits;

**7.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

**8.** Routine audits of contract payments to all subcontractors;

**9.** Reviewing of records and reports; and/or

**10.** Interviews of selected personnel.

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

**C. *<u>Cooperation</u>*.** The Contractor shall:

**6.** Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.

**7.** Execute written contracts with DBE Entities that meet the applicable DBE goals.

**c.** The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the City and the Contractor.

**d.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

**8.** Establish and maintain the following records for review upon request by the OSD:

**e.** Copies of written contracts with DBE Entities and purchase orders;

**f.** Documentation of payments and other transactions with DBE Entities;

**g.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

**h.** Any other records required by the OSD.

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

**9.** Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

**e.** The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth ($15^{th}$) day of each month until all DBE subcontracting work is completed.

**f.** Reports are required even when no activity has occurred in a monthly period.

**g.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

**h.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**10.** Conform to the established percentage as approved by the OSD.

**d.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

**e.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

**f.** The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

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

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

**d.** the Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the City is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and

document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

**E.** ***Failure to Comply During the term of the Agreement***. If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

**13.** **DURATION**. The term of this agreement shall be for one (1) year, beginning the effective date hereof, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**14.** **ELECTRONIC SIGNATURE AND DELIVERY**. The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by 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 Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

**15.** **EMPLOYEE VERIFICATION.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor 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 Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

**16.** **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.

**17.** **EQUAL EMPLOYMENT OPPORTUNITY**. In all hiring or employment made possible by, or resulting from this agreement, there (1) will not be any discrimination 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, affirmative action will be taken to ensure that the Contractor'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.

**18. EXCLUSIVE JURISDICTION AND VENUE**. For all claims arising out of or related to this Agreement, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

**19. EXTENSION**. This Agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City of New Orleans and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for four (4) additional one-year terms.

**20. INCORPORATION INTO SUBCONTRACTS**. The Contractor will incorporate these Agreement Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

**21. INDEMNIFICATION**.

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

**B.** ***Limitation***. The Contractor'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 Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.

**C.** ***Independent Duty***. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.

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

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

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

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

**25.** **NO THIRD PARTY BENEFICIARIES**. The Agreement is entered into for the exclusive benefit of the City and the Contractor, and the City and the Contractor expressly disclaim any intent to benefit anyone not a party to this Agreement.

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

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

**28.** **NON-SOLICITATION**. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Agreement.

**29.** **NON-WAIVER**. The failure of the City to insist upon strict compliance with any provision of the Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor 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 the City'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.

**30.** **OWNERSHIP INTEREST DISCLOSURE**. The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor 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 Contractor fails to submit the required affidavits, the City may, after

thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**31. <u>OWNERSHIP OF RECORDS</u>**. Upon final payment, all data collected and all products of work prepared, created or modified by Contractor 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 Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

**32. <u>PERFORMANCE MEASURES</u>**.

**A**. ***<u>Factors</u>***. the City will measure the performance of the Contractor 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. *<u>Failure to Perform</u>***. If the Contractor fails to perform according to the Agreement, the City will notify the Contractor. If there is a continued lack of performance after notification, the City may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the City will invoice the defaulting contractor for any increase in costs and other damages sustained by the City. Further, the City will seek full recovery from the defaulting contractor.

**33. <u>PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT</u>**. No elected official or employee of the City shall have a financial interest, direct or indirect, in the Agreement, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to the Contractor pursuant to this Agreement without regard to the Contractor's satisfactory performance.

**34. <u>PROHIBITION ON POLITICAL ACTIVITY</u>**. None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**35. <u>REMEDIES CUMULATIVE</u>**. 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.

**36.** **SEVERABILITY**. If a court of competent jurisdiction finds any provision of the 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 will be fully severable and the remaining provisions of the Agreement will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Agreement.

**37.** **SUBCONTRACTOR REPORTING**. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**38.** **SURVIVAL OF CERTAIN PROVISIONS**. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Agreement and continue in full force and effect.

**39.** **SUSPENSION**. The City may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the City.

**40.** **TERMINATION FOR CAUSE**. The City may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective 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.

**41.** **TERMINATION FOR CONVENIENCE**. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the City's intention to terminate at least thirty (30) days before the date of termination.

**42.** **TERMINATION FOR NON-APPROPRIATION**. This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

**43.** **TERMS BINDING**. The terms and conditions of the Agreement are binding on any heirs, successors, transferees, and assigns.

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

**[END OF ATTACHMENT "B"]**

Remainder of this page left intentionally blank

**City of New Orleans, Louisiana**
**Request for Proposals**
**"TITLE"**
**"DATE"**

**Attachment "C"**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PLAN**

(Must be submitted with proposal)

**(Purchasing will attach DBE Participation Plan)**

**Attachment "D"**

# CITY OF NEW ORLEANS
# TAX CLEARANCE AUTHORIZATION

According to Section 2-8 of the Code of the City of New Orleans, Louisiana 1995, the City may not enter into or make payments under a contract, grant or cooperative endeavor agreement with any person, corporation, or entity delinquent in City taxes. This form supplies the needed tax clearance. This clearance is issued without prejudice to any tax liabilities discovered by audit.

**Please refer to the instructions on the back of this form**

*BUSINESS NAME:*

*OWNER'S NAME:*

*TYPE OF BUSINESS:*

*BUSINESS ADDRESS:*

*MAILING ADDRESS:*

*CONTACT TELEPHONE:*

*FAX NUMBER:*

*E-MAIL ADDRESS:*

*REAL ESTATE TAX NUMBER:*

*PERSONAL PROPERTY TAX NUMBER:*

*SALES TAX/OCCUPATIONAL LICENSE NUMBER:*

**PRINT NAME:** **TITLE:**

**AUTHORIZED SIGNATURE:** **DATE SIGNED:**

**I certify that I have the authority to execute this form with respect to the tax matters covered and that the above is true and correct. The City of New Orleans is authorized to inspect and/or receive confidential tax information.**

**BUREAU OF REVENUE (Room 1W15)**

This clearance covers Occupational License and Sales/Use taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20_____. The above clearance may be revoked for failure to pay sales tax.

**COLLECTOR OF REVENUE** **DATE**

**BUREAU OF TREASURY (Room 1W37)**

This clearance covers Ad Valorem taxes for Real Estate and Business Property taxes.

I hereby assert that after review of the taxpayer's records of this date that the taxpayer **IS NOT** delinquent in any taxes owed to the city. This clearance covers the period today through March 1, 20_____.

**TREASURY CHIEF** **DATE**

I attest that the taxpayer named above **is not** delinquent in any taxes owed to the city.

**DIRECTOR OF FINANCE** **DATE**

Revised 7-22-16 NC

# CITY OF NEW ORLEANS
# TAX CLEARANCE AUTHORIZATION

## INSTRUCTIONS

1. To complete this form, provide all of the information requested. Failure to fill in ALL information requested will delay processing. If the form is not signed and dated, the form will not be processed.

2. Complete, sign and date the authorization form and submit to the Department with whom you are contracting.

3. This form authorizes the City of New Orleans to inspect and/or receive your confidential tax information.

4. This Tax Clearance Authorization will not be honored for any purpose other than contracting with the City of New Orleans.

5. The following requirements must be met in order for a Tax Clearance Authorization form to be approved by the City of New Orleans. It is recommended that all outstanding tax and business registration be completed prior to processing the form to expedite contract execution.

**Real Estate/Personal Property Tax**

- Businesses are required to be current in payment of all Real Estate Tax and Personal Property Tax.
- A business can visit the City of New Orleans' website, www.nola.gov at the Bureau of Treasury webpage to pay outstanding Real Estate and Personal Property taxes due.
- A business can mail outstanding tax payments to City of New Orleans, Bureau of the Treasury 1300 Perdido St., Room 1W38, New Orleans, La. 70112.

**Sales Tax/Occupational License**

- All businesses are required to have a City of New Orleans Sales Tax number.
- If the business is located within Orleans Parish, an Occupational License is also required. If the business is domiciled outside of Orleans Parish, a registration is required to be completed to obtain a Revenue account number.
- If a business is not registered, a New Business Application must be completed. The application can be found on the City of New Orleans' website, www.nola.gov, at the Bureau of Revenue webpage. Under Online Revenue Documents, an application can be downloaded and returned to the City of New Orleans, Bureau of Revenue, 1300 Perdido St., Room 1W15, New Orleans, LA 70112. Any questions may be forwarded to Revenue Administration, 658-1695 or 658-1666.
- Non-profit organizations must comply with the Occupational License requirements by completing a New Business Application. The application can be found on the City of New Orleans' website, www.nola.gov, at the Bureau of Revenue webpage. Under Online Revenue Documents, an application can be downloaded and returned to the City of New Orleans, Bureau of Revenue, 1300 Perdido St., Room 1W15, New Orleans, LA 70112. Any questions may be forwarded to Revenue Administration, 658-1695 or 658-1666.
- Once exempt status is confirmed for the non-profit organization, the organization is exempt from Occupational License fees.

Revised Tax Clearance Authorization, April 20, 2012

**Attachment "E"**
**CITY OF NEW ORLEANS**
**IDENTIFICATION OF SUBCONTRACTORS**

**STATE OF LOUISIANA**

**PARISH OF _____**

Before me, the undersigned authority, came and appeared_____, who, being first duly sworn, deposed and said that:

1. He/She is the_____and authorized representative of _____ _____, hereafter called "Respondent."

2. The Respondent submits the attached proposal in response to City of New Orleans Proposal #_____.

3. The Respondent hereby identifies the following persons, natural or artificial, who are retained by Respondent at the time the attached proposal is submitted and who are expected to perform work as subcontractors in connection with the Respondent's work for the City. Respondent hereby acknowledges and agrees that when new subcontractors not previously named are added to the project, they must be promptly identified to the City User Department within 48 hours of the change. The official change may not take place unless and until the City provides its written approval.

_____
Person(s) and Company Name (if applicable

_____

_____

_____
Respondent Representative (Signature)

_____
(Print or type name)

_____
(Address)

Sworn to and subscribed before me, _____, Notary Public, this _____day of _____,

2011___.

_____
Notary Public (signature)
Notary ID#/Bar Roll #

**Attachment "F"**

**CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

**STATE OF LOUISIANA**

**PARISH OF _____**

Before me, the undersigned authority, came and appeared_____, who, being first duly sworn, deposed and said that:

4. He/She is the_____and authorized representative of _____ _____, hereafter called "Respondent."

5. The Respondent submits the attached proposal in response to City of New Orleans Proposal #_____.

6. The Respondent hereby confirms that a conflict(s) of interest exists/does not exist/may exist in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with city officials or employees. (*If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form*).

_____
Respondent Representative (Signature)

_____
(Print or type name)

_____
(Address)

Sworn to and subscribed before me, _____, Notary Public, this _____day of _____, 20___.

_____
Notary Public (signature)
Notary ID#/Bar Roll #

# City of New Orleans, Louisiana
# Request for Proposals/Qualifications
# "TITLE"
# "DATE"

**ATTACHMENT "G"**

**SAMPLE**

**PROFESSIONAL SERVICES AGREEMENT**

**BETWEEN**

**THE CITY OF NEW ORLEANS**

**AND**

**NAME OF CONTRACTOR**

**RFQ/RFP NUMBER**

**TITLE OF RFQ/RFP**

**THIS PROFESSIONAL SERVICES AGREEMENT** (the "**Agreement**") is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the "**City**"), and **NAME OF CONTRACTOR**, represented by **NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY** (the "**Contractor**"). The City and the Contractor may sometimes be collectively referred to as the "**Parties**." The Agreement is effective as of the date of execution by the City (the "**Effective Date**").

## RECITALS

***[Choose following "whereas" clauses if the City is hiring the selected the vendor as a result of an RFQ and a subsequent RFP]***

**WHEREAS**, on **DATE OF RFQ**, the City issued a request for proposals **RFQ NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the "**RFQ**");

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFQ.

**WHEREAS**, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** to qualified contractors under the RFQ to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the "**RFP**"); and

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

***[Choose following "whereas" clauses if the City is hiring the selected vendor as a result of an RFP]***

**WHEREAS**, on **DATE OF RFP**, the City issued a request for proposals **RFP NUMBER** seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the "**RFP**"); and

**WHEREAS**, the Contractor submitted a proposal dated **DATE OF PROPOSAL**, and the City has selected the Contractor to perform the professional services described in the RFP.

**NOW THEREFORE**, the City and the Contractor agree as follows:

## ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

**A.** ***Services*****.** The Contractor will, in accordance with the schedule approved by the City:

1. **INSERT SCOPE OF SERVICES, TASKS, DELIVERABLES, ELSE IN ACCORDANCE WITH EITHER THE RFQ/RFP OR CONTRACTOR'S PROPOSAL**;

2. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFQ AND/OR RFP; the Contractor's proposal dated **DATE OF PROPOSAL**.

3. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;

4. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;

5. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

6. 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 City within 30 days after the approval of the associated plan change or amendment; and

7. Cooperate with the City and any person performing work for the City.

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

**B.** ***Standards*****.** The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with **IDENTITY ANY PROFESSIONAL OR OTHER STANDARDS YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES**.

**C.** ***Compliance with Laws*****.** The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances, including, without limitation, **IDENTIFY ANY LEGAL REQUIREMENTS THAT YOU ARE AWARE OF AND THAT ARE SPECIFICALLY APPLICABLE TO THESE SERVICES**.

**D.** ***Schedule*****.**

1. The Contractor will perform all work under this Agreement according to the following schedule:

**INSERT APPLICABLE SCHEDULE**

The Contractor will submit a proposed progress schedule to the City within 14 calendar days of receiving written authorization to proceed from the City. At a minimum, the proposed progress schedule must include the following information and be arranged so the actual progress can be shown as work is completed: **INSERT ANY APPLICABLE SCHEDULE REQUIREMENTS**.

2. The City 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 Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

**E. *Invoices*.**

1. The Contractor will submit **INSERT CHOICE BETWEEN MONTHLY – QUARTERLY – OR OTHER** invoices for work performed under this Agreement to the City no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information and supporting documentation: **LIST INFORMATION AND DOCUMENTS REQUIRED TO BE SUBMITTED WITH INVOICE**.

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

**F. *Records and Reporting*.**

1. The Contractor 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 XXX 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 Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will identify any reporting requirements, including the frequency, method and contents.

3. The Contractor 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 City.

**G. *Audit and Inspection*.**

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

2. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested [***If this agreement is with a law firm or lawyer, add the following: ", subject to attorney-client privilege."***]. Failure to comply with such requests shall constitute a material breach of the contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

**H. *Insurance*.**

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

**INSERT ANY APPLICABLE INSURANCE REQUIREMENTS APPROVED BY THE CITY'S RISK MANAGER**

**a.** Minimum Requirements**:**

**i.** Commercial General Liability ("CGL"):

**ii.** Worker's Compensation:

**iii.** Professional Liability (Errors and Omissions):

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

**i.** Additional Insured Status.

**ii.** Primary Coverage.

**iii.** Claims Made Policies.

**iv.** Waiver of Subrogation.

**v.** Notice of Cancellation.

**vi.** Acceptability of Insurers.

2. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: RFP or RFQ No. xxxxxx) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:

a. Proof of coverage for each policy of insurance required by this Agreement;

b. Copy of the fully executed Agreement;

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

d. Statements disclosing any policy aggregate limit.

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

a. Replenish any 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 City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and

c. Notify the City's Risk Manager in writing within 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.

**I. *Indemnity*.**

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

labor, services, or materials furnished to the Contractor in connection with the performance of work under this Agreement.

2. Limitation. The Contractor'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 Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

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

4. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's reasonable attorney fees and expenses, incurred by the City in enforcing this indemnity.

## ARTICLE II - REPRESENTATIONS AND WARRANTIES

**A.** The Contractor represents and warrants to the City that:

**1.** The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

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

**4.** The Contractor 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 Contractor's performance of this Agreement;

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

**6.** The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor 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 Contractor's most favored customer for the same or substantially similar services;

**8.** The Contractor 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 Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

**B.** ***Convicted Felon Statement*****.** The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

**C.** ***Non-Solicitation Statement*****.** The Contractor 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 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 Agreement.

***[If this agreement is with a law firm or lawyer, add the following:]***

**D.** ***Conflict Of Interest*****.** The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. Contractor represents that it has performed a conflicts check and affirms that no actual, perceived or potential conflicts exist. Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a conflict waiver must be presented to the City Attorney in writing in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

**E.** ***Employee Verification*****.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor 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 Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

***[If scope of work involves public works/construction, substituting the prior language by the following:]***

> ***Employee Verification*****.** The Contractor 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 subcontractors to submit to the Contractor 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 Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

**F.** The Contractor acknowledges that the City is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City.

## ARTICLE III - THE CITY'S OBLIGATIONS

**A.** ***Administration*.** The City will:

**1.** Administer this Agreement through the **NAME OF THE CITY DEPARTMENT RESPONSIBLE FOR MONITORING THIS AGREEMENT**;

**2.** Provide the Contractor **IDENTIFY ANY SPECIFIC DOCUMENTS TO BE PROVIDED** and other documents deemed necessary for the Contractor's performance of any work required under this Agreement;

**3.** Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor; and

**4. INSERT ANY ADDITIONAL OBLIGATIONS FOR THE CITY**.

**B.** ***Payment*.** The City will make payments to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

**1.** The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;

**2.** The City, 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 City may set off any amounts due to the Contractor against any amounts deemed by the City to be owed to the City by the Contractor pursuant this Agreement; and

**4.** All compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.

**5.** The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor 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 City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

**6.** If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the City and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

## ARTICLE IV - COMPENSATION

**A.** ***Rate of Compensation*.**

**1.** The City will pay the Contractor in accordance with the following rate: **INSERT RATE OF COMPENSATION**.

**2.** This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the City in accordance with the terms and conditions of this Agreement.

**3.** The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, 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 City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

**4.** The Contractor immediately will notify the City in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

**B. *Maximum Amount*.** The maximum aggregate amount payable by the City under this Agreement is $**INSERT NUMERICAL MAXIMUM DOLLAR AMOUNT**.

## ARTICLE V - DURATION AND TERMINATION

**A. *Initial Term*.** The term of this agreement shall be for 1 year, beginning the Effective Date, provided there is an encumbrance of funds by the requesting department made from the funds allotted by the Chief Administrative Officer, which are derived from appropriations made by the City Council. This Agreement shall automatically terminate with respect to any period of time for which funds are not so encumbered.

**B. *Extension*.** This Agreement may be extended at the option of the City, provided that funds are allocated by the City Council and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the City for 4 additional one-year terms.

**C. *Termination for Convenience*.** The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 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 City will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

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

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

## ARTICLE VI – DECLARED DISASTER

**E. *Declaration.*** During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the City 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 Contractor will vary and may need to be adjusted as needs are identified. The Contractor 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.

**F.** ***Task Order. Notification and Personnel***. Prior or during the declaration of an emergency, the City will notify the Contractor via task order if the City requires the Contractor's support. Upon activation by task order, the Contractor will provide the City with contact information of personnel assigned to the task order; and coordinate with the City to identify any personnel available to meet the City's needs.

**G.** ***Purchase Order***. Once services are identified, the City will issue a purchase order to the Contractor. The City 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.

**H.** The Contractor will ensure that the City is provided with timely and accurate reports and other documentation, as requested.

## ARTICLE VII - PERFORMANCE MEASURES

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

## ARTICLE VIII – LIVING WAGES

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

## ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM

**F.** ***In General*****.** The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.

**G.** ***Monitoring*****.** To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:

**11.** Job site visits;

**12.** Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;

**13.** Routine audits of contract payments to all subcontractors;

**14.** Reviewing of records and reports; and/or

**15.** Interviews of selected personnel.

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

**H.** ***Cooperation***. The Contractor shall:

**11.** Designate an individual as the "DBE Liaison" who will monitor the Contractor's DBE participation as well as document and maintain records of "Good Faith Efforts" with DBE Entities.

**12.** Execute written contracts with DBE Entities that meet the applicable DBE goals.

**e.** The Contractor shall provide the DBECO with copies of said contracts within 30 days from the date this Agreement is fully executed between the City and the Contractor.

**f.** The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.

**13.** Establish and maintain the following records for review upon request by the OSD:

**i.** Copies of written contracts with DBE Entities and purchase orders;

**j.** Documentation of payments and other transactions with DBE Entities;

**k.** Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of "Post-Award Good Faith Efforts" for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;

**l.** Any other records required by the OSD.

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

**14.** Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by the OSD.

**i.** The Contractor shall submit the initial report outlining DBE participation within 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, "DBE Utilization" reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.

**j.** Reports are required even when no activity has occurred in a monthly period.

**k.** If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.

**l.** The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.

**15.** Conform to the established percentage as approved by the OSD.

**g.** The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.

**h.** No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.

**i.** The City will not adjust the contract for any increase in cost due to replacement of DBE Entities.

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

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

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

## ARTICLE X - NON-DISCRIMINATION

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

**C.** ***Incorporation into Subcontracts*.** The 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.** The City may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

## ARTICLE XI - INDEPENDENT CONTRACTOR

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

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

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

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

## ARTICLE XII - NOTICE

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

1. To the City:

   **NAME AND ADDRESS OF THE CITY DEPARTMENT RESPONSIBLE FOR MONITORING THIS AGREEMENT**

   &

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

2. To the Contractor:

   **NAME AND ADDRESS OF POINT OF CONTACT FOR CONTRACTOR TO RECEIVE NOTICES**

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

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

## ARTICLE XIII - ADDITIONAL PROVISIONS

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

**B. *Assignment*.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

**C. *Choice of Law*.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.

**D. *Conflicting Employment*.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the City, the Contractor 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 Contractor will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The City will make the final determination whether the Contractor may accept the other employment.

**E. *Construction* of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor 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.

**F. *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.

***G. Exhibits.*** The following exhibits will be and are incorporated into this Agreement: ***[List of all exhibits to incorporate in the Agreement.]***

**H. *Jurisdiction*.** The Contractor 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 Contractor.

**I. *Limitations of the City's Obligations*.** The City has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.

**J. *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.

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

**L. *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.

***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; [***List of all incorporated documents in descending order**.]*

**N. *Ownership Interest Disclosure*.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor 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 Contractor fails to submit the required affidavits, the City may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**O. *Ownership of Records.*** Upon final payment, all data collected and all products of work prepared, created or modified by Contractor 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 Contractor's personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, "Work Product") will be the exclusive property of City and the City will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in the City's name. No Work Product may be reproduced in any form without the City's express written consent. The City may use and distribute any Work Product for any purpose the City deems appropriate without the Contractor's consent and for no additional consideration to the Contractor.

**P. *Prohibition of Financial Interest in Agreement*.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

**Q. *Prohibition on Political Activity*.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.

**R. *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.

**S. *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.

***[This provision or a similar one must be added if the agreement is paid for by federal funds (CDBG, FEMA, HUD, else):]***

**T. *Special Conditions for XXXX Contracts*.** The "XXXX Compliance Provisions for Professional Services Contracts," attached as Exhibit "___" to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City's notice to the Contractor that the City intends to seek reimbursement from the XXXXX Program in connection with the work to be performed under this Agreement.

**U. *Subcontractor Reporting*.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the City. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the City, the Contractor must provide notice to the City within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the City may, after thirty 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

**V. *Survival of Certain Provisions*.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, choice of law, and **IDENTIFY ANY OTHER PROVISIONS THAT SHOULD SURVIVE TERMINATION** shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

**W. *Terms Binding*.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

***[This is a new provision under which the City will now accept a digital copy of the signed agreement sent via email by the contractor/vendor/consultant instead of an original via regular mail.***

***However, acceptance by the City is conditioned upon 3 elements: (1) this provision must be inserted in the agreement, (2) the signature on the original must be in BLUE INK, and (3) the digital copy must be in color (no black and white digital copy).]***

## ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY

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

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

**[SIGNATURES CONTAINED ON NEXT PAGE]**

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

**CITY OF NEW ORLEANS**

**BY: _____**
**MITCHELL J. LANDRIEU, MAYOR**

**Executed on this _____ of _____, 201__**

**FORM AND LEGALITY APPROVED:**
**Law Department**

**By: _____**

**Printed Name: _____**

**NAME OF CONTRACTOR**

**BY: _____**
**NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY**

**_____**
**FEDERAL TAX I.D. OR SOCIAL SECURITY NO. [*Do not insert this number in any drafts of the agreement. This information is confidential and should only be filled out by contractor/vendor/consultant when the individual signs the agreement. This information shall not be published]***

**CITY OF NEW ORLEANS**

# INDEPENDENT COST ESTIMATE

| REQUESTING AGENCY: | AUTHORIZED AGENCY REPRESENTATIVE & TITLE: | DATE ICE PREPARED: |
|---|---|---|
| | | |

| ESTIMATE PREPARED BY: | PREPARER'S PHONE NUMBER: | PREPARER EMAIL: |
|---|---|---|
| | | |

| PROJECT NAME: | PROJECT NUMBER: | REASON FOR ICE: Project Initiation / Plan Change # |
|---|---|---|
| | | |

| PROCUREMENT METHOD: | SMALL PURCHASE | SEALED BIDDING | RFP | RFQ | SOLE SOURCE | INTER-AGENCY |
|---|---|---|---|---|---|---|
| PLACE CHECK IN APPROPRIATE BOX | | | | | | |

| ESTIMATED WORK TYPE: | PUBLIC WORKS | MATERIALS + SUPPLIES | SERVICE CONTRACTS | A/E SERVICES | INTER-AGENCY MOU: PLEASE LIST AGENCY |
|---|---|---|---|---|---|
| PLACE CHECK IN APPROPRIATE BOX | | | | | |

DESCRIPTION OF ITEM(S) OR SERVICE(S) REQUIRED:

| ESTIMATE TYPE: | CHECK BOX BELOW | ARE COSTS WITHIN COST THRESHOLDS FOR PROCUREMENT METHOD AND WORK TYPE? | YES | NO |
|---|---|---|---|---|
| RS MEANS | | IS THIS COST ESTIMATE FOR EMERGENCY SERVICES OR A/E SERVICES? | YES | NO |
| PUBLISHED PRICING / QUOTES | | IS THIS FOR A MODIFICATION OF AN EXISTING CONTRACT? | YES | NO |
| OTHER: | | ***IF YES IS ANSWERED FOR ANY OF THE ABOVE ICE MUST BE ROUTED TO PURCHASING FOR APPROVAL.*** | | |

| NUMBER OF ATTACHMENTS: | | LIST OF ATTACHMENTS: |
|---|---|---|
| NUMBER PAGES ATTACHED (NOT INCLUDING THIS PAGE): | | |
| **GRAND TOTAL OF ESTIMATE:** | **Profit:** | |
| | | |

**THIS DOCUMENT IS FOR CITY OF NEW ORLEANS INTERNAL USE ONLY AND RESULTS OF ESTIMATE ARE NOT TO BE MADE PUBLIC PRIOR TO FINALIZATION, PURCHASE, OR EXECUTION OF CONTRACT**

ICE PREPARER'S SIGNATURE — DATE

PROJECT MANAGER'S SIGNATURE — DATE

PROJECT MANAGER SUPERVISOR'S SIGNATURE — DATE

AUTHORIZED AGENT'S SIGNATURE — DATE

PURCHASING DEPARTMENT AGENT'S SIGNATURE — DATE

# City of New Orleans
# Cost Reasonableness
# Analysis

| | |
|---|---|
| Date Prepared: | Monday, November 14, 2016 |
| Prepared By: | |
| PW # / Project ID: | *FEMAPW / Quickbase Project ID* |
| Project Title: | *Project Title* |
| Scope of Work Performed: | |
| Vendor Name: | |
| Cost Analyzed: | *The Amount of $$ and Change Order/Amendment number* |
| Attachments/Comments: | *Attach RSMeans report, rate sheets, internet sources, and historical contract data, bid tabulations, MS Excel spreadsheet etc. containing data from which cost comparisons were obtained.* |

**Issues:**
*Explain why the above Change Order/Amendment/Additional Services are needed for the completion of the project.*

**Project History:**
*Describe the sequence of events warranting the needed change in the project.*

**Contractor's Proposal:** A request for proposal was issue to the contractor on (DATE). The contractor's original proposal was sent on (DATE) in the amount of $(Tot Amount). Following negotiations with the City, the contractor submitted a revised cost proposal in the amount of $(Tot Amount) on (DATE).

**Independent Cost Estimate (ICE):** The original ICE was in the amount of $(Tot Amount) and signed on (DATE). The original ICE was determined based upon an analysis of the following factors: INSERT FACTORS. Upon learning of errors and omissions relating to (E & O Details - Describe with an additional sentence if necessary) in the original ICE, the ICE was revised accordingly to reflect (Briefly describe needed ICE cost adjustments where applicable). The revised ICE for the project is $ (Tot Amount).

**Cost Analysis:**
*Describe the costs analyzed, and the method and source of the comparisons made in order to prove reasonableness. Example of such information, includes but is not limited to RS Means, state-provided fee curves, , market prices, comparisons of cost quotation submissions, comparison of historical data or other similar indicia, or consultation of any other relevant nationally-recognized cost estimating databases.*

**Profit Analysis:**
*Sponsor must determine whether Contractor's proposal is limited to a fair and reasonable profit. To determine whether the Contractor's proposed profit is fair and reasonable,, consideration will be given to the complexity of*

*the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work. Public works projects sponsors shall utlize the Capital Improvement Plan Profit Calculator when determining fair and reasonable profit. Such calculations shall be provided as an attachment to this form.*

## Findings:

*Quantify and summarize the findings of your cost comparisons for the proposal and profit.*

The total proposed price is (##)% (higher/lower) than the original ICE. The total proposed profit is (##)% (higher/lower) than the original ICE.

| COST ELEMENT | RATES | ICE | PROPOSAL | DELTA | DELTA % OF ICE | ACCEPTABLE COST |
|---|---|---|---|---|---|---|

## Negotiations: *(*Must negotiate profit according to 44 CFR 13.36)*

*Describe all discussions held with the contractor (who, what, when, where, and why) and the outcome of any negotiations (what cost elements were reduced or increased in the contractor's or City's proposal). Negotiations must be solely based upon the Contractor's proposal, not the City's ICE. The City's ICE is confidential information and shall not to be shared.*

**Proposal:** The original contractor proposal in the amount of $(Amount) was (increased/reduced) by $(Amount) to a revised total cost of $(Amount).

**Profit Negotiations:** *Sponsor must negotiate profit as a separate element of the price for each contract in which there is no price competition and in ALL cases where cost analysis is performed.* The original contractor proposal profit percentage of (Amount)% was (increased/reduced) by (Amount)% resulting in a revised total cost of $(Amount).

## Recommendation:

*State reasons for recommendation for approval or denial based on the findings of your cost comparisons.*

The contractor was advised that conclusion of negotiations does not constitute a Notice to Proceed and the City would incur no obligation, nor should the contractor proceed with the work prior to receipt of the contract. I recommend that the contractor's revised proposal in the amount of $(Tot Amount) is fair and reasonable based upon the independent cost estimate and cost analysis conducted and detailed above.

# City of New Orleans
# Cost Reasonableness
# Analysis

Comments:

X

Print Name:
DPW Project Manager

X

Reviewed By: Lauren L. Prieur, P.E.
DPW Program Manager

X

Approved By: Mark Jernigan, P.E., PMP, LTC
Department of Public Works Director

CHANGE ORDER RECOMMENDATION FOR APPROVAL

**[Insert Project Name]**
**[Insert Project ID]**
**[Insert Vendor's Name]**
CHANGE ORDER NO.

---

PUBLIC BENEFIT

- **Project Description**: [Insert brief description – ex: testing and pumping at Municipal Auditorium for ongoing FEMA inspections from date _____ to _____.]

- **Clear Statement describing the work to be completed:** [Providing quantities and materials.]

- **Need for this Change Order**: [Insert brief description of the need for this Change Order – ex: necessary changes during construction required due to unforeseen damaged.]

- **Justification for the additional or deleted work**: [Why is this work needed instead of what was indicated on the drawings and provided in the base bid.]

- **Is the change outside of the current scope of work?** ☐ Yes ☐ No

- **Indicate how this scope is different**: Provide sound justifiable reasoning as to why the scope is differnt than what is in plans and Specs

- **Was an updated wage decision required?** ☐ Yes ☐ No

- **If an updated wage decision was required, was it communicated to the contractor?** ☐ Yes ☐ No ☐ N/A

- **Time-Line for major tasks**:
  - Percent of Construction Complete to Date:
  - Substantial Completion date as of this Change Order:

- **Change Order Amount**:

- **Source of Funding for this Change Order:** [If an increase, insert funding source (bonds, FEMA, insurance funds, CDBG, or revolver fund as potentially permanent funding, other)

- **Total Project Investment to Date:**

| | | |
|---|---|---|
| Value of A/E Contract for this work to Date | **$** | **0.00** |
| Construction Contract Value to Date: | **$** | **0.00** |
| Value of Project Management to Date: | **$** | **0.00** |
| Value of other Professional Services to Date: | **$** | **0.00** |
| Other Sunk Costs to Date: | **$** | **0.00** |
| **Total Investment to Date:** | **$** | **0.00** |

---

RECORDATION

Prepared By: 12.12.2016 Version

CHANGE ORDER RECOMMENDATION FOR APPROVAL

- Is this change order more than 10% of the original contract and more than $10,000? ☐ Yes ☐ No
- Does this change order put the total % of change orders above 20% of the original contract and is it more than $10,000? ☐ Yes ☐ No
- If the answer is yes to either one of these questions recordation is required by state law within 30 days. If the original contract and/or previous change orders have not yet been recorded they must be recorded at this time.

---

VENDOR SELECTION AND DBE INFORMATION

- **Type of Procurement Used:** [Should always be RFP for A&E and Bid for Construction. ]
- **Local Vendor:** ☐ Yes ☐ No
- **DBE:** ☐ Yes ☐ No. If No, %_____

---

ACTION CRITICAL

- **Objective consideration of alternatives**: [Describe other actions considered. If none, explain why]

- **I recommend approval for the above project** *(If not recommending for approval, please indicate a reason below, and return this to the previous signatory*)

  _____**Date:** _____
- James McCormick, Capital Projects Project Manager Supervisor
  **Requested Response Date:** __/__/__.

  _____**Date:** _____
- Vincent A. Smith, Director, Capital Projects Administration
  **Requested Response Date:** __/__/__.

  _____**Date:** _____
- Cedric S. Grant, Executive Director of Sewerage & Water Board
  **Requested Response Date:** __/__/__.

  _____**Date:** _____
- Jeffrey P. Hebert, First Deputy Mayor/Chief Administrative Officer
  **Requested Response Date:** __/__/__.

  _____**Date:** _____
- Mary Kay Kleinpeter-Zamora , Chief Procurement Officer
  **Requested Response Date:** __/__/__.

PLAN CHANGE RECOMMENDATION FOR APPROVAL
Date of Submittal and Initials by Project Manager: _____

**[●Insert Project Name Only●]**
**[●Insert Vendor's Name●]**
**PLAN CHANGE No. 0**

---

**PUBLIC BENEFIT**

- **Project Description: [●Insert brief project description - ex: testing and pumping at the Municipal Auditorium for ongoing FEMA inspections from date _____ to _____. Discuss the Who, What, Why, When & Where●]**
- **Need for this Change Order: [●Insert brief description of the need for this Change Order - ex: necessary changes during construction require due to unforeseen damages ●]**
- **Is this change order outside of the original scope of work?** ☐ Yes ☐ No
- **Was an updated wage decision required?** ☐ Yes ☐ No
- **If an updated wage decision was required, was it communicated to the contractor?** ☐ Yes ☐ No ☐ N/A
- **Time-Line for major tasks:**
  - Percent of Construction Complete to Date: 0%
  - Substantial Completion date as of this Change Order:
- **Change Order Amount: $0.00 & Calendar Days**
  - Revised Completion Date as of this Change Order:

**Sources of funding for this Change Order:** Bond funds, PW #21032 FEMA funds, Insurance funds, CDBG funds, or Revolver Fund as potentially permanent funding, other.

| Funding | Amt. | Phase (Regardless of Funding) | Amt. |
|---|---|---|---|
| Bonds | $0.00 | Survey (Phase Ia) | $0.00 |
| SWB | $0.00 | Design (Phase Ib, III, IV) | $0.00 |
| CDBG | $0.00 | Testing (Geotechnical Services) | $0.00 |
| FEMA | $0.00 | Construction | $0.00 |
| Revolver | $0.00 | Testing (Materials Testing) | $0.00 |
| | | Construction Administration (Phase Va) | $0.00 |
| | | Supervision (Resident Inspection Phase Vb) | $0.00 |
| | | Other | |
| Plan Change Total Funding | $0.00 | Plan Change Total Phases | $0.00 |

**Total Project Investment to Date:**
- Value of A/E Contract for this work to Date
- Construction Contract Value to Date:
- Value of other Professional Services to Date:
- Other Sunk Costs to Date:

- **Total Investment to Date:** **$0.00**

---

**RECORDATION**
- Is this change order more than 10% of the original contract and more than $10,000? ☐ Yes ☐ No
- Does this change order put the total % of change orders above 20% of the original contract and is it more than $10,000? ☐ Yes ☐ No
- If the answer is yes to either one of these questions recordation is required by state law within 30 days. If the original contract and/or previous change orders have not yet been recorded they must be recorded at this time.

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Prepared By: ver 12.12.16

**VENDOR SELECTION AND DBE INFORMATION**

- **Type of Procurement Used:**
- **Local Vendor:** ☐ Yes ☐ No
- **DBE:** ☐ Yes ☐ No. If No, _____%

---

**ACTION CRITICAL**

- **Objective consideration of alternatives:** Describe other actions considered. If none, explain why
- **I recommend approval for the above project** *(If not recommending for approval, please indicate a reason below, and return this to the previous signatory*)

_____Date: _____

- Lauren L. Prieur, DPW Program Administrator, Public Works
  **Requested Response Date: __/__/__**

- _____Date: _____

  Nguyen D. Phan, Chief Engineer, Public Works
  **Requested Response Date: __/__/__**

_____Date: _____

- Mark D. Jernigan, Director, Public Works
  **Requested Response Date: __/__/__**

_____Date: _____

- Cedric S. Grant, Executive Director, S&WB
  **Requested Response Date: __/__/__**

- _____Date: _____
  S&WB Construction Administration & Inspection
  Hadi Amini, PE, Engineering Division Manager
  **Requested Response Date: __/__/__**

- _____Date: _____
  S&WB Chief of Engineering
  Melvin Ron Spooner, PE
  **Requested Response Date: __/__/__**

- _____Date: _____
  Jeffery P. Hebert, Deputy Mayor and Chief Administrative Officer
  **Requested Response Date: __/__/__**

- _____Date: _____
  Mary Kay Kleinpeter-Zamora, Chief Procurement Officer
  **Requested Response Date: __/__/__**