

# CITY OF NEW ORLEANS



**REQUEST FOR PROPOSALS**

**FOR**

**[Insert Title]**

**RFP NO. [Insert RFP Number]**

**RELEASE DATE: [Insert Release Date]**

**SUBMISSION DEADLINE: [Insert Submission  
Deadline]**

# KEY REMINDERS TO PROSPECTIVE RESPONDENTS

1. READ THE SOLICITATION IN ITS ENTIRETY.
2. CONTACT THE DESIGNATED PURCHASING OFFICIAL ONLY.
3. CHECK THE SUPPLIER PORTAL PERIODICALLY.
4. TAKE ADVANTAGE OF THE QUESTION AND ANSWER PERIOD.
5. PROVIDE COMPLETE ANSWERS AND DESCRIPTIONS.
6. REVIEW THE RFP AND YOUR RESPONSE BEFORE SUBMITTING.
7. SUBMIT YOUR PROPOSAL ON TIME.

## **TABLE OF CONTENTS**

**Section 1 - Definition**

**Section 2 - Overview**

**Section 3 - DBE**

**Section 4 – Anticipated Timetable**

**Section 5 – Responsiveness and Selection Committee**

**Section 6 – Evaluation**

**Section 7 – Notification and Contract**

**Section 8 – Submission**

**Section 9 – General Information**

**Section 10 – Statement of No Response**

**Section 11 – Attachments**

## SECTION 1 – DEFINITIONS

“*BRASS*” means Budget, Requisition, and Accounting Services System.”

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

“*Close Event*” means the date and time at which BRASS prohibits Respondents from submitting a response to the solicitation.

“*DBE*” means Disadvantage Business Enterprise.

“*Event*” means the solicitation (RFQ, RFP, ITB, ITQ) that the Bureau of Purchasing created to release it on the Supplier Portal of BRASS.

“*FEMA*” means the Federal Emergency Management Agency.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*OSD*” means the City’s Office of Supplier Diversity.

“*Open Event*” means the date and time at which the Event is released to the public in the Supplier Portal of BRASS.

“*Purchasing Conference Room*” means the room adjacent to the Bureau of Purchasing located on the 4<sup>th</sup> floor of City Hall at 1300 Perdido Street, New Orleans, Louisiana 70112.

“*Respondent*”, “*Respondents*” or “*a respondent*” means a person or entity who responds to the RFP.

“*RFP*” means the present request for proposals.

“*SBE*” means Small Business Enterprise as defined by the U.S. Small Business Administration.

“*SLDBE*” means State and Local Disadvantage Business Enterprise.

## SECTION 2 – OVERVIEW

### **2.1 Introduction**

[Insert Introduction to Department].

### **2.2 Background**

[ Insert Background/ What has lead to the need for this RFP]

### **2.3 Purpose**

[Insert Purpose of this RFP]

### **2.4 Statement of Needs**

Refer to Attachment “A”.

### **2.5 Performance Evaluation**

The City will memorialize performance evaluation criteria in the executed contract.

\*\*\*\* If DBE is Waived Remove Section 3 in its entirety. (Note, also remove the DBE Technical Criteria in Section 6 –Evaluation, the DBE Tab in Section 8- Submission and Attachment B in Section 11- Attachments as well as Section 11.2\*\*\*\*

## SECTION 3 – DBE

### **3.1. In General**

The requirements of the City’s DBE Program apply to the RFP.

See section of the RFP on Attachments for more information and the applicable form(s).

### **3.2. DBE Goal**

A DBE contract goal of 35 percent has been established for this RFP.

### **3.3. DBE Interest**

The Bureau of Purchasing and OSD seek to offer the opportunity to DBE and SLDBE, SBEs, and other certified minority, women, disabled veteran owned businesses to submit their interest in participating to the RFP as a prospective subcontractor to a respondent or to jointly propose as a prospective partner with a respondent, or both.

DBE and other certified diversity entities must complete a questionnaire to express their interest. Follow the below link to submit your interest.

- <https://forms.office.com/Pages/ResponsePage.aspx?id=hfTLCLccAkqalQ3ZtFuf90s12RkxNB5KnaGW8hYN33NUQlo4WkhHWE5YQ1ICQjZHUUZBOEhMMzg1UC4u>

If a pre-submittal conference is scheduled, OSD will present the results of the questionnaire for the RFP during the conference.

**IMPORTANT:** Submit your interest on or before the deadline identified under Section 4.1. Otherwise, OSD will not be able to present it during the pre-submittal conference.

The Bureau of Purchasing will post said results via an addendum to the RFP following the said conference or, in the absence of a conference, several days after the deadline identified under Section 4.1.

### **3.4. DBE Opportunities**

The City expects Respondents to ensure that every effort is made to meet DBE utilization goals.

OSD offers the opportunity to Respondents to submit subcontracting opportunities on its DBE Opportunities Page. Said page can be found at:

- <https://www.nola.gov/economic-development/supplier-diversity/opportunities/>

### **3.5. DBE Point of Contact**

Respondents shall direct questions related to DBE compliance prior to the Submission Deadline to:

- By email: [Supplierdiversity@nola.gov](mailto:Supplierdiversity@nola.gov)
- By telephone: 504-658-4904
- In writing or in-person: Office of Supplier Diversity

## SECTION 4 – ANTICIPATED TIMETABLE

### 4.1. Dates

Release/Open Event (Cone of Silence Begins)	[Insert Date]
Deadline for DBE Interest	[Insert Date]
Pre-Submittal Conference	[Insert Date or N/A if none]
Deadline for Submitting Questions	[Insert Date and Time)CST]
Submission Deadline/Close Event	[Insert Date and Time CST]
Evaluation by Selection Committee	On or about [Insert Date]
Notification	Within 1 to 2 business days from the date of the evaluation

### 4.2. Meetings

The pre-submittal conference meeting and the selection committee meeting are public meetings. The Bureau of Purchasing encourages Respondents to attend said meetings.

\*\*\*\* Remove the statement below if there will be no Pre-Submittal Conference \*\*\*\*

In accordance with the applicable declaration of emergency issued by the Governor for the State of Louisiana at the time of the issuance of this RFP, prospective respondents must use the following information to attend the pre-submittal conference scheduled as a teleconference call:

- Telephone Number: 504-658-7001
- Meeting Number: [Insert Meeting Number]

### 4.3. City Calendar

The Bureau of Purchasing posts the dates and times of the public meetings connected to the RFP on the calendar of the City.

The Bureau of Purchasing encourages Respondents to subscribe to the calendar.

The City calendar can be found at:

- [Calendar - City of New Orleans \(nola.gov\)](http://nola.gov) .

### 4.4. Selection Committee Meeting

The Bureau of Purchasing makes every effort to maintain the above date of the selection committee meeting.

However, from time to time, the Bureau of Purchasing may need to reschedule the said meeting for reasons which include, but not limited to, request(s) from committee member(s) to have additional time for review, an unexpected calendar conflict of one or more committee member, an unforeseen emergency, etc.

### 4.5. Questions

Respondents must submit substantive questions to the Designated Purchasing Official either by email [Insert Email Address] no later than the deadline set forth in Section 4.1.

The Bureau of Purchasing encourages Respondents to use BRASS for the submission of your question(s).

If submitted by email, Respondent must provide at minimum: RFP number, first and last name of requester, name of company, business address and telephone number.

The Designated Purchasing Official will issue a response to any inquiry if it deems it necessary, by written addendum to the RFP.

Respondent's question(s) submitted after the deadline may not be reviewed for inclusion in an addendum to the RFP.

The Designated Purchasing Official will not respond to substantive questions submitted verbally either by telephone or in person or both outside of the scheduled meetings.

#### **4.6. Cone of Silence**

From the release of the RFP until the award, there is a prohibition on communication by respondents (or anyone on their behalf) with the City's staff, the Mayor and staff, council members and staff, members of the selection committee members and elected officials.

The Bureau of Purchasing calls this prohibition the "Cone of Silence."

This does not apply to oral communications at pre-submittal conferences, oral presentations before selection committees, contract negotiations, or communications in writing at any time with any city employee or elected official regarding matters not concerning this RFP.

**BREAKING THE CONE OF SILENCE, IF PROVEN, MAY RESULT IN A DISQUALIFICATION OF YOUR RESPONSE.**

## **SECTION 5 – RESPONSIVENESS AND SELECTION COMMITTEE**

### **5.1. Responsiveness**

Following the submission deadline, the Designated Purchasing Official will:

- Opens the timely submitted proposals, and then
- Reviews and determines if the respondent completed and submitted the required forms.

Prospective respondents are invited to read Section 8.7 for failure to comply with the deadline or the required documents.

If there are responsive respondents, the Designated Purchasing Official will provide a copy of the proposals to the selection committee.

### **5.2. Selection Committee – Composition**

The Chief Procurement Officer must establish selection committees with relevant subject-matter expertise in reviewing and evaluating responses to the RFP.

As per the applicable executive order, the selection committee will consist of the following individuals:

- The Chief Administrative Officer, or designee,

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

**5.3. Selection Committee – Grading**

The members on the selection committee shall either complete the numerical grading or use the wholly qualitative evaluation criteria.

**5.4. Selection Committee – Non-Voting Member**

The Selection Committee, through a majority vote, may add one non-voting member to the committee who has expertise in the relevant field.

**SECTION 6 – EVALUATION**

**6.1. In General**

The selection committee will evaluate responses based on the technical criteria established under this section.

A respondent may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of its response, as judged by the selection committee in accordance with the technical criteria.

During the review of any submission at any time (including in the event of a shortlist), the selection committee may:

- Conduct reference checks relevant to the solicitation to verify all information, and rely on or consider any relevant information from such cited references or from any other sources in the evaluation of the submissions,
- Seek clarification of a submission or additional information from any or all respondents and consider same in the evaluation of submissions,
- Waive any requests or requirements if such waiver is in the best interest of the City, and
- Request interviews/presentations with any, some or all respondents to clarify any questions or considerations based on the information included in submission.

**6.2. Technical Criteria for the RFP**

The Selection Committee will use the following criteria to evaluate the proposals submitted by Respondents:

**\*\*\*Sample Criteria\*\*\***

- 1. Experience and Competence: 0 – [Insert Points] Points  
Specialized experience and technical competence**
- 2. Performance: 0 – [Insert Points] Points  
Performance history, including, without limitation, competency, responsiveness, cost control, work quality and the ability to meet schedules and deadlines**

### 3. DBE

0 – 15 Points

POINTS	DESCRIPTION	POINT AWARD	AWARDING GUIDELINES
3pts may be awarded	<b>DBE Goal:</b> Proposal complies with contract DBE participation goal or will conduct good faith efforts to do so.	3pts	<ul style="list-style-type: none"> <li>Meets or exceeds the stated contract DBE goal or demonstrates why and how the respondent can only achieve a lower DBE goal</li> </ul>
		2pts	<ul style="list-style-type: none"> <li>States they will meet a lower contract goal without demonstrating why or how</li> </ul>
		1pts	<ul style="list-style-type: none"> <li>No commitment - 0%, but demonstrates why &amp; how DBE participation is not achievable</li> </ul>
		0pts	<ul style="list-style-type: none"> <li>No commitment -0% without explanation</li> </ul>
6pts may be awarded	<b>Quality of Proposal:</b> Proposal submitted a quality DBE Participation Plan that includes innovative strategies and approaches to achieve and maintain compliance over the contract term and that builds capacity in the DBE community.	+2pts	<ul style="list-style-type: none"> <li>Prime has identified scopes of work to be performed by DBE firm(s) to be used that represent a Commercially Useful Function</li> </ul>
		+1pts	<ul style="list-style-type: none"> <li>Prime has clearly identified DBE firm(s) and their scopes of work</li> </ul>
		+2pts	<ul style="list-style-type: none"> <li>The DBE has contributed directly to the Proposal (Resumes, Experience Portfolio, etc.)</li> </ul>
		+1pts	<ul style="list-style-type: none"> <li>Prime has identified ways to support the DBE (e.g.: Mentor-protégé relationship, bonding, early payments, etc.)</li> </ul>
6pts is default award; points may be deducted	<b>Past Performance Issues:</b> Includes firm's past performance on meeting DBE goals, technical assistance and supportive services designed to increase participation and build capacity in the DBE community.	Up to 6 points may be deducted	<p>Points shall be deducted for the following reasons:</p> <ul style="list-style-type: none"> <li>Prime has a history of not meeting their committed DBE goal</li> <li>Prime has history of switching DBEs or reduces work committed to DBEs</li> <li>Prime is inconsistent with reporting requirements of the DBE policy</li> <li>Prime does not cooperate with OSD on-site monitoring</li> <li>Prime has history of not paying their DBE subs in a timely manner</li> <li>Prime has a history of insufficient GFEs</li> </ul>

#### 6.3. Price Proposal

The selection committee will then evaluate and rank responsive proposals on price.

A respondent may receive the maximum points, a portion of this score, or no points at all, depending upon the merit of its price proposal, as judged by the selection committee in accordance with:

**Price Proposal** **0 – [Insert Points] Points**

- Cost

## **SECTION 7 – NOTIFICATION AND CONTRACT**

### **7.1. Notification**

Once the selection committee recommends a proposal, the Bureau of Purchasing notifies the selected firm by an intent to award letter. The unsuccessful firm(s) will be notified as well.

The Designated Purchasing Official will also award the event in BRASS which only represents an administrative function.

The intent to award letter will contain the name and contact information of the representative of the department responsible for administering the future contract.

IMPORTANT: The intent to award letter is not a contract award notification. The contract award is subject to the successful satisfaction by the selected respondent of all additional requirements in the solicitation.

### **7.2. Composite Scoring Sheet**

In addition to the notification, the Designated Purchasing Official will:

- Print and display a hard copy of the composite scoring sheet outside of the Bureau of Purchasing at City Hall, and
- Post an electronic copy of the sheet on the website of the Bureau of Purchasing under “RFP/RFQ Composite Scoring Sheets.”

The Bureau of Purchasing keeps a sheet available for public view for 30 days from the date of the selection committee meeting.

After 30 days, any interested party must submit a request for public records to the City’s Attorney Office to obtain a copy of the tabulation.

Submit your request at <https://www.nola.gov/city-attorney/public-records-requests/> .

### **7.3. Negotiation and Execution of Contract**

After the issuance of the intent to award letter, the City may negotiate the final contract with the selected respondent.

Irrespective of the occurrence of contractual negotiations or not, the selected respondent must provide the representative of the department responsible for administering the future contract with required documentation (examples: tax clearance form, proof of signing authority, proof of good standing with the State of Louisiana, etc.).

The City Attorney’s Office is responsible for presenting the successful respondent with a proposed written contract to execute.

Once executed by the City, the department responsible for the administration of the contract can authorize the beginning of the services.

The City will publish a copy of the fully executed contract on the City's Supplier Portal.

#### **7.4. Contract Administration**

The executed contract with the selected firm identifies the department responsible for administering it.

Said department will be notably responsible for monitoring the performance of the contractor.

#### **7.5. Contract Amendment and/or Time Extension**

##### **7.5.1. DBE Compliance**

Prior to amending and/or extending the contract for time with the contracted firm, said firm must be compliant with its committed DBE plan.

Failure to comply can constitute cause for termination of the contract.

##### **7.5.2. Performance Evaluation**

Prior to amending and/or extending the contract for time with the contracted firm, said firm must perform in accordance with the scope of work set forth in the contract.

Failure to comply can constitute cause for termination of the contract.

## **SECTION 8 – SUBMISSION**

### **8.1. In General**

Respondents must submit in PDF format 2 separate documents:

- Technical Proposal
  - Entitle the PDF as follows: “[name of respondent] - RFP [insert number of present RFP] – Technical Proposal”, and
- Price Proposal
  - Entitle the PDF as follows: “[name respondent] – RFP [insert number of present RFP] – Price Proposal”.

See Section 8.3 for their respective contents.

Respondents can submit their submissions via:

- Email to the Designated Purchasing Official, or by
- Responding to the event in BRASS.

The Bureau of Purchasing encourages Respondents to use BRASS for the submission of your response.

**NOTE:** If Respondent encounters a problem to submit a response by email or in BRASS, Respondent must notify the Designated Purchasing Official immediately and coordinate with said official for an alternative method of submission (in person or by courier).

Respondent must obtain written approval from the said official prior to submitting the response via an alternative method.

The City will not accept qualifications submitted by fax.

## **8.2. Designated Purchasing Official**

Respondents must direct response, correspondence, and other communications regarding the RFP to the following Designated Purchasing Official:

- Title (Mr., Mrs., Ms.), First and Last Name: [Insert Name]
- Email address: [Insert Email Address]
- Office Telephone Number: [Insert Telephone Number]
- For in-person or mailing: Attn: [Insert Name]  
City of New Orleans  
Bureau of Purchasing  
1300 Perdido Street, Suite 4W07,  
New Orleans, Louisiana 70112.

## **8.3. Contents**

The City requires that the submission be organized in the manner specified below to achieve a uniform review process and obtain the maximum degree of comparability.

### **A. Proposal Submission.** Said submission shall contain the following:

- Cover Sheet
    - Show the RFP number and subject, the name of your firm, address, email address, telephone number(s), name of contact person and date.
  - Table of Contents
    - Include a clear identification of the material by tab and by page number.
  - Tabs
    - Tab 1 - Consultant's Profile and Submittal Letter
      - Submittal Letter signed by and authorized agent of the respondent.
      - A proposal statement setting forth in detail how the proposal meets the proposal requirements and evaluation factors.
      - Organizational structure and locations of business with ownership interests.
    - Tab 2 – [Insert First Technical Criteria]
      - [Insert bullet points]
    - Tab 3 – [Insert Second Technical Criteria]
      - [Insert bullet points]
- \*\*\*\* If there are more technical criteria create a tab for each \*\*\*\*
- Tab 4 – DBE

- DBE Goal: Proposal complies with contract DBE participation goal or will conduct good faith efforts to do so.
  - Quality of Proposal: Proposal submitted a quality DBE Participation Plan that includes innovative strategies and approaches to achieve and maintain compliance over the contract term and that builds capacity in the DBE community.
  - Past Performance Issues: Includes firm's past performance on meeting DBE goals, technical assistance and supportive services designed to increase participation and build capacity in the DBE community.
- Tab 5 - Key Personnel
    - Include a listing of key staff including resumes for each describing experience, training, and education in the required services.
    - Identify staff experience working with governmental entities and list those projects.
  - Tab 6 - References
    - Provide references for which the firm has performed similar work of the same or similar magnitude to those requested in this solicitation, including the contact name, entity, address, telephone number, e-mail address, and dollar amount and term of the contract. (Provide letters of reference from previous clients, if available)
  - Tab 7 - Insurance
    - Attach evidence of required insurance in the amounts indicated. If available, a properly completed ACORD Form is preferable.
  - Tab 8 – Financial Statements
    - Provide an audited, financial statement for each of the past two years. A third party prepared financial statement is acceptable for one of the two years if an audited statement is not available. Any such third-party certified statement shall be signed and certified by the third party Certified Public Accountant (“CPA”) and signed and certified as accurate by the Prospective Consultant.
  - Tab 9 - Addenda
    - Include a statement on company letterhead that the respondent reviewed the addenda (include number and date of the addendum) issued by the City for this RFP.
  - Tab 10 - Exceptions
    - Include any/all exceptions taken to the content of solicitation itself or any contract or legal agreement(s) or document(s) related to the solicitation. Any exceptions shall be reviewed by

City for appropriateness and is only valid if accepted in writing by City.

- Tab 11 - Litigation
  - Provide all judgments entered into against the Prospective Consultant by any Federal, State, or Local Courts within the past 10 years; any criminal conviction ever issued against the respondent or its owners or principals, and all civil, criminal, and administrative proceedings pending against the Prospective Consultant at this time.
- Tab 12 - Forms
  - See Section 11.2 for the list of required forms.

**B. Price Proposal.** Said submission shall contain the following:

- See Section 11.1: Attachment “A” Pricing/Cost

#### **8.4. Receipt**

**THE DESIGNATED PURCHASING OFFICIAL MUST RECEIVE YOUR RESPONSE BEFORE THE DEADLINE INDICATED UNDER SECTION 4.1.**

The City will NOT accept submissions delivered after the deadline.

#### **8.5. Time Stamp in BRASS or Email**

If Respondent intends to submit the response in BRASS, the time stamp of receipt is generated by BRASS.

Note that BRASS prohibits any submission on and after the date and time the RFP closes.

If Respondent intends to submit the response by email to the Designated Purchasing Official, the date and time of the email received by the Designated Purchasing Official constitutes the time stamp of receipt.

The date and time of the email sent by Respondent does NOT constitute a proof of receipt.

#### **IMPORTANT:**

- The Bureau of Purchasing encourages Respondents to submit a response at least 3 hours before the deadline set forth in the RFP.
- The Bureau of Purchasing encourages Respondents to confirm with the Designated Purchasing Official that the response was received timely. If there is a high volume of submissions, the confirmation may take 1 or 2 business days.

#### **8.6. Alternative Method of Submission**

An alternative method of submission can be by courier service or in person.

If the Designated Purchasing Official approves an alternative method of submission, Respondent remains responsible for ensuring that the proposal is delivered prior to the submission deadline with a proof of delivery.

The City will not credit delivery claims without a written proof of delivery.

Failure to meet the submission deadline, irrespective of the mode of delivery, shall result in the rejection of the proposal.

### **8.7. Failing to Comply**

The Designated Purchasing Official will notify Respondent in writing that the proposal is non-responsive if:

- Respondent failed to submit it timely, or
- Respondent failed to complete and submit a form or document provided and required by the City.

The Designated Purchasing Official will not distribute a non-responsive proposal to the selection committee.

Respondent will have 2 business days from the date of notification by the Designated Purchasing Official to appeal the decision of non-responsiveness.

Non-responsive respondent must submit the appeal to the Chief Procurement Officer via email with the number of the RFP and a detailed explanation.

The decision from the Chief Procurement Officer or designee will be final.

Failure to submit the appeal timely waives the right to obtain a decision from the Chief Procurement Officer or designee.

### **8.8. Disclaimer**

Respondents are hereby advised that due to the nature of the internet, the City cannot guarantee that access to BRASS will be uninterrupted or that emails or other electronic transmissions will be sent to you or received by us.

The City is not responsible for any delays caused by the internet or any other means of submission chosen by Respondent or both.

## **SECTION 9 – GENERAL INFORMATION**

### **9.1. Legal Authority**

City Charter Section 6-308(5)(b) and Executive Order LC 20-01 authorize the City to issue a request for proposals to interested and qualified firms.

### **9.2. Ownership**

All qualification submissions 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.

### **9.3. Effect**

The RFP and any related discussions or evaluations by anyone create no rights or obligations whatsoever.

The City is not responsible for submissions and/or presentation costs.

The City may cancel or modify this solicitation at any time at will, with or without notice.

Anything to the contrary notwithstanding, the contract executed by the City and a qualified firm, if any, is the exclusive statement of rights and obligations extending from the RFQ and the request for proposal connected with the contract.

#### **9.4. Addendum**

The Designated Purchasing Official posts addendum on the supplier portal of BRASS under the RFP. A copy of the addendum is saved in the “Attachment” tab of the event for the RFP.

Respondents shall not rely on any representation, statement, or explanation other than those made in this RFP or in any addendums issued.

Where there appears to be a conflict between the RFP and any addendum issued, the last addendum issued will prevail.

#### **9.5. Agree to Contract Terms and Conditions**

By responding to this RFP, Respondent agrees to the City’s required Contract Terms and Conditions set forth in this solicitation and therefore waives any future right to contest the required provisions.

#### **9.6. Protest**

The City’s protest policy applies to this solicitation.

The policy is available at: <https://www.nola.gov/getattachment/Purchasing/Forms/No-130-Procurement-Protest-Policy.pdf/> .

#### **9.7. Debriefing**

Respondent who was not qualified can request a post-award debriefing.

The debriefing shall not include point-by-point comparisons of the debriefed respondent’s submission with the awarded or selected respondent(s).

The unsuccessful respondent must submit a request in writing to the Designated Purchasing Official within 15 calendar days from the date of the notification issued by the Bureau of Purchasing.

The Bureau of Purchasing will ensure that the debriefing is conducted within a reasonable time.

#### **9.8. Code of Ethics**

The City adheres to the Louisiana Code of Governmental Ethics, contained in the Louisiana Revised Statutes Annotated, R.S. 42:1101, *et seq.*

By submitting a qualification submission, prospective respondents warrant that there are no “conflict of interest” related to this solicitation that would violate applicable Louisiana Law.

Violation of the Louisiana Code of Governmental Ethics may result in rescission of contract, permit or licenses, and the imposition of fines and/or penalties, without contractual liability to the public in accordance with applicable law.

#### **9.9. BRASS**

The City launched BRASS in July 2019. BRASS replaces the legacy databases and is used by all City departments.

BRASS enables suppliers to register and to maintain information about their organization for the purpose of doing business with the City and receive notifications of business opportunities.

Registration is free.

The City invites prospective suppliers to learn more at <https://nola.gov/purchasing/brass/>.

#### **9.10. Direct Deposit Electronic Payment Program**

The City will require that the successful firm enrolls in its direct deposit electronic payment program.

Instead of receiving paper checks, payments will be made electronically via Automated Clearing House (“ACH”) and deposited directly into an account designated by the qualified respondent at its financial institution.

Enrolling in direct deposit payments supports the City’s ongoing efforts to become a more efficient and effective government, deliver enhanced services and timely payments, and provide for a sustainable environment.

ACH payment will apply to the invoice that you submit through the City’s Supplier Portal **AFTER** the Bureaus of Purchasing AND Treasury have completed the ACH activation. The activation process may take 4 to 10 calendar days.

#### **9.11. Waiver of Administrative Informalities**

The City shall reserve the right, at its sole discretion, to waive minor administrative informalities contained in any submission.

#### **9.12. Errors and Omissions in Submission**

The City reserves the right to seek clarification of any submission for the purpose of identifying and eliminating minor irregularities or informalities.

#### **9.13. Familiarity with Laws**

Respondents shall familiarize themselves with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the solicitation.

These laws and/or ordinance will be deemed to be included in the contract, the same as though herein written in full.

#### **9.14. Sample Agreement**

The City supplies a sample professional services agreement under Section 11.

The qualified respondent(s) shall be expected to execute a contract that is substantially the same as the sample agreement.

Respondent shall not submit its own standard contract terms and conditions as a response to this RFP.

**\*\* Remove the statement(s) below if FEMA or HUD funds will not be utilized\*\***

#### **9.15. FEMA Provisions.**

Notwithstanding any provision of the contract to the contrary during the performance of the contract, qualified respondents shall be required to comply with the Special Compliance Conditions for FEMA – Funded Contracts. See Section 11.3.

#### **9.16. HUD Provisions.**

Notwithstanding any provision of the contract to the contrary during the performance of the contract, qualified respondents shall be required to comply with the HUD Compliance Provisions for Direct Grantee Construction and Professional Service Contracts. See Section 11.3.

### **SECTION 10 – STATEMENT OF NO RESPONSE**

If you elected not to respond to the RFP, the Bureau of Purchasing is interested in learning the reason(s) for non-response.

Your response to the below questionnaire will help the City understanding potential challenges and/or barriers with the RFP.

- <https://forms.office.com/Pages/ResponsePage.aspx?id=hfTLCLccAkqalQ3ZtFuf90s12RkxNB5KnaGW8hYN33NUMjZBN05YS1U0UVY4N0tXOFdEMEVHQTFXNi4u>

### **SECTION 11 – ATTACHMENTS**

#### **11.1. Document to Review**

- Attachment A – Statement of Needs  
\*\* If the Department has provided any additional documents for review by prospective respondents add them here and assign attachment letters to them \*\*

#### **11.2. Required to Submit with Proposal In Response to RFP**

- Attachment B – DBE Compliance Form-3
- Attachment C – Affidavit of Conflict of Interest Disclosure  
\*\*\* If the Department will utilize HUD funds, add the Section 3 Plan here\*\*\*

#### **11.3. Contract Terms and Conditions and Insurance**

- Attachment D - Insurance Requirements
- Attachment E – City Contract Terms and Conditions  
\*\*\* If the Department will utilize federal FEMA and/or HUD Funds, add the FEMA and/or HUD provisions \*\*\*

#### **11.4. Required to Submit PRIOR to execution of contract**

- Attachment F – Tax Clearance Authorization
- Attachment G – Identification of Subcontractors
- Attachment H - Affidavit of Compliance with Hiring Requirement

#### **11.5. Sample Agreement**

- Attachment I – Sample Professional Services Agreement

**[ATTACHMENTS A THRU I ON FOLLOWING PAGES]**

**SECTION 11.1.**  
**THE FOLLOWING DOCUMENT IS FOR REVIEW  
ONLY**

**ATTACHMENT NO. A  
CITY OF NEW ORLEANS  
STATEMENT OF NEEDS**

[Insert Needed Services/Specifications]

**Pricing/Cost**

**Vendor's Fee Proposal Requirements**

[Insert Vender Price Proposal Details]

[The remainder of the page is intentionally left blank]

SAMPLE

## SECTION 11.2.

### THE FOLLOWING DOCUMENTS MUST BE COMPLETED AND SUBMITTED WITH RESPONSE

#### INSTRUCTIONS:

- Documents must be signed by an authorized representative of the entity or it will not be accepted.
- For Affidavits: the document must be notarized, or it will not be accepted.
- For Affidavits: Affiant **MUST** select when required or the affidavit will not be accepted.

*Instructions sheet may be omitted when submitting the affidavit*

**ATTACHMENT B**  
**CITY OF NEW ORLEANS**  
**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 Useful 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](http://www.nola.gov).
- b. The Louisiana Unified Certification Program (“LA UCP”) directory is available at [www.dotd.louisiana.gov](http://www.dotd.louisiana.gov).

Information on locating these directories may also be requested from the OSD at [supplierdiversity@nola.gov](mailto: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 [suppldiversity@nola.gov](mailto:suppldiversity@nola.gov).

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

### **Request for Proposals (“RFP”) / Request for Qualifications (“RFQs”):**

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 “B”):** 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 “B”) 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 - CONTRACTOR COOPERATION**

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.

- 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<sup>th</sup>) 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.
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<sup>th</sup>) 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 - POST-AWARD MODIFICATION**

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](mailto:supplierdiversity@nola.gov) to request a copy of all DBE referenced documents.**

SAMPLE

**DBE COMPLIANCE FORM-3 ARE ATTACHED SEPARATELY  
TO THIS RFP ON THE SUPPLIER PORTAL**

**[ATTACHMENTS C THRU I ON FOLLOWING PAGES]**

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

**ATTACHMENT C  
CITY OF NEW ORLEANS  
AFFIDAVIT OF CONFLICT OF INTEREST DISCLOSURE**

STATE OF \_\_\_\_\_

COUNTY/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 Solicitation No. \_\_\_\_\_.

3. The Respondent hereby confirms that a conflict(s) of interest *(check the applicable box)*
- does not exist
  - exists
  - 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 Public (print)  
Notary ID#/Bar Roll # \_\_\_\_\_

**[ATTACHMENTS D THRU I ON FOLLOWING PAGES]**

**SECTION 11.3.**  
**CONTRACT TERMS AND CONDITIONS AND**  
**INSURANCE**

**ATTACHMENT D  
CITY OF NEW ORLEANS  
INSURANCE REQUIREMENTS**

[Insert Minimum Insurance Requirements]

[ATTACHMENTS E THRU I ON FOLLOWING PAGES]

[The remainder of the page is intentionally left blank]

SAMPLE

**ATTACHMENT E**  
**CITY OF NEW ORLEANS**  
**CITY CONTRACT TERMS AND CONDITIONS**

**TABLE OF CONTENTS**

- |  |   |
|--|---|
| 1. <u>ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.</u>     | 21. <u>FORCE MAJEURE.</u>                                       |
| 2. <u>ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.</u> | 22. <u>INCORPORATION INTO SUBCONTRACTS.</u>                     |
| 3. <u>ASSIGNABILITY.</u>   | 23. <u>INDEMNIFICATION.</u>                                     |
| 4. <u>AMENDMENT.</u>   | 24. <u>INDEPENDENT CONTRACTOR STATUS.</u>                       |
| 5. <u>AUDIT AND INSPECTION.</u>  | 25. <u>INVOICING.</u>   |
| 6. <u>CHOICE OF LAWS.</u>  | 26. <u>LIMITATIONS OF THE CITY'S OBLIGATIONS.</u>               |
| 7. <u>COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX</u>           | 27. <u>LIVING WAGES.</u>  |
| 8. <u>CONFLICT OF INTEREST.</u>  | 28. <u>NO THIRD PARTY BENEFICIARIES.</u>                        |
| 9. <u>CONSTRUCTION OF AGREEMENT.</u>   | 29. <u>NON-EXCLUSIVITY.</u>                                     |
| 10. <u>CONVICTED FELON STATEMENT</u>   | 30. <u>NON-SOLICITATION.</u>                                    |
| 11. <u>COST RECOVERY.</u>  | 31. <u>NON-WAIVER.</u>  |
| 12. <u>DECLARED DISASTER.</u>  | 32. <u>OWNERSHIP INTEREST DISCLOSURE.</u>                       |
| 13. <u>DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.</u>                | 33. <u>PAYMENT.</u>   |
| 14. <u>DURATION.</u>   | 34. <u>PERFORMANCE MEASURES.</u>                                |
| 15. <u>EMPLOYEE VERIFICATION.</u>  | 35. <u>PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.</u> |
| 16. <u>ENTIRE AGREEMENT.</u>   | 36. <u>PROHIBITION ON POLITICAL ACTIVITY.</u>                   |
| 17. <u>FAMILIARITY WITH LAWS</u>   | 37. <u>REMEDIES CUMULATIVE.</u>                                 |
| 18. <u>NON-DISCRIMINATION.</u>   | 38. <u>SEVERABILITY.</u>  |
| 19. <u>EXCLUSIVE JURISDICTION AND VENUE.</u>                                 | 39. <u>SUBCONTRACTOR REPORTING.</u>                             |
| 20. <u>EXTENSION.</u>  | 40. <u>SURVIVAL.</u>  |
|  | 41. <u>SUSPENSION.</u>  |
|  | 42. <u>TERMINATION FOR CAUSE.</u>                               |

- 43. TERMINATION FOR CONVENIENCE.
- 44. TERMINATION FOR NON-APPROPRIATION.

- 45. TERMS BINDING.
- 46. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.

**1. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.**

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 Contract, 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.

**2. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.**

The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City under this Contract 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 Contract, 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 contract; 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 Contract.

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.

- 3. **ASSIGNABILITY.** The Contractor shall not assign any interest in this Contract and shall not transfer any interest in the same without prior written consent of the City.

- 4. **AMENDMENT.** The Contract shall not be modified except by written amendment executed by duly authorized representatives of the parties.

**5. AUDIT AND INSPECTION:**

- 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 Contract 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 Contract. 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 Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.

**7. COMPLIANCE WITH CITY'S HIRING REQUIREMENTS - BAN THE BOX.**

**A.** The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.

**B.** Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor

thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.

**C.** This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.

**D.** 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.

**8. 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.

**9. CONSTRUCTION OF AGREEMENT.** Neither party will be

deemed to have drafted the Contract. The Contract 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 Contract 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 Contract are provided for convenience only and are not intended to have effect in the construction or interpretation of the Contract. Where appropriate, the singular includes the plural, and neutral words and words of any gender include the neutral and other gender.

**10. 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.

**11. COST RECOVERY.** In accordance with Section 2-8.1 of the Municipal Code entitled “Cost recovery in contracts, cooperative endeavor agreements, and grants,” to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or economic benefit received from the City if the Contractor fails to meet its contractual obligations.

**12. 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.

**13. 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’s use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

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

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

**C. Cooperation.** 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 Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a. 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.

- 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 this Agreement. Such records are

necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by 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<sup>th</sup>) 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.

**D. Post-Award Modification.**

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.

**14. DURATION.** The services to be provided under the terms of this Contract shall begin upon execution of Contract and shall end no later than twelve (12) months after. It is understood and acknowledged by all signers to this Contract that work described under these terms is to be accomplished during the time period specified herein.

**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. FAMILIARITY WITH LAWS**

The Contractor shall be familiarized with and shall comply with all applicable Federal and State Laws, parish/municipal ordinances, resolutions, and the rules and regulations of all authorities having jurisdiction over the Agreement.

These laws and/or ordinance will be deemed to be included in the Agreement, the same as though herein written in full.

**18. 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, sex, color, religion, gender, age, physical or mental

disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

**B. Non-Discrimination.** In the performance of this Agreement, the 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. 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.

**19. EXCLUSIVE JURISDICTION AND VENUE.** For all claims arising out of or related to this Contract, 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.

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

**21. FORCE MAJEURE.**

**A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the City, provided such event was not caused by the negligence or misconduct

of the City, by the failure of the City to comply with applicable laws, or by the breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended.

**C. Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:
  - a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or
  - b. Terminate this Agreement, either immediately or after one or more periods of

suspension, effective on notice to the Contractor and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

**22. INCORPORATION INTO SUBCONTRACTS.**

The Contractor will incorporate these Contract Terms and Conditions into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with these provisions.

**23. 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 Contract; 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 Contract.

**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.

**24. 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.

**25. INVOICING.** The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the City electronically, via its supplier portal, for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information: invoice number, contract or purchase order number issued by the City, and the name of the city department to be invoiced. The City

may require changes to the form or the content of the invoice. The City may also require additional supporting documentation to be submitted with invoices.

**26. 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.

**27. LIVING WAGES.**

**A. Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

**B. Compliance.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

**C. Current Living Wage.** In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

**D. Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1<sup>st</sup> using the Consumer Price Index figures provided for the calendar year ended December 31<sup>st</sup> of the preceding year, and thereafter on an annual basis.

**E. Subcontract Requirements.** As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance ("**Article**"). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

**F. Reporting.** On or before January 31<sup>st</sup> and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number

of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:

Office of Workforce Development  
Living Wage - Compliance  
1340 Poydras Street – Suite  
1800  
New Orleans, Louisiana 70112

**G. Compliance Monitoring.**

Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

**H. Remedies.** If the Contractor fails to comply with the Living

Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.

**28. NO THIRD PARTY BENEFICIARIES.**

The Contract 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 Contract.

**29. NON-EXCLUSIVITY.**

This Contract 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 Contract and the City may engage the services of others for the provision of some or all of the work to be performed under this Contract.

**30. 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 Contract. 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 Contract.

**31. NON-WAIVER.**

The failure of the City to insist upon strict compliance with any provision of the Contract, 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.

**32. 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.

**33. PAYMENT.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), or rendered, and approved by the City after receipt by the City of properly submitted invoice via the City’s supplier portal.

**34. 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; staff turnover; 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.

**35. PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.**

No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, 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 Contract 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 Contract without regard to the Contractor’s satisfactory performance.

**36. PROHIBITION ON POLITICAL ACTIVITY.**

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

**37. REMEDIES CUMULATIVE.** No remedy set forth in the Contract 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.

**38. SEVERABILITY.** If a court of competent jurisdiction finds any provision of the Contract 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 Contract will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Contract.

**39. 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 Contract'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 Contract 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.

**40. SURVIVAL.** 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 Contract and continue in full force and effect.

**41. SUSPENSION.** The City may suspend this Contract 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.

**42. 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.

**43. TERMINATION FOR CONVENIENCE.** The City may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the City's intention to terminate at least

thirty (30) days before the date of termination.

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

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

**46. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.** It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

**[ATTACHMENTS F THRU I ON FOLLOWING PAGES]**

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

## **SECTION 11.4.**

**THE DOCUMENTS IN THIS SECTION MUST BE COMPLETED AND SUBMITTED TO THE CITY UPON REQUEST FROM THE DEPARTMENT ADMINISTERING THE CONTRACT BUT PRIOR TO THE EXECUTION OF THE CONTRACT.**

**OTHER DOCUMENTS WILL BE REQUIRED. THE DEPARTMENT WILL SUBMIT THE REQUEST TO THE SELECTED RESPONDENT.**

**ATTACHMENT F  
CITY OF NEW ORLEANS  
TAX CLEARANCE AUTHORIZATION**

**THE TAX CLEARANCE AUTHORIZATION IS ATTACHED  
SEPARATELY TO THIS RFQ ON THE SUPPLIER PORTAL**

**[ATTACHMENTS G THRU I ON FOLLOWING PAGES]**

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

**ATTACHMENT G  
CITY OF NEW ORLEANS  
IDENTIFICATION OF SUBCONTRACTORS**

STATE OF \_\_\_\_\_

COUNTY/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 Solicitation No. \_\_\_\_\_.

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 \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public (signature)  
Notary ID#/Bar Roll #

**[ATTACHMENTS H THRU I ON FOLLOWING PAGES]**

**ATTACHMENT H  
CITY OF NEW ORLEANS  
AFFIDAVIT OF COMPLIANCE WITH HIRING REQUIREMENTS**

STATE OF \_\_\_\_\_

COUNTY/PARISH OF \_\_\_\_\_

Before me, the undersigned authority, came and appeared \_\_\_\_\_,  
who, after being duly sworn, deposed and said that:

1. He/She is the \_\_\_\_\_ (*title*) and authorized representative of  
\_\_\_\_\_ (*entity*), the "Respondent."

2. The Respondent submits the attached proposal in response to City of New Orleans  
Solicitation No. \_\_\_\_\_.

3. The Respondent hereby confirms that \_\_\_\_\_ (*entity*) is

compliant with the City of New Orleans' hiring requirements contained in City  
Code Sections 2-8(d) and 2-13(a)-(f), unless otherwise excluded by city, state, or  
federal laws or regulations.

unable to comply with the City of New Orleans' hiring requirements contained in  
City Code Sections 2-8(d) and 2-13(a)-(f) for the following reasons:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Respondent Representative (Signature)

\_\_\_\_\_  
(Print or type name) (Address)

Sworn to and subscribed before me, \_\_\_\_\_, Notary Public, this \_\_\_\_ day of  
\_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public (signature)

\_\_\_\_\_  
Notary Public (print)

Notary ID#/Bar Roll # \_\_\_\_\_

**[ATTACHMENT I ON FOLLOWING PAGES]**

**SAMPLE**

**SECTION 11.5.  
SAMPLE AGREEMENT**

**ATTACHMENT I  
CITY OF NEW ORLEANS  
SAMPLE PROFESSIONAL SERVICES AGREEMENT**

**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 LaToya Cantrell, 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**

**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.

#### **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**

**A. Definitions.** Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.

**B. Compliance.** To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:

1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code (“**Living Wage**”);
2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.

**C. Current Living Wage.** In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal

to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting <https://www.nola.gov/economic-development/workforce-development/>.

**D. Adjusted Living Wage.** In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1<sup>st</sup> using the Consumer Price Index figures provided for the calendar year ended December 31<sup>st</sup> of the preceding year, and thereafter on an annual basis.

**E. Subcontract Requirements.** As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.

**F. Reporting.** On or before January 31<sup>st</sup> and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified

information to the following:

Office of Workforce Development  
Living Wage - Compliance  
1340 Poydras Street – Suite  
1800  
New Orleans, Louisiana 70112

**G. Compliance Monitoring.** Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.

**H. Remedies.** If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms

set forth in Section 70-811 of the City Code.

**ARTICLE IX - 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’s use of DBE subcontractors/suppliers (“**DBE Entities**”) through the following actions:

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

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

**C. Cooperation.** 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 Entities.

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

a. 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.

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 this Agreement. Such records are necessary to determine compliance with their DBE obligations.

- 4. Post monthly payments and submit regular reports to the DBECO as required via the online "Contract Compliance Monitoring System" or other means approved by 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<sup>th</sup>) 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.

**D. Post-Award Modification.**

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.

**ARTICLE X – FORCE MAJEURE**

**A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the City at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by City); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of City,

provided such event was not caused by the negligence or misconduct of City, by the failure of City to comply with applicable laws, or by the breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, the City must provide notice in writing to the Contractor stating: (1) an event triggering this Article has occurred; (2) the anticipated effect of the Force Majeure event on performance; and (3) the expected duration of the delay, if the Agreement is being suspended

**C. Effect.**

1. Upon the occurrence of a Force Majeure event, for which the City has provided required notice, the City may, at its sole discretion:

a. Suspend this Agreement for a duration to be set by the City, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions

to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the City; or

b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to Contractor and without any further compensation due.

2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

**ARTICLE XI - 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 XII - 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 XIII - 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 XIV - 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.

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[SIGNATURES CONTAINED ON NEXT PAGE]

**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 XV - 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 XVI - 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.

Printed Name: \_\_\_\_\_

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

**NAME OF CONTRACTOR**

**CITY OF NEW ORLEANS**

**BY:** \_\_\_\_\_  
**LaTOYA CANTRELL,**  
**MAYOR**

**BY:** \_\_\_\_\_

Executed on this \_\_\_\_\_  
of \_\_\_\_\_  
\_\_\_\_\_, 20\_\_

\_\_\_\_\_  
**NAME AND TITLE OF  
INDIVIDUAL INDICATED  
IN PROOF OF SIGNING  
AUTHORITY**

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

\_\_\_\_\_  
**FEDERAL TAX I.D. OR  
SOCIAL SECURITY NO.**

**By:** \_\_\_\_\_

**[END OF SOLICITATION]**

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