

K16-421

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

WAGGONNER & BALL ARCHITECTS, A PROFESSIONAL CORPORATION

RFP NO 2285-01890 NATIONAL DISASTER RESILIENCE COMPETITION

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is entered into by and between the City of New Orleans, represented by Mitchell J. Landrieu, Mayor (the “**City**”), and Waggonner & Ball Architects, APC, represented by J. David Waggonner III, President (the “**Consultant**”). The Agreement is effective as of August 31, 2015 (the “**Effective Date**”).

RECITALS

WHEREAS, on April 22, 2015, the City issued a request for proposals RFQ NO. 2285-01831 seeking qualified persons to provide professional services including Design, Engineering, and Construction Management Services Pool for Resilience, Stormwater Management, and/or Green Infrastructure (the “**RFQ**”);

WHEREAS, the Consultant submitted a proposal dated May 19, 2015, and the City has selected the Consultant to be part of the pool for the professional services described in the RFQ;

WHEREAS, on July 28, 2015, the City issued a request for proposals RFP NO 2285-01890 to qualified consultants under the RFQ to provide professional services including design services to the City of New Orleans in support of its application to the National Disaster Resilience Competition and for projects that receive funding awards through that competition. (the “**RFP**”);

WHEREAS, the Consultant submitted a proposal dated August 18, 2015, and the City has selected the Consultant to perform the professional services described in the RFP; and

WHEREAS, the Consultant and the City acknowledge that if the City is awarded the National Disaster Resilience Competition funding, the parties will execute an amendment to this Agreement to implement the design strategy provided by the Consultant. Implementation of the design strategy provided by the Consultant is contingent on the City’s receipt of the award funding and the parties acknowledge and agree that the application to the National Disaster Resilience Competition contemplates and may require services provided by Consultant after grant award.

NOW THEREFORE, the City and the Consultant agree as follows:

ARTICLE I - THE CONSULTANT’S OBLIGATIONS

A. Services. The Consultant will, in accordance with the schedule approved by the City, provide the following services:

1. Project Scoping for application development;

2. Organize 2 Charrettes with City staff and key stakeholders;
3. Provide Conceptual and schematic designs for all proposed projects;
4. Conduct a Benefit-Cost Analysis Calculation and Benefit-Cost Analysis Narrative according to HUD's requirements;
5. Recommend actions to streamline process so that the proposed program is accordance with the National Environmental Policy Act;
6. Support City as needed with Public Engagement Efforts;
7. Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFP; the Consultant's proposal dated August 18, 2015.
8. Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Consultant as set forth in this Agreement;
9. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;
10. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;
11. 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
12. 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 Consultant 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 Consultant represents that it has the requisite skills and expertise necessary to perform the Services. Accordingly, the Consultant is obligated to perform such services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which the Consultant is engaged in providing similar services in areas under the same or similar circumstances.

The Consultant acknowledges and agrees that, at the City's option, the Consultant shall be obligated to re-perform, at no additional cost to the City, any or all of the Services that fail to satisfy the foregoing standard of care.

C. Compliance with Laws. The Consultant, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

D. Schedule.

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

- Design Workshop- September 14-17th
- Project Cost Estimates- October 2nd
- Draft Projects Scopes, Renderings, and Narrative- October 6th
- Draft Benefits Cost Analysis (BCA) – October 7th
- Final Project Scopes, Renderings, BCA, and application support documentation- October 25th

The Consultant will submit a proposed progress schedule to the City within two (2) 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: a clear description of how the team will meet the compressed timeline for delivery of the Project Scopes, Cost Estimates, Benefits Cost Analysis, Community Engagement, and Environmental Review.

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 Consultant acknowledges and agrees that time is of the essence in the performance of this Agreement.

E. Invoices.

1. The Consultant will submit monthly invoices for work performed under this Agreement to the 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: The Consultant shall submit three (3) invoices in a format approved by the Department shall be submitted to the Department along with three (3) sets of back-up or verification documentation and three (3) CDs/DVDs containing the electronic files of the invoices and back-up documentation.

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

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 Consultant will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of five (5) years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to

the Agreement. If this Agreement is terminated for any reason, the Consultant will deliver to the City all plans and records of work compiled through the date of termination.

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

3. The Consultant is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. Audit and Inspection.

1. The Consultant 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 Consultant, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Consultant's office or place of business in Louisiana. If no such location is available, the Consultant will make the documents available at a time and location that is convenient for the City.

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

H. Insurance.

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

- a. Commercial General Liability ("CGL").
- b. Worker's Compensation.
- c. Professional Liability (Errors and Omissions).

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

- a. Additional Insured Status.
- b. Primary Coverage.
- c. Claims Made Policies.
- d. Waiver of Subrogation.
- e. Notice of Cancellation.
- f. Acceptability of Insurers.

3. The Consultant will provide the City's Risk Manager with the following documents within ten (10) calendar days of the Effective Date and at any other time at the City's request:

- 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.
4. Without notice from the City, the Consultant 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.

5. The Consultant shall provide documents or notification(s) or both subject to this Article I.H. to the following address: City of New Orleans Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112.

I. Indemnity. To the fullest extent permitted by law, the Consultant 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 causes of action asserted against the Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any negligent act, error or omission or the operation of the Consultant, its agents or employees while engaged in or in connection with the discharge or performance of any Services under this Agreement, and for any and all claims and/or liens for labor, services, or materials furnished to the Consultant in connection with the performance of work under this Agreement.

1. **Limitation.** The Consultant's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Consultant nor any of its agents or employees contributed to such gross negligence or willful misconduct.

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

ARTICLE II - REPRESENTATIONS AND WARRANTIES

A. The Consultant represents and warrants to the City that:

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

2. The Consultant has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;

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

4. The Consultant is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Consultant's performance of this Agreement;

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

6. The Consultant is not in breach of any federal, state, or local statute or regulation applicable to the Consultant or its operations;

7. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Consultant's most favored customer for the same or substantially similar services;

8. The Consultant has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Consultant and the execution of this Agreement by the Consultant's representative constitutes a sworn statement, under penalty of perjury, by the Consultant as to the truth of the foregoing representations and warranties.

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

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

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

ARTICLE III - THE CITY'S OBLIGATIONS

A. Administration. The City will:

1. Administer this Agreement through the Project Delivery Unit;
2. Provide the Consultant any documents deemed necessary for the Consultant'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 Consultant; and

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

1. The City's obligation to pay is contingent upon the Consultant's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The 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 Consultant against any amounts deemed by the City to be owed to the City by the Consultant pursuant this Agreement; and
4. All compensation owed to the Consultant under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Consultant that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Consultant 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 Consultant only for the work requested by the City and satisfactorily performed by the Consultant 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 Consultant a lump sum for this contract based on the hourly cost estimates provided in Attachment A.
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 Consultant'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 Consultant any other charges or fees and the Consultant will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement

4. The Consultant 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 TWO HUNDRED FIFTY THOUSAND DOLLARS AND ZERO CENTS (\$250,000.00).

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 Consultant written notice of the termination at least thirty (30) calendar days before the intended date of termination.

D. **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice and the 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 Consultant. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the 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 Consultant. The Consultant will resume work upon five (5) business day's written notice from the City.

ARTICLE VI - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM

A. **DBE Program Compliance.** The Consultant will 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 specific DBE participation goals. The Consultant’s failure to carry out these requirements, as determined in good faith by the City’s DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the City’s Policy Memorandum for the DBE Program.

B. **DBE Compliance Reporting.** The Consultant will provide written reports to the City’s Director of Supplier Diversity on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

1. The name and business address of each DBE involved in the contract;
2. A description of the work performed and/or the product or service supplied by each DBE;
3. The date and amount of each expenditure made to a DBE; and
4. Such other information as may assist the DBE Compliance Officer in determining State’s compliance with the DBE Program and the status of any DBE performing any portion of the contract.

C. **Access to Books and Records.** The Consultant will grant the City’s DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program in accordance with the inspection provisions of this Agreement.

D. **Disqualification from Future Contracts.** If the City terminates this Agreement in connection with any misrepresentation of the Consultant’s DBE status, the Consultant may be disqualified from contracting with or participating in any contracts with City contracts with the City of New Orleans.

ARTICLE VII - NON-DISCRIMINATION

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

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

C. Incorporation into Subcontracts. The Consultant will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The City may terminate this Agreement for cause if the Consultant fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

ARTICLE VIII - INDEPENDENT CONSULTANT

A. Independent Consultant Status. The Consultant is an independent Consultant and shall not be deemed an employee, servant, agent, partner, or joint venture of the 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 Consultant, as an independent Consultant 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 Consultant will not be considered an employee of the City for the purpose of Worker's Compensation coverage.

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

D. Waiver of Benefits. The Consultant, as an independent Consultant, will not receive from the 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 IX - 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:

Project Delivery Unit Manger
City of New Orleans
1300 Perdido Street, Suite 6E15
New Orleans, LA 70112

&

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

2. To the Consultant:

J. David Waggonner III, President
Waggonner & Ball Architects, APC
2220 Prytania Street
New Orleans, LA 70130

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. 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 X - 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 Consultant'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 Consultant's efforts do not conflict with the City's interests, and in recognition of the Consultant's obligations to the City, the Consultant will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Consultant will promptly notify the City in writing of its intention to accept the other employment and will disclose all possible

effects of the other employment on the Consultant's performance of this Agreement. The City will make the final determination whether the Consultant 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 Consultant on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

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. Jurisdiction. The Consultant consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Consultant.

H. 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.

I. 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.

J. Non-Exclusivity. This Agreement is non-exclusive and the Consultant 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.

K. 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.

L. Ownership Interest Disclosure. The Consultant will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Consultant and stating that no other person holds an ownership interest in the Consultant via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Consultant fails to submit the required affidavits, the City may, after thirty (30) days' written notice to the Consultant, take such action as may be

necessary to cause the suspension of any further payments until such the required affidavits are submitted.

M. 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 Consultant, 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 Consultant pursuant to this Agreement without regard to Consultant's otherwise satisfactory performance of the Agreement.

N. 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.

O. Remedies Cumulative. No remedy set forth in the Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.

P. Severability. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.

Q. Special Conditions for CDBG Contracts. The "CDBG Compliance Provisions for Professional Services Contracts," attached as Exhibit "A" 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 Consultant 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.

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

S. 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 all special conditions for FEMA/CDBG compliance shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

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

(SIGNATURES ON THE FOLLOWING PAGES)

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

CITY OF NEW ORLEANS

BY: 
MITCHELL J. LANDRIEU, MAYOR

4/18/16

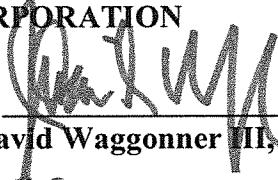
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: 

WAGGONNER & BALL ARCHITECTS, A PROFESSIONAL CORPORATION

BY: 
J. David Waggonner III, President

