



## REQUEST FOR PROPOSALS FOR COMMERCIAL LEASING CONSULTANT RFP NO. FMC 08-2401

**Request for Proposals:** The French Market Corporation (“FMC”) seeks a professional, full-service commercial real estate firm, or specialist to provide comprehensive, strategic, and innovative asset management services specific to the commercial real estate portfolio managed by the FMC. The selected firm must be licensed to practice in the State of Louisiana and have experience in creating strategic leasing plans for commercial tenant spaces. The requested services are professional in nature and will be assigned by the Executive Director of FMC. The services to be provided are described in more detail in Attachment “A” hereto as provided below.

The French Market Corporation (“FMC”) is a self-sustaining public benefit corporation, which pursuant to La. Rev. Stat. 39:1052 is not a political subdivision of the state. The mission of FMC is the preservation, restoration, maintenance, promotion and development of the City of New Orleans’ properties and historical assets assigned to its management by ordinance and/or agreement with the City of New Orleans. As provided below, and incident to *City Charter Section 6-308(5)*, *Executive Order LC 20-01*, and *FMC’s Competitive Selection Procedure for Contractual Professional Services*, the FMC requests qualifications from experienced firms to provide the needed services.

**Instructions:** Respondents shall submit the following to the French Market Corporation directed Attention: *Ms. Katherine C. Guidry, Executive Director, 518 St. Peters Street, New Orleans, Louisiana 70116*, not later than August 21, 2024 at 2:00 pm (CST):

1. Three (3) signed hardcopies of the proposal in a sealed envelope marked “***FMC Commercial Leasing Consultant Services***”; and one (1) digitally signed proposal (maximum of three (3) files) on a CD or Flash Drive, in Microsoft Word format or as a PDF file, marked “***FMC Commercial Leasing Consultant Services***”;
2. Three (3) printed hard copies of the related cost proposal enclosed in a separate sealed envelope, marked ***FMC Commercial Leasing Consultant Services Cost Proposal***;
3. Both signed the hardcopies and the digital response shall include the following:
  - a. A signed cover letter including the company’s name, address and primary contact for the request for qualifications. The primary contact information shall include the submitter’s name, telephone, and email address;

- b. A proposal demonstrating the Respondent’s qualifications;
  - c. All required attachments; and
  - d. Respondents must clearly notate on the outside of all submissions (whether submitted via regular mail or via express delivery; on the envelope and on the digital submission) the name of the respondent and the title of the RFP. This information is critical to the FMC to identify proposals.
4. Respondents should clearly demonstrate their qualifications to perform the needed services and attend to all factors applicable in a professional relationship.
  5. Respondents should include detailed resumes or curricula vitae for the principals performing the services.
  6. 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 this solicitation. These laws and/or ordinances will be deemed to be included in the contract, the same as though herein written in full.

**Receipt of Proposals:**

All proposals **must be received** by FMC on or before the Proposal Submission Deadline.

FMC will not accept proposals submitted by fax.

FMC will not accept proposals delivered after the deadline. FMC will not credit delivery claims not clearly documented by original receipt.

Copies of the solicitation and related information are available on the FMC’s website at: <https://www.frenchmarket.org/public-notice/>.

**Anticipated Timetable.**

RFP Release:	Friday, August 2, 2024
Deadline for Submitting Questions:	Tuesday, August 13, 2024
Proposal Submission Deadline:	Wednesday, August 21, 2024
Evaluation and Selection:	Friday, August 23, 2024
Notification:	Monday, August 26, 2024

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

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

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

**By responding to this RFP, the respondent agrees to FMC’s required Contract Terms and Conditions as provided in Attachments “B” and therefore waives any future right to contest the required provisions.**

**1. Services Needed.**

See Attachment A.

**2. Selection Committee**

The FMC will establish a Selection Committee with relevant subject matter expertise to review and evaluate proposals. The Contractor will be selected by the FMC Executive Director based on the review of the selection committee, as per the *FMC’s Competitive Selection Procedure for Contractual Professional Services*, as re-certified by the Mayor of the City of New Orleans on January 24, 2024. This solicitation anticipates that this service will be classified as a “Small Purchase” with a contract value between \$15,000 and \$100,000.

**3. Evaluation Criteria.**

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

Technical Criteria

- (30%) **Specialized experience and technical competence.** Demonstrate history of planning for multi-tenant commercial uses. Provide plan for bringing below market rate tenants up to appropriate rates. Demonstrate ability to capture a diverse market of potential tenants.
- (30%) **Performance history.** Provide history of responsiveness, cost control, work quality and the ability to meet schedules and deadlines. Provides examples of at least 3 comparable projects and their implemented results.

- (10%) **Qualification and key personnel.** Relevant qualifications and experience of the individual brokers/agents who will be directly engaged in providing the services outlined in the scope.
- (5%) **Quality of proposal.** Overall organization, completeness, and quality of proposal, including cohesiveness, clarity of response, and demonstrated understanding of the scope.

DBE Participation

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

- (5%) Proposal complies with contract DBE participation goal of **35%** or will conduct good faith efforts to do so.
- (5%) Proposal submitted a quality DBE Participation Plan that includes innovative strategies and approaches to achieve and maintain compliance over the contract term, including firm's past performance on meeting DBE goals, technical assistance and supportive services designed to increase participation and build capacity in the DBE community.

Price Proposal

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

- (15%) Cost

**4. Ownership.**

All proposals and/or documentation submitted therewith are FMC property for all purposes.

Respondents will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption. FMC will not credit any blanket exemption claims lacking specific justification. FMC does not guarantee the confidentiality of submissions.

**5. Effect.**

This RFP and any related discussions or evaluations by anyone create no rights or obligations whatsoever. The FMC is not responsible for RFP submission and/or presentation costs. The FMC may cancel or modify this solicitation at any time at will, with or without notice. Anything to the contrary notwithstanding, the professional services agreement executed by the FMC and a qualified respondent, if any, is the exclusive statement of rights and obligations extending from this solicitation.

**6. Point of Contact.**

- a) All correspondence and other communications regarding this procurement should be directed to the attention of: *Katherine C. Guidry, Executive Director, French Market Corporation, 518 N. Peters Street, New Orleans, Louisiana 70116.*
- b) Substantive questions must be submitted by respondents in writing to the person at the address provided above or emailed to [KGuidry@frenchmarket.org](mailto:KGuidry@frenchmarket.org) no later than 4 pm Tuesday, August 13, 2024.
- c) Any request received after that time may not be reviewed for inclusion in this RFP. The request shall contain the requester's name, address, and telephone number.
- d) FMC will issue a response to any inquiry if it deems it necessary by written addendum to the RFP prior to the RFP's Submission Deadline. Such addendum will be posted on FMC's website and sent via email to any known RFP package recipients. The respondent shall not rely on any representation, statement or explanation other than those made in this RFP or in any addenda issued. Where there appears to be a conflict between this RFP and any addendum issued, the last addendum issued will prevail.

**7. Cone of Silence.**

- a) From the time of advertising until the final award, there is a prohibition on communication by respondents (or anyone on their behalf) with the FMC's Staff, Board members and City elected officials.
- b) This does not apply to oral communications at pre-submittal conferences, contract negotiations, or communications in writing at any time with any FMC employee, or elected City official regarding matters not concerning this RFQ.
- c) **Breaking the established prohibition on communication, if proven, may result in a disqualification of your submittal.**

**8. Required Attachments with Submission.**

Respondents are required to complete and submit with their qualification submission the following attachments:

- Attachment "C" Disadvantaged Business Enterprise Participation Plan
- Attachment "F" City of New Orleans Conflict of Interest Disclosure Affidavit

**9. Required Attachments with Submission.**

The FMC supplies the below attachments for information. FMC will request them from the qualified respondent prior to the execution of a professional services agreement.

- Attachment "D" Tax Clearance Certificate
- Attachment "E" Identification of Subcontractors
- Attachment "G" Affidavit of Compliance with Hiring Requirements

## **10. Minimum Scope of Insurance.**

Except as otherwise noted, at all times during this Agreement or during 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. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor's scope of work under the Agreement.

If the Contractor maintains broader coverage and/or higher limits than the minimums shown above, FMC requires and shall be entitled to the broader coverage and/or the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to FMC:

### **A. Minimum Requirements:**

1. Workers' Compensation & Employers Liability Insurance in compliance with the applicable Workers' Compensation Act(s). Statutory and Employers Liability Insurance with limits of not less than \$500,000.
2. Commercial General Liability Insurance including contractual liability insurance, products and completed operations, personal & advertising injury, bodily injury, property damage, abuse and molestation and any other type of liability for which this Agreement applies with limits of liability of not less than \$1,000,000 each occurrence / \$2,000,000 policy aggregate.
3. Automobile Liability Insurance with limits of liability of not less than \$500,000 per accident for bodily injury and property damage. Insurance shall include all owned, non-owned and hired vehicles.
4. Professional (Errors & Omission) Liability Insurance appropriate to the Contractors profession with limits of liability of not less than \$1,000,000 per occurrence or claim / \$2,000,000 policy aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as is undertaken by Contractor in this agreement.

Policy shall be kept in force and uninterrupted for a period of three (3) years beyond policy expiration. If coverage is discontinued for any reason during this three (3) year term, Contractor must procure and evidence full extended reporting period (ERP) coverage.

Contractors shall be able to meet the above referenced specific policy limits of liability through a combination of primary and umbrella /excess coverage.

- B. **Important:** The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work.
- C. **Additional Insured Status:** The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming French Market Corporation, its departments, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of

the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the French Market Corporation as Certificate Holder and be delivered via U.S. Mail to Attn: Deputy Director, 518 St. Peters Street, New Orleans, LA 70116

The Additional Insured box shall be marked “Y” or Commercial General Liability coverage. The Subrogation Waiver Box must be marked “Y” for Workers Compensation/Employers Liability and Property.

- D. Primary Coverage: For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects FMC, its departments, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by FMC shall be non-contributing to the Contractors coverage.
- E. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.
  - F. Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against FMC by virtue of the payment of any loss under insurance required by this agreement.
- G. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to FMC of no less than 30 days.
- H. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City and FMC.
- I. Notice: The Contractor will provide French Market Corporation (at French Market Corporation Attn: Deputy Director, 518 St. Peters Street., New Orleans, LA 70116 – **FMC 08-2401 (FMC Commercial Leasing Consultant Services)**). The Contractor shall provide the following documents within 10 calendar days of the City’s or FMC’s request: Copies of all policies of insurance, including all policies, forms, and endorsements.
- J. Miscellaneous: Without notice from FMC, the Contractor will:
  - 1. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;

2. Substitute insurance coverage acceptable to FMC within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.

K. Special Risks or Circumstances: French Market Corporation shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

## **11. Disadvantaged Business Enterprise (DBE) Requirements**

### **A. DBE Program Compliance:**

1. 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.
2. 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.
3. Contractor agrees 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.

### **B. DBE Contract Goal:**

1. The requested DBE Contract Goal is listed in the contract section of the RFP.
2. Participation shall be counted toward meeting the contract goal based on the following:
  - a. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
  - b. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
  - c. 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.
  - d. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier’s participation and 60 % of DBE Non-Manufacturer supplier’s participation toward its contract goal.
  - e. 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.
  - f. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Usefully Function.



- g. “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:
  - i. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
  - ii. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
  - iii. 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.
  - iv. 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.

C. 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.

- 1. 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).
- 2. 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).

D. Good Faith Effort Policy:

In accordance with Sec.70-461 of the City Code, the FMC shall reject any proposal 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.

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:

1. Specific Portions of Work Identified for DBE Subcontractor:

- a. 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.
- b. Bidder/Proposer listed the estimated value of each scope or portions of work identified.

2. Notifying Certified DBEs of Contracting Opportunities:

- a. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
  - b. Bidder/Proposer included a copy of each announcement or notification.
3. Initial Solicitation & Follow-Up:
- a. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
  - b. Bidder/Proposer included copies of the written notice(s) sent to certified firms.
4. Negotiate In Good Faith
- a. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.
  - b. 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 [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).

E. Required DBE Forms For Bids/RFPs/RFQs:

1. BIDs:

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

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

- a. DBE Compliance Form-1: This form is used to establish your DBE commitment on a City of New Orleans bid, RFP or solicitation response. The Bidder shall provide a list of all proposed DBE subcontractor(s). If the Bidder has attained the amount of DBE participation to meet the contract goal, only submit DBE Compliance Form-1.
- b. DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal. The Bidder shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

- c. After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts. Thereafter, the Bidder/Contractor shall be bound by the established percentage, as approved by the OSD.
2. Request for Proposals (“RFP”) / Request for Qualifications (“RFQs”):  
To ensure the full participation of DBE’s in all phases of the FMC’s/City’s procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.
- a. DBE Participation Plan (Attachment “C”): A completed DBE Participation Plan shall be considered a methodology on how the respondent plans to meet the contract DBE participation goal if awarded the project. If a DBE Participation Plan (Attachment “C”) is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.
  - b. Within ten (10) days of the FMC’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 FMC Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).

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.

F. 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 FMC and the Contractor.
  - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
  - a. Copies of written contracts with DBE Entities and purchase orders;
  - b. Documentation of payments and other transactions with DBE Entities;

- c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.  
The Contractor is required to maintain such records for three (3) years after completion or closeout of the Agreement. Such records are necessary to determine compliance with their DBE obligations.
4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
- a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the FMC 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 FMC will not adjust the contract for any increase in cost due to replacement of DBE Entities.

**G. Post-Award Modification:**

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

1. 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
2. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the FMC 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.

**H. 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.

**I. 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 or FMC 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.**

END OF DOCUMENT

**French Market Corporation**  
**Request for Proposals FMC 08-2401**  
**FMC Commercial Leasing Consultant Services**  
**August 2, 2024**

**Attachment “A”**

1. Provide strategic leasing plan for commercial tenant spaces managed by the French Market Corporation. This plan shall contemplate the unique historic and cultural significance of the district. Plan must identify similar districts; their successes and failures. Final product will include a thorough analysis to support consultant’s plan for appropriate tenant mix at market rates established in the McEnery appraisal.
2. Work with FMC to implement strategic leasing plan as spaces become available.
3. Provide plan to bring tenant rents up to market rate. Work with FMC to implement plan in a reasonable manner.
4. Provide insight/editing of standard lease documents

**Minimum Vendor Qualifications:**

- 10 years of commercial real estate experience
- Minimum of 2 years’ experience in the Greater New Orleans region
- Minimum of 5 years’ experience with multi-tenant spaces
- Experience in culturally and/or historically significant districts
- Maintain all the appropriate licenses and certifications required to lease commercial real estate in the City of New Orleans

## **Pricing/Cost**

### **Vendor's Fee Proposal Requirements**

Proposals must include a Cost Proposal that includes the following elements:

- (1) A pricing sheet providing hourly billing rates (fully inclusive) for either everyone who will provide services and their position held within the company.
- (2) A not-to-exceed price for "Strategic Leasing Plan" This price should anticipate hourly billing of all labor plus any additional materials, contractual, or supply costs required to complete a final deliverable acceptable by the FMC. The vendor will be responsible for completing this within this not-to-exceed price and under no circumstances will bill the FMC beyond this pricing for "Strategic Marketing."
- (3) A not-to-exceed price plan to bring tenant leases up to market rate." This price should anticipate hourly billing of all labor plus any additional materials, contractual, or supply costs required to complete a final deliverable acceptable by the FMC. The vendor will be responsible for completing this within this not-to-exceed price and under no circumstances will bill the FMC beyond this pricing.
- (4) Leasing fee
- (5) Construction consultation fee. In the event the consultant is asked to oversee tenant buildout.

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**French Market Corporation  
Request for Proposals FMC 08-2401  
FMC Commercial Leasing Consultant Services  
August 2, 2024**

**Attachment “B”**

**CONTRACT TERMS AND CONDITIONS**

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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 and/or the FMC 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 or FMC 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 and/or the FMC 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 and/or the FMC 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 and/or the FMC'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 or the FMC 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 FMC.
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 and/or FMC audit, inspection, and review and, at the City's or the FMC'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 or the FMC.
  - 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, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
- 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 FMC 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 FMC 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 or FMC, and in recognition of the Contractor's responsibility to the City and FMC, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City or FMC 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 FMC and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the FMC. Final decision on any disputed offers of other employment for the Contractor shall rest with the FMC.

**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 FMC 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 FMC 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 FMC will notify the Contractor via task order if the FMC requires the Contractor's support. Upon activation by task order, the Contractor will provide the FMC with contact information of personnel assigned to the task order; and coordinate with the FMC to identify any personnel available to meet the FMC's needs.
- c. Purchase Order.* Once services are identified, the FMC will issue a purchase order to the Contractor. The FMC 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 FMC 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' 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 FMC 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 FMC 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 FMC 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:
    - 1. 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
    - 2. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the FMC 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 FMC 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 FMC a sworn affidavit attesting to the above provisions if requested by the FMC. The FMC 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. 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 nondiscrimination, 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 FMC 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.

**18. 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.

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

**20. FORCE MAJEURE.**

**A. Event.** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the FMC 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 FMC); 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 FMC provided such event was not caused by the negligence or misconduct of the FMC, by the failure of the FMC to comply with applicable laws, or by the breach of this Agreement.

**B. Notice.** To seek the benefit of this Article, the FMC 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 FMC has provided required notice, the FMC may, at its sole discretion:

- a. Suspend this Agreement for a duration to be set by the FMC, 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 FMC; 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.

**21. 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.

**22. INDEMNIFICATION.**

- a. To the fullest extent permitted by law, the Contractor will indemnify, defend, and hold harmless the City and FMC, 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 and FMC's option: (a) defend the City and/or FMC from or (b) reimburse the City and /or FMC 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 and/or FMC's reasonable attorney fees and expenses, incurred by the City and/or the FMC in enforcing this indemnity.
- 23. 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 or FMC and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City and/or the FMC.
- 24. INVOICING.** The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the FMC electronically, via its email to [accounting@frenchmarket.org](mailto:accounting@frenchmarket.org), 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 FMC is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the FMC, and the name of the department to be invoiced. The FMC may require changes to the form or the content of the invoice. The FMC may also require additional supporting documentation to be submitted with invoices.
- 25. LIMITATIONS OF THE CITY'S and FMC's OBLIGATIONS.** The City and FMC has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.
- 26. 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 \$15.00. 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.

- 27. NO THIRD PARTY BENEFICIARIES.** The Contract is entered into for the exclusive benefit of the FMC and the Contractor, and the FMC and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.
- 28. NON-EXCLUSIVITY.** This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the FMC's approval of any potential conflicts with the performance of this Contract and the FMC may engage the services of others for the provision of some or all of the work to be performed under this Contract.
- 29. 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.
- 30. NON-WAIVER.** The failure of the FMC 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 FMC'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.
- 31. 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 FMC 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.
- 32. 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), rendered, and/or accepted and upon receipt by the FMC of properly submitted invoice via email at [accounting@frenchmarket.org](mailto:accounting@frenchmarket.org) or via mail to: French Market Corporation, ATTN: Accounts Payable, 518 St. Peter Street, New Orleans, LA 70116.
- 33. PERFORMANCE MEASURES.**
- A. *Factors.* The FMC 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 FMC will notify the Contractor. If there is a continued lack of performance after notification, the FMC 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 FMC will invoice the defaulting contractor for

any increase in costs and other damages sustained by the FMC. Further, the FMC will seek full recovery from the defaulting contractor.

34. **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 FMC and shall entitle the FMC to recover, in addition to any other rights and remedies available to the FMC, all monies paid by the FMC to the Contractor pursuant to this Contract without regard to the Contractor's satisfactory performance.
35. **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.
36. **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.
37. **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.
38. **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 FMC. For any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the FMC, the Contractor must provide notice to the FMC within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the FMC 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.
39. **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.
40. **SUSPENSION.** The FMC 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 FMC.
41. **TERMINATION FOR CAUSE.** The FMC 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.

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

**43. 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 FMC will not be liable for any amounts beyond the funds appropriated and encumbered for this Contract.

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

**45. 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 or French Market Corporation.

**END OF ATTACHMENT "B"**

**French Market Corporation  
Request for Proposals FMC 08-2401  
FMC Commercial Leasing Consultant Services  
August 2, 2024**

**Attachment “C”**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

(Must be submitted with proposal)



OFFICE OF SUPPLIER DIVERSITY  
 CITY OF NEW ORLEANS  
 DBE Compliance Form-1 | DBE RESPONSIVENESS FORM

Contact Office of Supplier Diversity for questions on completing this form.  
 Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)

Instructions: Prior to award of a City contract, please complete and submit DBE Compliance Form-1. *List all DBE and Non-DBE firms* that will be utilized, and list scopes of work/services or goods they will perform or provide. Please ensure that all authorized signatories of each DBE firm listed signs this form. If you have not attained the amount of DBE participation to meet the contract goal, you are required to complete and submit DBE Compliance Form-2 along with all required supporting Good Faith Efforts documentation. Please reference the GFE Policy for further guidance. The GFE Policy is available via [www.nola.gov](http://www.nola.gov) or by request at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).

Solicitation #: \_\_\_\_\_ Project Name: \_\_\_\_\_ Date: \_\_\_\_/\_\_\_\_/\_\_\_\_

Name of Bidder/Proposer: \_\_\_\_\_ has satisfied the requirements of the bid/proposal specifications for the above referenced ITB/RFP/RFQ or solicitation by the City of New Orleans in the following manner:

*(Please check the appropriate space)*

- The bidder/proposer is committed to the contract goal of \_\_\_\_\_ % DBE utilization on this contract.
- The bidder/proposer is unable to meet the current DBE contract goal, however, is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract and will submit documentation demonstrating good faith efforts in addition to this form. *(Please complete and submit DBE Compliance Form-2 along with all required supporting documentation)*

Total Bid/Proposal Amount:	\$ _____	100%
Total proposed DBE Amount:	\$ _____	_____ %

Bidder/Proposer's point-of-contact:

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Email: \_\_\_\_\_



OFFICE OF SUPPLIER DIVERSITY  
**CITY OF NEW ORLEANS**  
 DBE Compliance Form-1 | **DBE RESPONSIVENESS FORM**

Contact Office of Supplier Diversity for questions on completing this form.  
 Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)

Solicitation #: \_\_\_\_\_ Bidder/Proposer: \_\_\_\_\_

Every DBE firm listed must be utilized on the project, and must perform a Commercially Useful Function. To remove or replace a DBE firm you must request & submit a DBE Removal/Substitution Request Form and receive approval from the OSD prior to removal or replacement the DBE firm.

**DBE COMMITTEMENT TO CONTRACT GOAL: (Attach additional pages if necessary)**

**Sub-Contractors/Sub-Consultants and Manufacturers**

Name of DBE Firm	CERTIFICATION (SLDBE or LAUCP)	Scope(s) of Work to be performed by the DBE	Tier 1, 2, or 3 Subcontractor?	Value of Proposed Contract with DBE	% OF TOTAL CONTRACT
1.				\$	%
2.				\$	%
3.				\$	%
4.				\$	%
5.				\$	%
6.				\$	%
7.				\$	%
8.				\$	%
9.				\$	%
10.				\$	%
<b>TOTAL</b>				\$	%

**Suppliers (For participation towards DBE Goal, count only 60% of total proposed Contract Value)**

Name of DBE Firm	Certification (SLDBE or LAUCP)	Supplies to be provided by the DBE	100% of Value of Proposed Contract with DBE Supplier	60% Value of Proposed Contract with DBE Supplier	% OF TOTAL CONTRACT
1.			\$	\$	%
2.			\$	\$	%
3.			\$	\$	%
4.			\$	\$	%
5.			\$	\$	%
<b>TOTAL</b>			\$	\$	%





OFFICE OF SUPPLIER DIVERSITY  
**CITY OF NEW ORLEANS**  
 DBE Compliance Form-1 | **DBE RESPONSIVENESS FORM**

Contact Office of Supplier Diversity for questions on completing this form. Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)

Solicitation #: \_\_\_\_\_ Bidder/Proposer: \_\_\_\_\_

**DBE AFFIRMATION: (Attach additional pages if necessary)**

The listed DBE firm(s) below affirm(s) that it will perform the Scope of Work for the estimated dollar value as stated in the DBE Commitment to Contract Goal section on page 2 of the DBE Compliance Form-6.

NAME of DBE FIRM	PRINT NAME of DBE FIRM'S AUTHORIZED SIGNATORY	SIGNATURE of DBE FIRM'S AUTHORIZED SIGNATORY	DATE
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			
11.			
12.			
13.			
14.			
15.			



OFFICE OF SUPPLIER DIVERSITY  
**CITY OF NEW ORLEANS**  
 DBE Compliance Form-I | **DBE RESPONSIVENESS FORM**

Contact Office of Supplier Diversity for questions on completing this form.  
 Via email: [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov)

RFP/RFQ/Bid/Solicitation/Other #: \_\_\_\_\_ Bidder/Proposer: \_\_\_\_\_

**NON-DBE SUBCONTRACTORS AND SUPPLIERS: (Attach additional pages if necessary)**

NAME OF FIRM	PHONE	Scope of Work to be performed by the Subcontractor	VALUE of PROPOSED CONTRACT	% OF TOTAL CONTRACT
1.			\$	%
2.			\$	%
3.			\$	%
4.			\$	%
5.			\$	%
6.			\$	%
7.			\$	%
8.			\$	%
9.			\$	%
10.			\$	%
11.			\$	%
12.			\$	%
13.			\$	%
14.			\$	%
15.			\$	%

**I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.**

PRINT NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ TITLE: \_\_\_\_\_ DATE: \_\_\_\_\_

**Attachment "D"**

**CITY OF NEW ORLEANS  
TAX CLEARANCE AUTHORIZATION**

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

*BUSINESS NAME:*

\_\_\_\_\_

*OWNER'S NAME:*

\_\_\_\_\_

*TYPE OF BUSINESS:*

\_\_\_\_\_

*BUSINESS ADDRESS:*

\_\_\_\_\_

*MAILING ADDRESS:*

\_\_\_\_\_

*CONTACT TELEPHONE:*

\_\_\_\_\_

*FAX NUMBER:*

\_\_\_\_\_

*E-MAIL ADDRESS:*

\_\_\_\_\_

*REAL ESTATE TAX NUMBER:*

*PERSONAL PROPERTY TAX NUMBER:*

*SALES TAX/OCCUPATIONAL LICENSE  
NUMBER:*

**PRINT NAME:**

**TITLE:**

**AUTHORIZED SIGNATURE:**

**DATE SIGNED:**

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

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

This clearance covers Occupational License and Sales/Use taxes.

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

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

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

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

\_\_\_\_\_  
**COLLECTOR OF REVENUE**

\_\_\_\_\_  
**DATE**

\_\_\_\_\_  
**TREASURY CHIEF**

\_\_\_\_\_  
**DATE**

**Attachment "E"**  
**CITY OF NEW ORLEANS**  
**FRENCH MARKET CORPORATION**  
**IDENTIFICATION OF SUBCONTRACTORS**

**STATE OF LOUISIANA**

**PARISH OF**

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

1. He/She is the \_\_\_\_\_ and authorized representative of \_\_\_\_\_  
\_\_\_\_\_, hereafter called "Respondent."

2. The Respondent submits the attached proposal in response to FMC RFQ 07-23 FMC AUDIT  
AND ACCOUNTING SERVICES

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 FMC. Respondent hereby acknowledges  
and agrees that when new subcontractors not previously named are added to the project, they must be  
promptly identified to the FMC User Department within 48 hours of the change. The official change may  
not take place unless and until the FMC 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 \_\_\_\_\_, 202\_\_\_\_.

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

**Attachment "F"**

**CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

**STATE OF LOUISIANA**

**PARISH OF \_\_\_\_\_**

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

1. He/She is the \_\_\_\_\_ and authorized representative of \_\_\_\_\_, hereafter called "Respondent."
2. The Respondent submits the attached proposal in response to French Market Corporation Proposal # \_\_\_\_\_.
3. The Respondent hereby confirms that a conflict(s) of interest exists/does not exist/may exist in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with city officials or employees. *(If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form).*

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

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

\_\_\_\_\_  
(Address)

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

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

**French Market Corporation  
Request for Proposals FMC 08-2401  
FMC Commercial Leasing Consultant Services  
August 2, 2024**

ATTACHMENT “G”

SAMPLE

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

FRENCH MARKET CORPORATION

AND

NAME OF CONTRACTOR

RFQ/RFP NUMBER

TITLE OF RFQ/RFP

**THIS PROFESSIONAL SERVICES AGREEMENT** (the “**Agreement**”) is entered into by and between the French Market Corporation, represented by Katherine C. Guidry, French Market Corporation (the “**FMC**”), and **NAME OF CONTRACTOR**, represented by **NAME AND TITLE OF INDIVIDUAL INDICATED IN PROOF OF SIGNING AUTHORITY** (the “**Contractor**”). FMC and the Contractor may sometimes be collectively referred to as the “**Parties.**” The Agreement is effective as of the date of execution by the City (the “**Effective Date**”).

**RECITALS**

**WHEREAS**, on August 2, 2024, FMC issued a request for proposals No. FMC 08-2401 seeking qualified persons to provide professional services including **SHORT DESCRIPTION OF SERVICES** (the “**RFP**”);

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

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

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

**WHEREAS**, on **DATE OF RFP**, FMC 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 FMC has selected the Contractor to perform the professional services described in the RFP.

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

**ARTICLE I - THE CONTRACTOR’S OBLIGATIONS**

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

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

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

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

4. Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by FMC, 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 FMC within 30 days after the approval of the associated plan change or amendment; and

7. Cooperate with FMC and any person performing work for FMC.

FMC’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 FMC within 14 calendar days of receiving written authorization to proceed from FMC. 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. FMC 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 FMC 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 FMC 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. FMC may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

**F. Records and Reporting.**

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of XXX years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to FMC 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 FMC.

**G. Audit and Inspection.**

1. The Contractor will submit to any FMC or City audit, inspection, and review and, at FMC'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 FMC.

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

**H. Insurance.**

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



- 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 FMC’s Director of Operations (at the New Orleans Building Corporation Attn: Director of Operations, 1111 Canal Street, Suite 400, New Orleans, LA 70112) within 10 calendar days of the Effective Date and at any other time at FMC’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 FMC, 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 FMC within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
  - c. Notify the FMC’s Director of Operations in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

**I. Indemnity.**

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

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

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

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

## **ARTICLE II - REPRESENTATIONS AND WARRANTIES**

**A.** The Contractor represents and warrants to FMC 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 FMC and incorporated into this Agreement;

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

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

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

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

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

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

*[If this agreement is with a law firm or lawyer, add the following:]*

**D. Conflict Of Interest.** The Contractor expressly acknowledges that this Agreement is for the performance of professional legal services on behalf of the Client, the City. Therefore, Contractor further acknowledges that it is bound by the Louisiana Rules of Professional Conduct. Contractor represents that it has performed a conflicts check and affirms that no actual, perceived or potential conflicts exist. Contractor acknowledges that it has an ongoing obligation to identify potential conflicts and to decline representation which presents a conflict. Any request for a conflict waiver must be presented to the City Attorney in writing in accordance with the Louisiana Rules of Professional Conduct. Nevertheless, the City Attorney is under no obligation to approve conflict waiver requests.

**E. Employee Verification.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of this provision. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

*[If scope of work involves public works/construction, substituting the prior language by the following:]*

**Employee Verification.** The Contractor swears that (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 3 years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor will provide to the City a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

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

### **ARTICLE III - THE CITY'S OBLIGATIONS**

**A. Administration.** FMC will administer this agreement;

**1.** 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;

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

**3. INSERT ANY ADDITIONAL OBLIGATIONS FOR FMC.**

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

1. FMC'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. FMC, 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. FMC may set off any amounts due to the Contractor against any amounts deemed by FMC to be owed to FMC 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 FMC.

5. FMC 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 FMC, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or FMC is not expressly obligated to pay under this Agreement.

6. If this Agreement is terminated for any reason, FMC 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. FMC 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 FMC 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. FMC 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 FMC 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 FMC under this Agreement is **INSERT NUMERICAL MAXIMUM DOLLAR AMOUNT.**

**ARTICLE V - DURATION AND TERMINATION**

**A. Initial Term.** The term of this agreement shall be for 1 year, beginning the Effective Date. 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 FMC, provided that funds are allocated and the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by FMC for 4 additional one-year terms.

**C. Termination for Convenience.** FMC may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least 30 calendar days before the intended date of termination.

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

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

**F. Suspension.** FMC may suspend this Agreement at any time and for any reason by giving 2 business day's written notice to the Contractor. The Contractor will resume work upon 5 business day's written notice from FMC.

#### **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 FMC 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, FMC will notify the Contractor via task order if FMC requires the Contractor's support. Upon activation by task order, the Contractor will provide FMC with contact information of personnel assigned to the task order; and coordinate with FMC to identify any personnel available to meet FMC's needs.

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

#### **ARTICLE VII - PERFORMANCE MEASURES**

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

### **ARTICLE VIII – LIVING WAGES**

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

### **ARTICLE IX - DISADVANTAGED BUSINESS ENTERPRISE (“DBE”) PROGRAM**

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

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

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 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 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 30 days from the date of notice to proceed (or equivalent document) issued by the City to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth day of each month until all DBE subcontracting work is completed.
  - 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 - 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.** FMC may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

#### **ARTICLE XI - INDEPENDENT CONTRACTOR**

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

**B. Exclusion of Worker's Compensation Coverage.** The FMC 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 FMC for the purpose of Worker's Compensation coverage.

**C. Exclusion of Unemployment Compensation Coverage.** The Contractor, as an



independent contractor, is being hired by FMC 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 FMC 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 FMC 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 FMC'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 FMC 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 FMC under this Agreement.

#### **ARTICLE XII - NOTICE**

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

1. To the City:

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

&

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

2. To the Contractor:

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

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

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

#### **ARTICLE XIII - ADDITIONAL PROVISIONS**

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

**B. Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without FMC'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 FMC's interests, and in recognition of the Contractor's obligations to FMC, 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 FMC 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. FMC 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 FMC or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

**F. Entire Agreement.** This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**G. Exhibits.** The following exhibits will be and are incorporated into this Agreement: *[List of all exhibits to incorporate in the Agreement.]*

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

**I. Limitations of the City's Obligations.** FMC 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 FMC's approval of any potential conflicts with the performance of this Agreement and FMC may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

**L. Non-Waiver.** The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.

**M. Order of Documents.** In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; *[List of all incorporated documents in descending order.]*

**N. Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other

person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an “ownership interest” shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, FMC may, after 30 days’ written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

**O. Ownership of Records.** Upon final payment, all data collected and all products of work prepared, created or modified by Contractor in the performance of this Agreement, including without limitation any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, but excluding the Contractor’s personnel and administrative records and any tools, systems, and information used by the Contractor to perform the services under this Agreement, including computer software (object code and source code), know-how, methodologies, equipment, and processes and any related intellectual property (collectively, “Work Product”) will be the exclusive property of FMC and FMC will have all right, title and interest in any Work Product, including without limitation the right to secure and maintain any copyright, trademark, or patent of Work Product in FMC’s name. No Work Product may be reproduced in any form without FMC’s express written consent. FMC may use and distribute any Work Product for any purpose FMC deems appropriate without the Contractor’s consent and for no additional consideration to the Contractor.

**P. Prohibition of Financial Interest in Agreement.** No elected official or employee of the FMC 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 FMC shall be deemed to be a financial interest of such elected official or employee of FMC. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by FMC and shall entitle FMC to recover, in addition to any other rights and remedies available to FMC, all monies paid by FMC to Contractor pursuant to this Agreement without regard to Contractor’s otherwise satisfactory performance of the Agreement.

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

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

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

*[This provision or a similar one must be added if the agreement is paid for by federal funds (CDBG, FEMA, HUD, else):]*

**T. Special Conditions for XXXX Contracts.** The “XXXX Compliance Provisions for Professional Services Contracts,” attached as Exhibit “\_\_\_” to this Agreement, are expressly incorporated in the Agreement and will be effective, notwithstanding any provision of the Agreement or any incorporated documents, to the contrary, upon the City’s notice to the Contractor that the City intends to seek reimbursement from the XXXXX Program in connection with the work to be performed under this Agreement.

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

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

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

**ARTICLE XV - ELECTRONIC SIGNATURE AND DELIVERY**

The Parties agree that a manually signed copy of this Agreement and any other document(s) attached to this Agreement delivered by email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. No legally binding obligation shall be created with respect to a party until such party has delivered or caused to be delivered a manually signed copy of this Agreement.

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

**[SIGNATURES CONTAINED ON NEXT PAGE]**

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

**NEW ORLEANS BUILDING CORPORATON**

**BY:** \_\_\_\_\_  
**KATHERINE C. GUIDRY, EXECUTIVE DIRECTOR**

Executed on this \_\_\_\_\_ of \_\_\_\_\_, 201\_\_

**NAME OF CONTRACTOR**

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

\_\_\_\_\_  
**FEDERAL TAX I.D. OR SOCIAL SECURITY NO.** *[Do not insert this number in any drafts of the agreement. This information is confidential and should only be filled out by contractor/vendor/consultant when the individual signs the agreement. This information shall not be published]*

END OF DOCUMENT