

PROFESSIONAL SERVICES AGREEMENT

BETWEEN

THE CITY OF NEW ORLEANS

AND

GAYLE H. BOUDOUSQUIE D/B/A GAYLE H. BOUDOUSQUIE AND ASSOCIATES

THIS PROFESSIONAL SERVICES AGREEMENT (the "Agreement") is entered into by and between the City of New Orleans, represented by LaToya Cantrell, Mayor (the "City"), and Gayle H. Boudousquie d/b/a Gayle H. Boudousquie and Associates represented by Gayle H. Boudousquie, (the "Contractor"). The City and the Contractor may sometimes be collectively referred to as the "Parties." The Agreement is effective as of the date of execution by the City (the "Effective Date").

RECITALS

WHEREAS, the City seeks to hire a firm or individual to provide an appraisal for real property and desires to engage a certified, professional appraiser to furnish the City with a summary appraisal report for the selected properties;

WHEREAS, the services to be provided under this Agreement are necessary to achieve the purposes of the Louisiana Constitution, Article 7, Section 14, in regards to the sale of property;

WHEREAS, Contractor, is a qualified, professional appraiser, as evidenced by its credentials attached as Exhibit A; and

WHEREAS, the Contractor has the requisite expertise, qualifications, and certifications in place, and is available for the performance of the needed professional services.

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

ARTICLE I - THE CONTRACTOR'S OBLIGATIONS

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

1. Appraise two properties: 2621 General Meyer Avenue, a/k/a Touro Shakespeare Home, and Poydras "ROW" in accordance with Uniform Standards of Professional Appraisal Practice (USPAP). The Contractor shall personally inspect each parcel, including all buildings, structures, fixtures, and other improvements to the properties.

a. The following factors and assumptions shall be used by Contractor in conducting its appraisal of 2621 General Meyer:

i. 2621 General Meyer is to be leased under a 50 year lease with nine 5-year extensions possible, adjusted annually with CPI increases;

ii. The property contains a restrictive covenant: that it be used as an alms house; and

iii. Zoning is changing to HU-RM1.

b. In conducting its appraisal of Poydras ROW, Contractor shall consider the property as for sale as vacant land.

c. The legal description for the properties to be appraised are as follows:

- i. Touro Shakespeare Home - A certain portion of ground together with all buildings and improvements thereon situated in the Parish of Orleans, Fifth Municipal District, Square 5, Part 9 or Lot A (as part of a subdivision of Arpents 14 and 15), as more fully shown on the attached surveys and site plans, formerly known as the Touro-Shakespeare Nursing Home. The improvements bear the municipal Address of 2621 General Meyer Avenue, New Orleans, Louisiana 70114.
 - ii. Poydras ROW - A portion of ground in the First Municipal District located within the Poydras Street Right-of-Way between Squares 587 and 588, between Squares 573 and 574, between Squares 559 and 560, between Squares 545 and 546, and between Squares 529 and 530, that comprises approximately 201,773 square feet of ground bounded by S. Broad Street, Poydras Street, S. Galvez Street and Poydras Street all measurements more or less as more fully shown on the attached survey.
 - d. Site maps, plat maps, and/or a list of municipal addresses of the properties to be appraised (to the extent possible) will be included in the Notice to Proceed to the Contractor. Additionally, if available, the City will provide legal descriptions of the real property to be appraised, including identifying any interests in the real property to be specifically excluded from appraisal, to the Contractor prior to the Contractor's commencement of the appraisal process. A separate appraisal is to be furnished for each property.
2. Testify as an expert witness on behalf of the City in any judicial proceeding involving any property appraised under this Agreement. Such services shall include such reasonable time as may be required for re-inspection of the property, updating the Contractor's valuation, participation in pretrial conferences with counsel for the City, and testifying in the judicial proceeding. The compensation for such services shall be determined in accordance with Article IV.
3. Modify or furnish supplements to any appraisal report furnished under this Agreement within four (4) days, without additional cost to the City, if:
- a. applicable principles of law with respect to the valuation of the property require the modification or supplementing of such appraisal;
 - b. material omissions, inaccuracies, or defects in the appraisal report are discovered after delivery and acceptance of the report by the City; or
 - c. the Contractor receives or becomes aware of relevant additional appraisal information in existence prior to the date the Contractor signed the report.
4. If there is a significant delay between the date of valuation and the date of sale or lease of any parcel or if the property has been materially altered since the appraisal by any catastrophic, a revised determination of the boundaries of the property to be acquired, or other cause, the Contractor shall, if requested by the City, furnish the City a supplementary report

updating this valuation and the supporting data and analyses to a current date. The compensation for such updating of an appraisal shall be determined in accordance with Article IV.

5. Consult with the City and its legal counsel regarding services to be performed by the Contractor, at such time(s) as may be mutually convenient for the parties to this Agreement. The Contractor shall initiate such consultations whenever the Contractor is in doubt as to whether an element of property is real or personal property or needs legal advice on any aspect of the appraisal to be furnished under this Agreement. There shall be no charge by any party for such consultations.

6. Contents of Appraisal Reports. Each appraisal report to be furnished by the Contractor under this Agreement shall contain certain information and the Contractor's conclusions and opinions, together with the data and analyses by which they were derived, as set forth below. A separate report shall be submitted for each parcel. However, if more than one parcel is to be appraised, all general data may be included in a separate data volume that is referenced in the separate appraisal reports on the individual parcels. The appraisal report on each parcel shall include the following:

- a. A summary titled "Appraisal Report for [the parcel]" that provides the following:
 - i. Project name and number.
 - ii. Date of the report.
 - iii. Parcel number, address of the property, and brief identification of all interests in the property appraised.
 - iv. Date(s) of the Contractor's inspection of the property.
 - v. The Contractor's estimate of the fair market value of the entire parcel.
 - vi. The limiting conditions of the appraisal, which may include the following assumptions, where reasonable and appropriate:
 1. that the title is good and marketable;
 2. that no responsibility is assumed by the Contractor for legal matters, especially those affecting the title to the property;
 3. that the legal description of the property and the interest in the property to be appraised, furnished to the Contractor by the City, is correct, and;
 4. That no survey of the property has been made.
 - vii. Any other appropriate assumption or limiting condition may be added if it has been specifically approved in writing by the City;
 - viii. The certifications of the Contractor:
 1. that the Contractor personally made a thorough inspection of the property;
 2. that, to the best of the Contractor's knowledge and belief, everything contained in the report is true and no relevant and important fact has been omitted;
 3. that neither the Contractor's employment nor compensation is contingent on the valuation reported, and;
 4. that the Contractor has no past, present, or prospective interest (including that of real estate agent or broker) in the property, the

parties involved, or any other interest that would conflict in any way with the services performed or the making of an impartial report.

- ix. A certification that, in the Contractor's opinion, the fair market value of the property is an amount to be stated as of the date of valuation; and
- x. The signature of the Contractor.
- b. The street address and an accurate description of each parcel and all interests in the parcel appraised. The property description shall identify all conditions, restrictions, easements, servitudes, and reservations affecting the title.
- c. Basic property data including pertinent information with respect to such matters as:
 - i. the environment and location of the property;
 - ii. the zoning and any restrictive covenants, conditions, or servitudes affecting the available use or occupancy of the land;
 - iii. the assessed value of the real property if available;
 - iv. the use and occupancy of the property at the time of appraisal;
 - v. access to the property;
 - vi. the character, topography, dimensions, and area of the land;
 - vii. the freedom of the property from special hazards;
 - viii. the current rental and rental history of the property, if rented;
 - ix. the estimated annual costs of ownership, operation, and maintenance of the property; and
 - x. a description of the buildings, structures, and other improvements, if any, including relevant information as to type of improvement, designated use, construction materials and finish, equipment, dimensions, floor area, age, condition, space or room arrangement, functional utility, and any other characteristics or attributes of the improvements germane to the value of the real property.
- d. The appraisal report shall contain a general sketch plat showing the shape and dimensions of the land, the location of the principal improvements on the land, the location of any easements in the land, and the abutting streets, alleys, or other public rights of way. The report shall also include such photographs, each clearly identified, as may be appropriate.
- e. Report of any condition or occupancy of the property in violation of law that may affect the value of the property.
- f. The Contractor's opinion as to the highest and best use for the property. The appraisal report shall also include the Contractor's opinions as to any other use(s) for which the property is reasonably suitable or adaptable. If the property is unused vacant land or the highest and best use is not self-evident or is found to differ significantly from the present use, the appraisal report shall contain the analyses by which the Contractor reached the conclusions as to the highest and best use of the property and as to its suitability or adaptability for any other use(s). The analysis of a potential use shall include consideration of relevant matters, such as the suitability of the location, the environment and the legal and physical attributes of the property for such use, the estimated cost, if any, of converting the property to such use, and the supply, sale price levels, and

relative desirability of other properties that would compete for the same kind of use. The analysis of the property for the future use or uses found to be the highest and best use is part of the process of appraising the property and, therefore, may be included in the valuation analysis furnished in accordance with this Article.

- g. The opinion of the Contractor as to the fair market value of the property, for lease or for sale as indicated in the scope of services. The appraisal report shall contain a description of the reasoning process used by the Contractor in reaching the conclusion as to value and all data and analyses needed to explain and support the valuation. The supporting data and analyses furnished in the appraisal report shall include the following:

- i. An analysis of the property, from the point of view of evaluating the effect of its characteristics and attributes on its value for the available use or uses for which the property is best suited. Particular attention shall be given to the characteristics of the property most relevant to its value, such as, in the case of an investment property, the income potential and the expenses of ownership, maintenance, and operation;
- ii. An identification of the most recent sale of each property appraised and any other sales of such property during the last five (5) years preceding the appraisal. Such sale(s) of the property appraised and all recent sales of comparable properties considered by the Contractor in forming the opinion(s) of fair market value shall be verified insofar as practical. The information furnished with respect to each such sale shall include, among other pertinent facts, the names of the grantor and grantee, the date of the sale, the sale price, any special terms, conditions, or circumstances of the sale that affected the transaction, and a description of the property and its condition at time of sale in sufficient detail for use in making the appraisal.
- iii. The analyses that constitute the principal basis for the Contractor's opinion of the fair market value. The appraisal report shall contain the Contractor's evaluation with respect to previous sales of the property appraised and any recent offer of the owner to sell the property. The appraisal report shall also contain the Contractor's analysis of each comparable property and its sale in relation to the property appraised. The Contractor's analysis shall reflect appropriate allowances for the difference in the time of the sale of the comparable properties and the date of appraisal and the differences in the utility, desirability, and productivity of the properties that are pertinent to their relative value. The appraisal report shall contain a valuation data map showing the location of the property appraised and the comparable properties referred to in the appraisal report.
- iv. All other information, analyses, and estimates considered by the Contractor to be relevant to the estimation of the fair market value of the property.
- v. Such maps, plans, photographs, or other exhibits as are necessary to explain or illustrate the analyses of the Contractor.

- vi. The Contractor's evaluation of the indications of value deduced from the separate analyses of the various evidences of value and an explanation of how the Contractor reached its conclusion as to the fair market value of the property.
- h. The opinion of the Contractor as to the fair market value of the land, as if vacant. The valuation shall be for the same interest in the land as is to be acquired in the real property. The report shall contain information with respect to the available use or uses for which the land would be suitable if vacant, the opinion of the Contractor as to its highest and best use, and the Contractor's analysis of the evidences of value and of the use potential by which the Contractor reached his/her conclusions as to the highest and best use of the land and the land value.
- i. A property analysis if the property is a commercial, industrial, institutional, governmental, or farm property that involves substantial quantities and kinds of fixtures such as machinery and equipment. Any building, structure, fixture, or other improvement, which would be real property if owned by the owner of the land, shall be considered to be real property (even if the improvement is the property of a tenant who has the right to remove it or the obligation to remove it at the expiration of the lease term). The property analysis must be approved by the City before the appraisal is completed and, as approved by the City, shall be included as an exhibit in the Contractor's report. The property analysis shall list, identify, and classify as to ownership and type of improvement, all items of physical property considered to be part of the real property. The property analysis shall also identify tangible personal property located on the premises to the extent reasonably necessary to prevent misunderstandings as to what is regarded as being real or personal property. Buildings, structures, fixtures and other improvements, including their accessories and spare parts, shall be identified and classified as to ownership and type of property.

7. Perform all other services and obligations relating to 2621 General Meyer and Poydras ROW as set forth in any the following documents that are incorporated fully into this Agreement: the Contractor's proposal dated June 10, 2019 and attached hereto as Exhibit "B."

8. 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;

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

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

11. Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within 30 days after the approval of the associated plan change or amendment; and

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

The City's officers and employees are not authorized to request or instruct the 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 the following provisions.

1. **Purpose and Significance of Appraisal.** The appraisal(s) to be furnished under this Agreement are required by the City for its guidance in making fair and impartial determinations of fair market value to be used as a valuation for the sale or lease of each parcel as specified in Article I. The Contractor shall be guided by those objectives when estimating values. Appraisal reports will be reviewed carefully by the City. Accordingly, the text of each appraisal report must cover all matters germane to the required valuation findings and must provide a full explanation of the Contractor's reasoning and the Contractor's analyses of the evidence of value, so that a reviewer will be able to follow the Contractor's analyses and understand how the Contractor reached each valuation conclusion.

2. **Appraisal Standards.** The appraisal under this Agreement shall be based on nationally recognized appraisal standards and techniques, including but not limited to the Uniform Standards of Professional Appraisal Practice (USPAP). Factors relating to race, color, religion, sex, or national origin, or to racial, religious, or ethnic identification or national origins, or to racial, religious, or ethnic identification of neighborhoods are not relevant to the estimation of value and shall not be considered in connection with appraisal of real property.

3. **Date of Valuation.** The Contractor's valuation shall be as of a date concurrent with the preparation of the report unless the City has specified some other date of valuation.

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, Louisiana Real Estate Appraisers Law as set forth in LSA-R.S. §37:3391 *et seq.*

D. Schedule.

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

a. Prepare and deliver to the City, within thirty (30) calendar days after a written Notice to Proceed is issued to the Contractor by the City, three (3) copies of the appraisal reports conforming to the provisions of this Agreement.

2. The City has the sole right to approve, reject, or require changes to all schedules relating to the performance of this Agreement, including, without limitation, any proposed progress schedule and any requests for modifications.

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

E. Invoices.

1. The Contractor will submit invoices for work performed under this Agreement to the City no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum,

each invoice must include the following information and supporting documentation: (1) hours worked on Appraisal for 2621 Gen Meyer; and (2) hours worked on Appraisal for Poydras "ROW."

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

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

F. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of 3 years from: (a) the completion of this Agreement (including any renewal or extension periods); or (b) from the resolution of any dispute relating to the Agreement. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

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

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

G. Audit and Inspection.

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

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

H. Insurance.

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: The Contractor shall purchase and maintain for the duration of the contract insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, employees or subcontractors.

1. Minimum Scope and Limits of Insurance

a. Workers Compensation

Workers Compensation insurance shall be in compliance with the Workers Compensation law of the State of the Contractor's headquarters. Employers Liability is included with a minimum limit of \$100,000 per accident/per disease/per employee, \$500,000 aggregate.

b. Commercial General Liability

Commercial General Liability insurance, including Personal and Advertising Injury Liability and Products and Completed Operations, shall have a minimum limit per occurrence of \$1,000,000 and a minimum general annual aggregate of \$2,000,000. The Insurance Services Office (ISO) Commercial General Liability occurrence coverage form CG 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. Claims-made form is unacceptable.

c. Automobile Liability

Automobile Liability Insurance shall have a minimum combined single limit per accident of \$1,000,000. ISO form number CA 00 01 (current form approved for use in Louisiana), or equivalent, is to be used in the policy. This insurance shall include third-party bodily injury and property damage liability for owned, hired and non-owned automobiles.

d. Professional Liability (Errors and Omissions)

Professional Liability (Errors and Omissions) Insurance shall have a minimum limit of \$1,000,000 per claim and minimum aggregate of \$2,000,000. Claims-made coverage is acceptable. The date of inception of the policy must be no later than the first date of anticipated work under this contract. The Professional Liability policy shall provide an extended reporting period of at least 24 months, with full reinstatement of limits if available, from the expiration date of the policy, if policy is not renewed. Professional Liability Insurance shall be maintained for a minimum of three years after Substantial Completion or Acceptance of the project, whichever is later.

2. Deductibles and Self Insured Retentions

Any deductibles or self-insured retentions must be declared to and accepted by the City. The Contractor shall be responsible for all deductibles and self-insured retentions.

3. Other Insurance Provisions

The policies are to contain, or be endorsed to contain, the following provisions:

a. Commercial General Liability and Automobile Liability Coverages

i. The City of New Orleans, its departments, political subdivisions, officers, officials, agents, employees, and volunteers shall be named as an additional insured with respect to liability arising out of the performance of this agreement by the Contractor. ISO Form CG 20 10 11 85 or both forms CG 20 10 (for ongoing work) and CG 20 37 (for completed work) (current forms approved for use in Louisiana), or equivalents, are to be used when applicable. The coverage shall contain no special limitations on the scope of

protection afforded to the City. Endorsement naming City as additional insured must be submitted with proof of insurance.

ii. The Contractor's insurance shall be primary as respects the City of New Orleans, its departments, political subdivisions, officers, officials, agents, employees, and volunteers for any and all losses that occur under the contract. Any insurance or self-insurance maintained by the City shall be excess and non-contributory of the Contractor's insurance.

b. Workers Compensation and Employers Liability Coverage

To the fullest extent allowed by law, the Contractor and its insurer(s) shall agree to waive all rights of subrogation against the City, its officers, agents, employees and volunteers for losses arising from work performed by the Contractor for the City.

c. All Coverages

i. All policies must be endorsed to require 30 days written notice of cancellation to the City. Ten-day written notice of cancellation is acceptable for non-payment of premium. Notifications shall comply with the standard cancellation provisions in the Contractor's policy. In addition, Contractor is required to notify City of policy cancellations or reductions in limits.

ii. The acceptance of the completed work, payment, failure of the City to require proof of compliance, or City's acceptance of a non-compliant certificate of insurance shall not release the Contractor from the obligations of the insurance requirements or indemnification agreement.

iii. The insurance companies issuing the policies shall have no recourse against the City for payment of premiums or for assessments under any form of the policies.

iv. Any failure of the Contractor to comply with reporting provisions of the policy shall not affect coverage provided to the City, its officers, agents, employees and volunteers.

4. Acceptability of Insurers

a. All required insurance shall be provided by a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located. Insurance shall be placed with insurers with an A.M. Best's rating of A-:VII (7) or higher.

b. If at any time an insurer issuing any such policy does not meet the minimum A.M. Best rating, the Contractor shall obtain a policy with an insurer that meets the A.M. Best rating and shall submit another Certificate of Insurance within 30 days.

c. If any of the insurance companies providing any insurance coverage furnished by the Contractor is declared bankrupt, becomes insolvent, its right to do business in Louisiana is terminated or it ceases to meet the requirements of this Agreement, the Contractor shall, within thirty (30) days thereafter, substitute another insurance company or companies

acceptable to the City. The City reserves the right to mandate cessation of all services until the receipt of acceptable replacement insurance.

5. Verification of Coverage

a. Contractor shall furnish the City with Certificates of Insurance reflecting proof of required coverage. The Certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificates are to be received and approved by the City before work commences and upon any contract renewal or insurance policy renewal thereafter.

b. The Certificate Holder shall be listed as follows and the Certificate delivered by US Mail as follows:

**City of New Orleans Risk Manager
1300 Perdido Street, 9E06—City Hall
New Orleans, LA 70112.**

c. To verify the availability of insurance the Additional Insured Box must be marked "Y" for Commercial General Liability and Automobile Liability on the Certificate. The Subrogation Waiver Box must also be marked "Y" for Workers Compensation and Employers Liability on the Certificate.

d. In addition to the Certificates, Contractor shall submit the declarations page and the cancellation provision for each insurance policy. The City reserves the right to request complete certified copies of all required insurance policies at any time.

e. Upon failure of the Contractor to furnish, deliver and maintain required insurance, this contract, at the election of the City, may be suspended, discontinued or terminated. Failure of the Contractor to purchase and/or maintain any required insurance shall not relieve the Contractor from any liability or indemnification under the contract.

6. Subcontractors

Contractor shall include all subcontractors as insureds under its policies OR shall be responsible for verifying and maintaining the Certificates provided by each subcontractor. Subcontractors shall be subject to all of the requirements stated herein. The City reserves the right to request copies of subcontractor's Certificates at any time.

I. Indemnity.

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

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

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

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

ARTICLE II - REPRESENTATIONS AND WARRANTIES

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

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

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

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

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

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

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

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

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

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

B. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor has, within the preceding 5 years, been convicted

of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

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

D. **Employee Verification.** The Contractor swears that (i) it is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of 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.

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

ARTICLE III - THE CITY'S OBLIGATIONS

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

1. Administer this Agreement through the Department of Property Management, Division of Real Estate and Records;
2. Provide the Contractor with site maps, plat maps, and/or a list of municipal addresses of the properties to be appraised (to the extent possible) and other documents deemed necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

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

1. The City's obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The City, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;

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

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

5. The City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise from or relate to the any change order within the scope of the Agreement; are for services performed on days on which services were suspended, due to circumstances beyond the control of the City, and no work has taken place; arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the City is not expressly obligated to pay under this Agreement.

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

ARTICLE IV - COMPENSATION

A. Rate of Compensation.

1. The City will pay the Contractor in accordance with the following rate:

- a. \$4,500 for the completed appraisal and report for 2621 General Meyer Ave.;
- b. \$2,000 for the completed appraisal and report for Poydras "ROW."
- c. For services as an expert witness for the City in judicial proceedings the Contractor and the City hereby agree that the fair and reasonable compensation for the Contractor's services shall be \$500 dollars for each day's attendance in court and \$300 for each half day, as provided in Article I(A)(2); and
- d. \$100 per hour for supplementary reports, as provided in Article I(A)(4).

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

3. The stated compensation is inclusive, and includes no additional amounts for, the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement. The City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

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

B. Maximum Amount. The maximum aggregate amount payable by the City under this Agreement is \$15,000.00.

ARTICLE V - DURATION AND TERMINATION

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

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

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

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

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

ARTICLE VII - PERFORMANCE MEASURES

A. Factors. The City will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).

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

ARTICLE VII - NON-DISCRIMINATION

A. Equal Employment Opportunity. In all hiring or employment made possible by, or resulting from this Agreement, the Party Reference (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 Party Reference's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.

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

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

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

ARTICLE IX – BAN-THE-BOX

A. Compliance with City's Hiring Requirements - Ban the Box.

- i. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
- ii. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the City will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the City may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
- iii. 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.

- iv. 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.

ARTICLE X - INDEPENDENT CONTRACTOR

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

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

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

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

ARTICLE XI - 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:

Real Estate Administrator
City of New Orleans
1300 Perdido Street, 5W06
New Orleans, LA 71012
Jennifer.Kretschmann@nola.gov

&

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

2. To the Contractor:

Gayle Boudousquie
2339 Dauphine Street, Suite 1331
New Orleans, LA 70117
gaylehb@bellsouth.net

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 XII - ADDITIONAL PROVISIONS

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

B. Assignment. This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the City's prior written consent.

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

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

E. Construction of Agreement. Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

F. Entire Agreement. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this

Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

G. Exhibits. The following exhibits will be and are incorporated into this Agreement: Exhibit A - Contractor's Qualifications and Exhibit B—Contractor's June 10, 2019 Bid.

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

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

J. No Third Party Beneficiaries. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.

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

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

M. Order of Documents. In the event of any conflict between the provisions of this Agreement any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; Exhibit A - Contractor's Qualifications; and Exhibit B - Contractor's June 10, 2019 Bid.

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

O. 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.

P. 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.

Q. 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.

R. Survival of Certain Provisions. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law, and shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.

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

ARTICLE XIII - ELECTRONIC SIGNATURE AND DELIVERY

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

[The remainder of this page is intentionally left blank]

[SIGNATURES CONTAINED ON NEXT PAGE]

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

CITY OF NEW ORLEANS

BY: *Lt. Cantrell*
LATOYA CANTRELL, MAYOR

Executed on this 27th of August, 2019

FORM AND LEGALITY APPROVED:

Law Department

By: *[Signature]*

Printed Name: *Tracy Turner*

GAYLE H. BOUDOUSQUIE D/B/A GAYLE H. BOUDOUSQUIE AND ASSOCIATES

BY: *Gayle H. Boudousquie*
GAYLE H. BOUDOUSQUIE [insert title] *owner*

434-72-0185
FEDERAL TAX I.D.

[EXHIBITS A & B ATTACHED SEPARATELY]