

K20-1101

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
BATTURE LLC**

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 Batture, LLC represented by Robert Mora, Managing Partner (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 is a political subdivision of the State of Louisiana;

WHEREAS, the City desires to retain the Contractor for the purpose of providing professional land surveying services for the following project: West End Survey (the "**Project**");

WHEREAS, in accordance with Article V Section B of CAO Policy Memorandum 8R, the City qualified the Contractor to perform land surveying services;

WHEREAS, the City sent to the Contractor an Informal Request for Proposal for land surveying services for the Project, which is incorporated by reference herein (the "**Request**");

WHEREAS, the Contractor submitted a proposal dated August 14, 2020 in response to the Request, which is also incorporated by reference herein (the "**Proposal**");

WHEREAS, the Contractor is a licensed firm in the State of Louisiana qualified to perform the required land-surveying services for this Project and is agreeable to undertake the services under the conditions and for the fees satisfactory to the City; and

WHEREAS, the City has selected the Contractor for this Project.

NOW THEREFORE, for and in consideration of the mutual covenants contained herein, the parties hereto agree as follows:

The City hereby retains the Contractor who, upon written authorization from the City, agrees to proceed with all services necessary for the performance of, in the proper sequence and in the time specified, the tasks for the Project as set forth hereinafter.

1. CONTRACTOR'S OBLIGATIONS

- A. The Contractor's basic services (the "**Basic Services**") shall consist of all the tasks and deliverables as described in this Agreement and shall include all documentation, benchmarks, descriptions, surveys, and plans as herein described. All support services, local travel, postage, and related expenses required to complete and deliver the work enumerated below are included in the Basic Services.

- B. The Contractor shall conduct a boundary survey ("**Boundary Survey**") for the Project, as requested by the City through the Request. The Contractor's Boundary Survey shall include the following items and any additional requirements included in the City's Request:
- (1) Legal description of the property.
 - (2) All rights-of-way, property lines, fences, and gates, unless specifically noted otherwise.
 - (3) Manholes and storm-drain lines on or surrounding the property, drop inlets, and inverts of storm-drain lines.
 - (4) Location of subsurface Sewerage & Water Board sanitary sewer lines, lift stations, inverts, water lines, water meters, fire hydrants, and manhole covers on or surrounding the property as located by LA One Call.
 - (5) Subsurface and above-ground utilities, including electrical service and meters, gas lines and meters, utility poles, cable, and any other utilities as located by LA One Call.
 - (6) All improvements, such as, but not limited to, drives, paving, sidewalks, posts, and structures.
- C. Topographic Land Survey. The Contractor shall conduct a topographical survey of existing grade elevations and of the locations of all visible topographic features within survey limits (see exhibit A for project extents). Topographic features may include, but are not limited to utility manholes & valves, power poles, sidewalks, fences, buildings, trees greater than 2" in diameter, extent and type of pavement.
- D. Elevations. The Contractor will depict elevations on a 25' x 25' grid and at any changes in grade. These elevations shall be depicted as 1.0-foot contours. Additionally, elevations will be included as spot elevations inside the AutoCAD drawing.
- E. Utilities. The Contractor will contact utility owners regarding existing utility lines including location, sizes and depths. The Contractor will add the information provided to the Contractor's drawings.
- F. One Call. The Contractor will provide documentation (ticket number) for one-call made at the site, and the Contractor will locate the markings made by utility companies.
- G. On-site Control. The Contractor will provide horizontal and vertical control points (estimated 3 horizontal points and 2 vertical points).
- H. All field data will be collected utilizing an RTK GPS and a total station. Vertical Datum will be NAVD 88; Horizontal Datum will be Louisiana State Plane Coordinate System NAD 83.
- I. The Contractor shall perform all services required under this Agreement, within the timeframe stipulated by the City.

- J. The Contractor shall furnish all equipment and personnel necessary to perform any services required under this Agreement.
- K. The Contractor shall make its work available for inspection by the City and other interested parties, at the City's sole discretion, and confer with the City concerning the work.
- L. The Contractor shall correct errors and/or omissions in the Contractor's services as directed by the City without additional compensation, regardless of whether such work has been accepted.
- F. The Contractor's deliverables include:
 - (1) AutoCAD File (compatible with AutoCAD 2000);
 - (2) electronic PDF copies of drawings; and
 - (3) three (3) original copies (24x36) of certified lease survey.
- G. Representations and Warranties. The Contractor further represents and warrants to the City that:
 - (1) The Contractor has the full power and authority to enter and execute this Agreement and this Agreement is legally binding upon and enforceable against the Contractor in accordance with its terms;
 - (2) The Contractor is not under any obligation to any other person that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way its performance or any obligations hereunder;
 - (3) The Contractor presently has no, and will not acquire any, interest, direct or indirect, in any project area or any parcels therein or any other interest which would conflict in any manner or degree with the performance of services under this Agreement, and will not employ any person having any such interest in the performance of this Agreement;
 - (4) The Contractor's work will be accurate and free from any material errors and the Contractor's obligations under this Agreement shall not be in any way diminished by reason of any approval of any work by the City. It is understood that the City, at all times, is ultimately relying upon the Contractor's skill and knowledge in performing the services set forth in this Agreement;
 - (5) The Contractor has the requisite skills and expertise necessary to perform the services that may be required under this Agreement, will perform such services with the same degree of care, skill, and diligence as would be ordinarily exercised by a competent practitioner of the same profession in which the Contractor is engaged in providing similar services in major United States metropolitan areas under the same or similar circumstances, and will re-perform, at the City's option and at no additional cost to the City, any or all of services that fail to satisfy the foregoing standard of care;
 - (6) The Contractor has read and fully understands the terms, covenants, and conditions set forth in this Agreement and is executing the same willingly and voluntarily of its own volition;
 - (7) 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; and

- (8) The Contractor represents and warrants to the City that all representations and warranties contained in the Agreement remain true and correct on the date of its signature and that no event has occurred that would constitute a violation or contradiction of any representations and warranties contained in the Agreement.

H. 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.

I. Schedule.

- (1) Upon receiving notice to proceed, the Contractor will commence with the scope of work. Barring delay caused by circumstances outside the Contractor's control, the field work will be complete, and files submitted to the City within 24 days from Notice to Proceed ("NTP").
- (2) The Contractor acknowledges and agrees that time is of the essence in the performance of this Agreement.

J. Invoices. The Contractor must submit monthly invoices (unless agreed otherwise between the Parties to this Agreement) to the City electronically, via the City's supplier portal, for goods or services provided under this Agreement, no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information:

- (1) contract or purchase order number issued by the City;
- (2) the name of the City department to be invoiced (i.e. Economic Development); and
- (3) the services performed during the invoiced month.

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

K. 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.

L. 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.

2. THE CITY'S OBLIGATIONS

- A. Administer this Agreement through the City Office of Economic Development (the "Department").
- B. The City shall provide full information regarding its requirements for the Project and shall provide copies of available relevant documents, as requested.
- C. The City shall examine the documents submitted by the Contractor and shall render decisions pertaining thereto promptly to avoid unreasonable delays in the performance of the Contractor's services.
- D. The City shall cooperate with the Contractor and provide timely responses to the Contractor's inquiries. The City shall provide the Contractor access to the site as required.
- E. Make payments to the Contractor timely upon the receipt and approval of 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 electronically via the City's supplier portal; (b) satisfactory performance of the services and conditions required by this Agreement, including, without limitation, the submission of satisfactory deliverables, reports, invoices, and evidence of necessary insurance;
 - (2) Unless specifically authorized by a validly executed amendment, the City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that:
 - i. Are beyond the scope or duration of this Agreement;

- ii. Arise from or relate to the any change order within the scope of the Agreement;
- iii. Are for testing services on days on which construction was suspended, due to circumstances beyond the control of the Department, and no construction has taken place;
- iv. Arise from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or
- v. The City is not expressly obligated to pay under this Agreement.

(3) 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. PAYMENT OR COMPENSATION

- A. The City will pay the Contractor in accordance with the following rate: a fee for the delivery and acceptance of Basic Services under this Agreement not to exceed \$5,530.
- B. 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.
- C. 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.
- D. The maximum aggregate amount payable by the City to the Contractor under this Agreement is \$5,530.

4. TERM OR DURATION

- A. Duration. This Agreement shall commence on the Effective Date and shall continue for a period of one (1) year, 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. Appropriation and/or Extension. This Agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City of New Orleans and the extension of the Agreement facilitates continuity of services provided herein. This Agreement may be extended by the City on an annual basis for no longer than four (4) one (1) year periods.

5. TERMINATION AND SUSPENSION

- A. Cancellation. The City may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of said intention to terminate at least thirty (30) days before the date of termination.
- B. Termination for Cause. The City may terminate this Agreement immediately for Cause. "Cause" includes, without limitation, any failure to perform any obligation or abide by any condition of this Agreement.
- C. Suspension. The City may suspend this Agreement at any time and for any reason by giving two (2) days' written notice to the Contractor. The Contractor will resume work upon five (5) calendar days' written notice from the City.

6. RECORDS RETENTION AND ACCESS

- A. In addition to any obligations set forth in Article I Section L above, the Contractor will grant the City, the State of Louisiana, the federal grantor agency, the Comptroller General of the United States, or any of their duly authorized representatives access to any books, documents, papers, and records of the Contractor which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcriptions.
- B. The Contractor will retain all required records for three years after the State of Louisiana or the City makes final payments and all other pending matters related to the Agreement are closed.

7. OWNERSHIP OF DOCUMENTS. A full set of final documents, in print and electronic format, that arise from the services provided herein shall be the property of the City and shall be delivered to the City upon completion of the project.

8. INDEMNIFICATION

- A. The Contractor shall indemnify and save the City harmless against any and all claims, demands, suits, judgments of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act or omission or the operation of the Contractor, its agents, servants, or employees while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Contractor hereunder and shall also hold the City harmless from any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of its obligation under this Agreement.
- B. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.
- C. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even

if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

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

9. INSURANCE

- A. 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. 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, the City 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 the City.

B. 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.

The policy shall be amended to include independent contractors and volunteers providing professional services on behalf of or at the direction of the Contractor. 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.

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 Contractor's obligations and/or Scope of Work.

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

- (1) Additional Insured Status: The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming the City of New Orleans, its departments, political subdivisions, officers, officials, employees, and volunteers as 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 Contractor's 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).

The 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 City of New Orleans as Certificate Holder and be delivered via U.S. Mail to 1300 Perdido Street, 9E06 – City Hall, New Orleans LA 70112.

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.

- (2) Primary Coverage: For any claims related to this agreement, the Contractor's insurance coverage shall be primary insurance as respects the City, its departments, political subdivisions, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City shall be non-contributing to the Contractor's coverage.
- (3) 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.
- (4) Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against the City by virtue of the payment of any loss under insurance required by this Agreement.
- (5) Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to the City of no less than 30 days.

- (6) 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.
 - D. The Contractor will provide the City's Risk Manager (at City of New Orleans Attn: Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: Batture LLC – West End Redevelopment Survey) within 10 calendar days of the Effective Date and at any other time at the City's request the following documents:
 - (1) Proof of coverage for each policy of insurance required by this Agreement; and
 - (2) Copies of all policies of insurance, including all policies, forms, and endorsements.
 - E. Without notice from the City, 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 the City within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement;
 - (3) Notify the City's Risk Manager in writing within 48 hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement; and
 - F. Special Risks or Circumstances. The City of New Orleans shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.
10. 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(7), 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(12)(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.

11. 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: Jeffrey E. Schwartz, Director
Office of Economic Development
City of New Orleans
1340 Poydras Street | Suite 1800
New Orleans, LA 70112

&

Sunni J. LeBeouf, City Attorney
City of New Orleans
1300 Perdido Street, Suite 5E03
New Orleans, LA 70112

(2) To the Contractor: Robert Mora, Managing Partner
Batture LLC
500 Crystal Street
New Orleans, LA 70124

- 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.

12. 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. Compliance with the 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.
- F. 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 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 based on 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.
- G. 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.

- 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: (i) the Agreement and (ii) the Proposal.
- 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, choice of law 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.
13. 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: 

LaToya Cantrell, Mayor

Executed on November 14, 2020

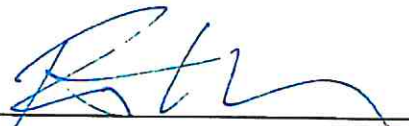
FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Tracy Tyler

BATTURE LLC

By: 

Robert Mora, Managing Partner

Tax I.D. # 46-5677826