

**ARCHITECTURAL / ENGINEERING SERVICES  
PIETY WHARF RESTORATION  
PROFESSIONAL SERVICE CONTRACT  
RFQ FMC 01-20**

***I. Purpose.***

The French Market Corporation (“FMC”) seeks proposals from qualified parties for architectural, marine engineering and/or structural engineering design services to determine the scope of work and related cost to return the Piety Wharf to its pre-allision condition immediately prior to damage caused as a result of being struck by a vessel on June 6, 2019. As provided below, and incident to City Charter Section 6-308(5), Executive Order LC 20-01, and FMC’s Competitive Selection Procedure for Contractual Professional Services, the FMC requests qualifications from experienced firms to provide the needed services.

***II. Services Needed.***

Professional services to determine the estimated cost for the repair and restoration of the Piety Wharf within Crescent Park, including the development of documents directing the replacement of Piety Wharf components damaged by a vessel allision in June 2019 and stabilized in March 2020. Services should include initial narratives with estimates of probable costs and complete design and documentation services.

FMC will provide the following documents, which are posted on its web site at <https://www.frenchmarket.org/public-notices/>.

- Original Crescent Park Construction Drawings, March 2, 2010;
- Allision Damage Report prepared by US Forensic, dated June 20, 2019;
- Allision Damage Report prepared by Kyle Smith Marine Surveying, Inc., dated October 27, 2019;
- Allision Damage Report and recommendations prepared by Kyle Smith Marine Surveying, Inc., dated January 24, 2020; and
- Repair Report prepared by Kyle Smith Marine Surveying, Inc., dated March 23, 2020.

The selected vendor will be responsible for conducting any on-site surveys and testing to determine the scope of damage to the wharf and related scope of repairs. The selected vendor will be responsible for identifying and documenting the appropriate cost for any materials and services proposed to be used in such repairs. The selected vendor will also be responsible for identifying any and all potential costs that could be encountered in repairing the damaged wharf and obtaining an estimated cost for each such item.

The selected vendor’s work should assume that the FMC/City of New Orleans is procuring all goods or services and should adequately account for the requirements of complying with the Louisiana Public Bid Law and the laws and policies of the City of New Orleans.

### ***III. Deliverables.***

The final deliverable should be a report containing the complete cost to repair the Piety Wharf and place it in pre-allision condition. Sufficient documentation and information should be included in/attached to the report to substantiate the costs in the report. The report should include initial schematic narratives and diagrams as needed to capture the full scope of the work of above and below wharf (sub-structure) component with estimates of probable cost for complete design and documentation services.

The completed estimate report should contain, at least, the following items:

- Mobilization and de-mobilization costs;
- Demolition costs (as-needed);
- Cost for architectural and engineering services;
- Cost for any site or materials testing services;
- Construction/repair costs;
- Assumed contingencies, with statements explaining each; and
- Cost of any permits, licenses, or related approvals.

### ***IV. Evaluation Criteria.***

The Contractor will be selected by the FMC Executive Director, as per the FMC's Competitive Selection Procedure for Contractual Professional Services, as certified by the Mayor of the City of New Orleans on July 15, 2020. This solicitation anticipates that this service will be classified as a "Small Purchase", with a contract value between \$15,000 and \$50,000. The contractor will be selected based on the following criteria:

- A. Experience and reputation of the professional personnel;
- B. The completeness of the response and the timeline necessary to complete the identified scope;
- C. Experience with working with public entities and a demonstrated clear understanding of the work to be performed;
- D. Demonstrated reputation for honesty, integrity and fairness in dealing with matters involving public policy and the allocation of public assets; and
- E. Involvement of certified disadvantaged business enterprises (DBE), as evidenced by government issued certification thereof.

### ***V. Instructions.***

Respondents shall submit the following to French Market Corporation directed Attention: *Executive Director, 1008 N. Peters St., Suite 300, New Orleans, Louisiana 70116, 504-636-6400*, not later than Friday, September 18, 2020.

One (1) signed hardcopy of the proposal in a sealed envelope, marked ARCHITECTURAL / ENGINEERING SERVICES PIETY WHARF RESTORATION RFQ and one (1) digitally signed proposal (maximum of three files) on a CD or Flash Drive, in Microsoft Word format or as a PDF

file, marked ARCHITECTURAL / ENGINEERING SERVICES PIETY WHARF RESTORATION RFQ;

- A. A signed cover letter including the company's name, address and primary contact for the qualification. The primary contact information shall include the submitter's name, telephone, and email address.
- B. An RFQ submission demonstrating the Respondent's qualifications, and
- C. All required attachments to be submit along with both electronic and hardcopy proposal submissions.
- D. Respondents should ensure to notate clearly on the outside of all submissions (whether submitted via regular mail or via express delivery; on the envelope and the digital submission) the name of the respondent and the title of the RFQ. This information is critical to the FMC to identify proposals.

Respondents should clearly demonstrate the applicant's qualifications to perform the needed services and attend all factors applicable in a professional relationship.

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

Respondents should include detailed resumes or curricula vitae for the principals performing the services.

FMC will not accept proposals submitted by fax. All proposals **must be received** by FMC on or before the Submission Deadline. FMC will not accept proposals delivered after the deadline. FMC will not credit delivery claims not clearly documented by original receipt.

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

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

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

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

**VI. Ownership.**

All qualification submissions and/or documentation submitted therewith are FMC property for all purposes. Respondents will clearly mark documents or information claimed exempt from public records disclosure and specifically justify the exemption. FMC will not credit any blanket exemption claims lacking specific justification. FMC does not guarantee the confidentiality of submissions.

**VII. Effect.**

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

**VIII. Point of Contact.**

All correspondence and other communications regarding this procurement should be directed to the attention of: *Executive Director, French Market Corporation, 1008 N. Peters St., Suite 300, New Orleans, Louisiana 70116.*

Substantive questions must be submitted by respondents in writing to the person at the address provided above or emailed to [LTAlley@frenchmarket.org](mailto:LTAlley@frenchmarket.org) no later than Friday, September 11, 2020.

Any request received after that time may not be reviewed for inclusion in this RFQ. The request shall contain the requester's name, address, and telephone number.

FMC will issue a response to any inquiry if it deems it necessary by written addendum to the RFQ prior to the RFQ's Submission Deadline. Such addendum will be posted on FMC's website and sent via email to any known RFQ package recipients. The respondent shall not rely on any representation, statement or explanation other than those made in this RFQ or in any addenda issued. Where there appears to be a conflict between this RFQ and any addendum issued, the last addendum issued will prevail.

**IX. Cone of Silence.**

From the time of advertising, and until the final award, there is a prohibition on communication by respondents (or anyone on their behalf) with the City or FMC's staff, board members and elected officials.

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

**Breaking the established prohibition on communication, if proven, may result in a disqualification of your submittal.**

**X. Required Attachments with Submission.**

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

- Attachment “C” Disadvantaged Business Enterprise Participation Plan
- Attachment “F” City Of New Orleans Conflict Of Interest Disclosure Affidavit

**XI. Required Attachments with Submission.**

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

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

**XII. Qualification Submission Requirements.**

To achieve a uniform review process and obtain the maximum degree of comparability, the FMC requires that the qualification submission be organized in the manner specified below:

A. Title Page

Show the RFQ number and subject, the name of your firm, address, email address, telephone number(s), facsimile machine number(s), name of contact person and date.

B. Table of Contents

Clearly identify the materials by section, page number, and tabs.

C. Letter of Transmittal (Limited To One Page)

Briefly state your firm’s understanding of the services to be performed and make a positive commitment to provide services as specified. Give the name(s) of the person(s) who is/are authorized to make representations for your firm, their title, address, email address, telephone number(s) and facsimile number(s).

D. Qualification Contents

Proposals should contain a clear and comprehensive response to all requirements/questions in the order contained herein.

**XIII. Minimum Scope of Insurance.**

Except as otherwise noted, at all times during this Agreement or during the performance of work required by this Agreement, the Contractor will maintain the following insurance in full force and effect for the duration of the work under this Agreement. Evidence of coverage shall be provided prior to the start of any activities/work, in conjunction with the Contractor’s scope of work under the Agreement.

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

A. Minimum Requirements:

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

B. Important: The obligations for the Contractor to procure and maintain insurance shall not be constructed to waive or restrict other obligations. It is understood that neither failure to comply nor full compliance with the foregoing insurance requirements shall limit or relieve the Contractor from any liability incurred as a result of their activities/operations in conjunction with the Contractors obligations and/or Scope of Work.

C. Additional Insured Status: The Contractor and all Subcontractors (where applicable) will provide, and maintain current, a Certificate of Insurance naming French Market Corporation, its departments, officers, officials, employees, and volunteers are to be covered as "Additional Insureds" on the CGL policy with respect to liability arising out of the performance of this agreement, General liability insurance coverage can be provided in the form of an endorsement to the Contractors insurance (at least as broad as ISO Form CG 20 10 11 85 or both CG 20 10 and CG 20 37 forms if later revisions used).

Contractor shall require and verify that all Subcontractors maintain insurance and coverage limits meeting all the requirements stated herein. The Certificate of Insurance, as evidence of all required coverage, should name the French Market Corporation as Certificate Holder and be delivered via U.S. Mail to Attn: Insurance Manager, 1008 N. Peters St., Suite 300, New Orleans, LA 70116 - Ref.: ARCHITECTURAL / ENGINEERING SERVICES PIETY WHARF RESTORATION RFQ.

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

- D. Primary Coverage: For any claims related to this agreement, the Contractors insurance coverage shall be primary insurance as respects FMC, its departments, officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by FMC shall be non-contributing to the Contractors coverage.
- E. Claims Made Policies: If applicable, the retroactive date must be shown and must be before the date of the agreement or the beginning of work. If the coverage is canceled or non-renewed, and not replaced with another claims-made policy, Contractor must purchase “extended reporting” coverage for minimum of 3 years after the termination of this agreement.
- F. Waiver of Subrogation: The Contractor and its insurers agree to waive any right of subrogation which any insurer may acquire against FMC by virtue of the payment of any loss under insurance required by this agreement.
- G. Notice of Cancellation: Each insurance policy required above shall provide that coverage shall not be canceled, expire or altered except without prior notice to FMC of no less than 30 days.
- H. Acceptability of Insurers: Insurance is to be placed with insurers licensed and authorized to do business in the State of Louisiana with a current A.M. Best’s rating of no less than A: VII, unless otherwise acceptable to the City and FMC.
- I. Notice: The Contractor will provide French Market Corporation (at French Market Corporation Attn: Insurance Manager, 1008 N. Peters St., Suite 300, New Orleans, LA 70116 - Ref.: Farmers and Flea Market Study) the following documents, within 10 calendar days of the City’s or FMC’s request: Copies of all policies of insurance, including all policies, forms, and endorsements.
- J. Miscellaneous: Without notice from FMC, the Contractor will:
  - 1. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
  - 2. Substitute insurance coverage acceptable to FMC within 30 calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement.
- K. Special Risks or Circumstances: French Market Corporation shall reserve the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer coverage, or other circumstances.

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

- A. DBE Program Compliance:

The requirements of the City of New Orleans (“City”) Disadvantaged Business Enterprise (“DBE”) Program apply to this Agreement. It is the policy of the City to practice nondiscrimination based on social and economic disadvantage, race, color, gender, disability and national origin in the award and performance of contracts.

In consideration of this policy and pursuant to Division 2 of Article IV of Chapter 70 of the Code of the City, the City enacted the DBE Program for all City contracts.

Contractor agree to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including without limitation, all reporting requirements and established DBE participation percentage. The Contractor's failure to carry out these requirements, as determined in good faith by the City's Office of Supplier Diversity ("OSD"), shall be deemed a material breach of this Agreement. This material breach may result in the termination of this Agreement and/or the pursuit of any other remedies available to the City under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

B. DBE Contract Goal:

The requested DBE Contract Goal is listed in the contract section of the invitation to bid.

NOTE: All non-public works contracts have a default goal of 35% DBE participation. Participation shall be counted toward meeting the contract goal based on the following:

1. Only business entities certified as SLDBE or LAUCP-DBE are counted toward the contract DBE participation goal.
2. The Bidder/Proposer may count only the total dollar value of the subcontract awarded to certified DBE subcontractor/supplier(s) toward the contract goal.
3. A Bidder/Proposer can count 100 % of the DBE's participation provided that the DBE has committed to performing at least 51% of the work with its own forces.
4. Bidder/Proposer may count 100 % of DBE Manufacturer Supplier's participation and 60 % of DBE Non-Manufacturer supplier's participation toward its contract goal.
5. When the Bidder/Proposer is in a joint venture with one or more DBE business entities, the OSD, after reviewing the joint venture agreement, shall determine the percent of participation that will be counted toward the contract goal.
6. Bidder/Proposer may count toward its contract goal only those DBE subcontractors/suppliers performing a Commercially Useful Function.  
"DBE Commercially Useful Function means" a discrete task or group of tasks, the responsibility for performance of which shall be discharged by the DBE firm by using its own forces or by actively supervising on-site the execution of the tasks by another entity for whose work the DBE firm is responsible. In determining whether a certified firm is performing a commercially useful function, factors including, but not limited to, the following shall be considered:
  - a. Whether the business entity has the skill and expertise to perform the work for which it is being utilized and possesses all necessary licenses;
  - b. Whether the firm is in the business of performing, managing, or supervising the work for which it has been certified and is being utilized;
  - c. Whether the DBE subcontractor is performing a real and actual service that is a distinct and verifiable element of the work called for in a contract.



- d. Whether the DBE subcontractor performed at least thirty percent (30%) of the cost of the subcontract (including the cost of materials, equipment or supplies incident to the performance of the subcontract) with their own forces.

C. DBE Directory:

Contractors may only utilize certified SLDBE and/or Louisiana Unified Certification Program (LAUCP) DBE firms from the following lists to meet the City's DBE Program goals.

1. Contractors agree to utilize the City's SLDBE directory of certified firms as a first source when searching for certified DBE business entities. The SLDBE directory includes entities certified through Sewerage and Water Board of New Orleans, New Orleans Aviation Board and Harrah's New Orleans. The SLDBE directory is available at [www.nola.gov](http://www.nola.gov).
2. The Louisiana Unified Certification Program ("LA UCP") directory is available at [www.dotd.louisiana.gov](http://www.dotd.louisiana.gov).

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

D. Good Faith Effort Policy:

In accordance with Sec.70-461 of the City Code, the City and FMC shall reject any proposal and shall not award, enter into or amend any contract that is not supported by documentation establishing that the Bidder/Proposer has met the applicable contract DBE participation Goal or made Good Faith Efforts to the applicable contract DBE participation goal.

Good Faith Efforts are steps taken to achieve a contract DBE participation goal or other requirements which, by their scope, intensity and usefulness demonstrate the Bidder's or Proposer's responsiveness to fulfilling the City's DBE Program goals prior to the award of a contract, as well as the Contractor's responsibility to put forth measures to meet or exceed the contract DBE participation goal throughout the duration of the contract.

The OSD shall be responsible for determining whether a Bidder/Proposer has made their best efforts to achieve the DBE Program contracting objectives. In making this determination, the DBE Compliance Officer shall consider the following factors:

1. Specific Portions of Work Identified for DBE Subcontractor:
  - a. Bidder/Proposer listed all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for the project.
  - b. Bidder/Proposer listed the estimated value of each scope or portions of work identified.
2. Notifying Certified DBEs of Contracting Opportunities:
  - a. Bidder/Proposer contacted the OSD to request submission of subcontracting opportunities on the DBE Opportunities page.
  - b. Bidder/Proposer included a copy of each announcement or notification.

3. Initial Solicitation & Follow-Up:

- a. Bidder/Proposer listed all certified DBE firms that received written notification of work items to be subcontracted and documented the certified firm's response.
- b. Bidder/Proposer included copies of the written notice(s) sent to certified firms.

4. Negotiate In Good Faith

- a. Bidder/Proposer provided an explanation for any rejected DBE bid or price quotation.
- b. Bidder/Proposer included a copy of the written rejection notice including the reason for rejection to the rejected DBE firm.

If a Bidder/Proposer fails to submit documented Good Faith Efforts as outlined, the bid shall be considered non-responsive.

The OSD may take into account the performance of other Bidders/Proposers in meeting the contract DBE participation goal and may, if deemed advisable, request further information, explanation or justification from any Bidder/Proposer. For example, Bidder's past performance on similar contracts with similar scopes and/or a Proposer's prior history utilizing DBEs will also be taken in consideration when determining Good Faith Efforts.

Good Faith Efforts shall be monitored throughout the life of the contract and evaluated on a case-by-case basis in making a determination whether a Bidder or Proposer is in compliance with the Good Faith Effort policy.

To obtain a copy of the Good Faith Effort Policy contact OSD at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov).

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

1. BIDs:

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

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

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

documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

- c. After receipt and review of the required post-bid documents, the OSD will determine if the Bidder has provided valid DBE Compliance Forms and (if applicable) evidence of demonstrated Good Faith Efforts. Thereafter, the Bidder/Contractor shall be bound by the established percentage, as approved by the OSD.

2. Request for Proposals (“RFP”) / Request for Qualifications (“RFQs”):

To ensure the full participation of DBE’s in all phases of the City’s procurement activities, all Proposers at time of proposal submission shall complete and submit a DBE Participation Plan.

- a. DBE Participation Plan (Attachment “C”): A completed DBE Participation Plan shall be considered a methodology on how the Proposer plans to meet the contract DBE participation goal if awarded the project.

If a DBE Participation Plan (Attachment “C”) is not submitted, it shall be determined that the Respondent was non-responsive to the DBE provisions and the proposal will not be evaluated by the selection committee.

- b. Within ten (10) days of the City’s issuance of the Notice to Award letter, the selected Proposer shall complete and submit a DBE Compliance Form-1: This form is used to establish your DBE commitment on a City Bid, RFP or solicitation response. The selected Proposer shall provide a list of all proposed DBE subcontractor(s).

If the amount of DBE participation committed on DBE Compliance Form-1 is less than the Contract Goal, the selected Proposer shall complete DBE Compliance Form-2: This form is used to document Good Faith Efforts when the amount of DBE participation committed on DBE Compliance Form-1 is less than the contract DBE participation goal. The selected proposer shall provide all required supporting documentation of demonstrated Good Faith Efforts as specified on DBE Compliance Form-2.

The OSD shall review the contents of all required DBE Compliance Forms and may, if deemed advisable, request further information, explanation or justification from any Bidder/Respondent. Thereafter, the Contractor shall be bound by the established percentage, as approved by the OSD.

F. Contractor Cooperation:

The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE subcontractors/suppliers (“DBE Entities”).

2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a. The Contractor shall provide the DBE Compliance Officer (“DBECO”) with copies of said contracts within thirty (30) days from the date the Agreement is fully executed between the FMC and the Contractor.
  - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
  - a. Copies of written contracts with DBE Entities and purchase orders;
  - b. Documentation of payments and other transactions with DBE Entities;
  - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of the Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
  - a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the FMC to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15<sup>th</sup>) day of each month until all DBE subcontracting work is completed.
  - b. Reports are required even when no activity has occurred in a monthly period.
  - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.
  - a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
  - b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
  - c. The FMC will not adjust the contract for any increase in cost due to replacement of DBE Entities.

G. Post-Award Modification:

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

1. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
2. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the FMC is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

H. Monitoring DBE Participation:

To ensure compliance with DBE requirements during the term of the Agreement, the DBECO will monitor the Contractor' use of DBE subcontractors/suppliers ("DBE Entities") through the following actions:

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

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

I. Failure To Comply:

If the DBECO determines in good faith that the Contractor failed to carry out the requirements of the DBE Program, such failure shall be deemed a material breach of this Agreement. This material breach may result in the termination of the Agreement and/or the pursuit of any other remedies available to the City or FMC under any applicable law, ordinance, or rule, including, but not limited to those set forth in the City's Policy Memorandum for the DBE Program.

**All DBE Compliance forms are maintained by the OSD and are subject to change.**

**Please contact the OSD at [supplierdiversity@nola.gov](mailto:supplierdiversity@nola.gov) to request a copy of all DBE referenced documents.**

END OF DOCUMENT

**City of New Orleans, Louisiana  
French Market Corporation  
Request for Qualifications**

**Date:**

**Attachment “B”**

**CONTRACT TERMS AND CONDITIONS**

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39. SURVIVAL.
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42. TERMINATION FOR CONVENIENCE.
43. TERMINATION FOR NON-APPROPRIATION.
44. TERMS BINDING.
45. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS.

1. **ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE.** The Contractor herein expressly agrees and acknowledges that it is an independent contractor as defined in R.S. 23:1021 (6) and as such, it is expressly agreed and understood between the parties hereto, in entering into this Contract, that the City or the FMC shall not be liable to the Contractor for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the Contractor shall not be considered an employee of the City or FMC for the purpose of Worker's Compensation coverage.

2. **ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE.** The Contractor herein expressly declares and acknowledges that it is an independent contractor, and as such is being hired by the City and/or the FMC under this Contract for hire as noted and defined in R.S. 23:1472 (E), and therefore, it is expressly declared and understood between the parties hereto, in entering into this Contract, or agreement for hire, and in connection with unemployment compensation only, that:

- a. The Contractor has been and will be free from any control or direction by the City and/or the FMC over the performance of the services covered by this contract; and
- b. Services to be performed by the Contractor are outside the normal course and scope of the City's and/or the FMC's usual business; and
- c. The Contractor has been independently engaged in performing the services listed herein prior to the date of this Contract.

Consequently, neither the Contractor nor anyone employed by the Contractor shall be considered an employee of the City or the FMC for the purpose of unemployment compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

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

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

5. **AUDIT AND INSPECTION:**

- a. The Contractor will submit to any City and/or FMC audit, inspection, and review and, at the City's or the FMC's request, will make available all documents relating or pertaining to this Contract maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City or the FMC.
- b. The Contractor will abide by all provisions of City Code § 2-1120, including but not limited to City Code § 2-1120(12), which requires the Contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the Contract. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

6. **CHOICE OF LAWS.** This Contract shall be construed and enforced in accordance with the laws of the State of Louisiana, without regard to its conflict of laws provisions.



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

- a. The Contractor agrees to adhere to the City's hiring requirements contained in City Code Sections 2-8(d) and 2-13(a)-(f). Prior to executing this Agreement, the Contractor must provide a sworn statement attesting to its compliance with the City's hiring requirements or stating why deviation from the hiring requirements is necessary.
- b. Failure to maintain compliance with the City's hiring requirements throughout the term of the Agreement, or to provide sufficient written reasons for deviation, is a material breach of this Agreement. Upon learning of any such breach, the FMC will provide the Contractor notice of noncompliance and allow Contractor thirty (30) days to come into compliance. If, after providing notice and thirty (30) days to cure, the Contractor remains noncompliant, the FMC may move to suspend payments to Contractor, void the Agreement, or take any such legal action permitted by law or this Agreement.
- c. This section will not apply to any agreements excluded from the City's hiring requirements by City Code Sections 2-8(d) or (g). Should a court of competent jurisdiction find any part of this section to be unenforceable, the section should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or if reformation is not possible, the section should be fully severable and the remaining provisions of the Agreement will remain in full force and effect.
- d. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

**8. CONFLICT OF INTEREST.** In the interest of ensuring that efforts of the Contractor do not conflict with the interests of the City or FMC, and in recognition of the Contractor's responsibility to the City and FMC, the Contractor agrees to decline any offer of employment if its independent work on behalf of the City or FMC is likely to be adversely affected by the acceptance of such employment. The initial determination of such a possibility rests with the Contractor. It is incumbent upon the Contractor to notify the City and FMC and provide full disclosure of the possible effects of such employment on the Contractor's independent work in behalf of the FMC. Final decision on any disputed offers of other employment for the Contractor shall rest with the FMC.

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

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

**11. COST RECOVERY.** In accordance with Section 2-8.1 of the Municipal Code entitled "Cost recovery in contracts, cooperative endeavor agreements, and grants," to the maximum extent permitted by law, the Contractor shall reimburse the City or disgorge anything of value or

economic benefit received from the City if the Contractor fails to meet its contractual obligations.

**12. DECLARED DISASTER.**

- a. Declaration. During the declaration of an emergency by federal, state, and/or local government, the Contractor shall provide support to the FMC on an as-needed and task-order-driven basis. Because of the uncertainty of the scale and/or type of emergency, the services to be provided by the Contractor will vary and may need to be adjusted as needs are identified. The Contractor may be requested to provide a range of services. Said services may need to be rendered on a continual basis (24 hours / 7 days per week) during the declaration of an emergency.
- b. Task Order. Notification and Personnel. Prior or during the declaration of an emergency, the FMC will notify the Contractor via task order if the FMC requires the Contractor's support. Upon activation by task order, the Contractor will provide the FMC with contact information of personnel assigned to the task order; and coordinate with the FMC to identify any personnel available to meet the FMC's needs.
- c. Purchase Order. Once services are identified, the FMC will issue a purchase order to the Contractor. The FMC will issue a subsequent purchase order in case of additional needs for services, or may issue a modified purchase order if changes are made to the initial purchase order.
- d. The Contractor will ensure that the FMC is provided with timely and accurate reports and other documentation, as requested.

**13. DISADVANTAGED BUSINESS ENTERPRISE ("DBE") PROGRAM.**

- a. In General. The Contractor agrees to abide by the City Code sections 70-496, *et seq.*, to use its best efforts to carry out all applicable requirements of the City's DBE Program for the administration of this Agreement, as set forth in the City Code and any applicable rules adopted thereunder. The City's Office of Supplier Diversity ("**OSD**") oversees the DBE Program and assigns a DBE Compliance Officer ("**DBECO**") to ensure compliance.
- b. Monitoring. To ensure compliance with DBE requirements during the term of this Agreement, the DBECO will monitor the Contractor's use of DBE subcontractors/suppliers ("**DBE Entities**") through the following actions:
  1. Job site visits;
  2. Electronic payment tracking via the Contract Compliance Monitoring System or other means as approved by the OSD;
  3. Routine audits of contract payments to all subcontractors;
  4. Reviewing of records and reports; and/or
  5. Interviews of selected personnel.

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

c. Cooperation. The Contractor shall:

1. Designate an individual as the “DBE Liaison” who will monitor the Contractor’s DBE participation as well as document and maintain records of “Good Faith Efforts” with DBE Entities.
2. Execute written contracts with DBE Entities that meet the applicable DBE goals.
  - a. The Contractor shall provide the DBECO with copies of said contracts within thirty (30) days from the date this Agreement is fully executed between the FMC and the Contractor.
  - b. The Contractor shall agree to promptly pay subcontractors, including DBE Entities, in accordance with law.
3. Establish and maintain the following records for review upon request by the OSD:
  - a. Copies of written contracts with DBE Entities and purchase orders;
  - b. Documentation of payments and other transactions with DBE Entities;
  - c. Appropriate explanations of any changes or replacements of DBE Entities, which may include a record of “Post-Award Good Faith Efforts” for each certified firm that the Contractor does not use in accordance with the approved DBE participation submission;
  - d. Any other records required by the OSD.

The Contractor is required to maintain such records for three (3) years after completion or closeout of this Agreement. Such records are necessary to determine compliance with their DBE obligations.

4. Post monthly payments and submit regular reports to the DBECO as required via the online “Contract Compliance Monitoring System” or other means approved by the OSD.
  - a. The Contractor shall submit the initial report outlining DBE participation within thirty (30) days from the date of notice to proceed (or equivalent document) issued by the FMC to the Contractor. Thereafter, “DBE Utilization” reports shall be due on or before the fifteenth (15<sup>th</sup>) day of each month until all DBE subcontracting work is completed.
  - b. Reports are required even when no activity has occurred in a monthly period.
  - c. If the established percentage is not being met, the monthly report shall include a narrative description of the progress being made in DBE participation.
  - d. The Contractor may also be required to attach or upload copies of canceled checks or bank statements that identify payer, payee and amount of transfer to verify payment information as indicated on the form.
5. Conform to the established percentage as approved by the OSD.

- a. The total dollar amount of the Agreement shall include approved change orders and amendments. For a requirements contract, the total dollar amount shall be based in actual quantities ordered.
- b. No changes to the established percentage and DBE Entities submitted on DBE Compliance Form-1 shall be allowed without approval by the OSD.
- c. The FMC will not adjust the contract for any increase in cost due to replacement of DBE Entities.

d. Post-Award Modification. The OSD may grant a post-award modification request if:

1. For a reason beyond the Contractor's control, the Contractor is unable to use the certified DBE entity submitted on DBE Compliance Form-1 to perform the specified work. The Contractor must notify the OSD of the intent for removal and substitution of a certified DBE immediately upon determination of that the DBE submitted on Compliance Form -1 is unable to perform the specified work. In such case, the Contractor shall use and document "Good Faith Efforts" to find a similarly qualified and certified DBE entity to perform such specified work. The same criteria used for establishing "Good Faith Efforts" in maximizing the participation of DBE Entities prior to awarding the Agreement will also apply to the substitution of DBE subcontractors during the performance of the Agreement; or
2. The Contractor reasonably believes that, due to a change of scope, execution of the work in accordance with the directions from the FMC is unlikely to meet the established percentage or terms. In such case, the Contractor shall use and document "Good Faith Efforts" to achieve a reasonable amount of DBE participation on the remaining work on the Agreement.

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

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

**16. ENTIRE AGREEMENT**. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior

and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

**17. NON-DISCRIMINATION**

- a. *Equal Employment Opportunity.* In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate against any employee or applicant for employment because of race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry, and (2) where applicable, will take affirmative action to ensure that the Contractor's employees are treated during employment without regard to their race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, sex, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, gender identity, creed, culture, or ancestry.
- b. *Non-Discrimination.* In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, gender, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.
- c. The FMC may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

**18. EXCLUSIVE JURISDICTION AND VENUE.** For all claims arising out of or related to this Contract, the Contractor hereby consents and yields to the jurisdiction of the Civil District Court for the Parish of Orleans, and expressly waives any (A) pleas of jurisdiction based upon Contractor's residence and (B) right of removal to federal court based upon diversity of citizenship.

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

**20. FORCE MAJEURE.**

**A. *Event.*** An event of Force Majeure will include any event or occurrence not reasonably foreseeable by the FMC at the execution of this Agreement, which will include, but not be limited to, abnormally severe and unusual weather conditions or other acts of God (including tropical

weather events, tornados, hurricanes, and flooding); declarations of emergency; shortages of labor or materials (not caused by FMC); riots; terrorism; acts of public enemy; war; sabotage; cyber-attacks, threats, or incidents; epidemics or pandemics; court or governmental order; or any other cause whatsoever beyond the reasonable control of the FMC provided such event was not caused by the negligence or misconduct of the FMC, by the failure of the FMC to comply with applicable laws, or by the breach of this Agreement.

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

**C. Effect.**

1. Upon the occurrence of a Force Majeure event, for which the FMC has provided required notice, the FMC may, at its sole discretion:
  - a. Suspend this Agreement for a duration to be set by the FMC, not to exceed 90 days. During such time of suspension, the Parties will not be liable or responsible for performance of their respective obligations under this Agreement, and there will be excluded from the computation of such period of time any delays directly due to the occurrence of the Force Majeure event. During any such period of suspension, the Contractor must take all commercially reasonable actions to mitigate against the effects of the Force Majeure event and to ensure the prompt resumption of performance when so instructed by the FMC; or
  - b. Terminate this Agreement, either immediately or after one or more periods of suspension, effective on notice to the Contractor and without any further compensation due.
2. Notwithstanding Section C(1) above, the obligations relating to making payments when due (for services or materials already provided) and those obligations specified to survive in the Agreement will be unaffected by any suspension or termination.

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

**22. INDEMNIFICATION.**

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

- b. Limitation. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents or employees contributed to such gross negligence or willful misconduct.
- c. Independent Duty. The Contractor has an immediate and independent obligation to, at the City's and FMC's option: (a) defend the City and/or FMC from or (b) reimburse the City and /or FMC for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (1) the allegations are or may be groundless, false, or fraudulent; or (2) the Contractor is ultimately absolved from liability.
- d. Expenses. Notwithstanding any provision to the contrary, the Contractor shall bear the expenses including, but not limited to, the City's and/or FMC's reasonable attorney fees and expenses, incurred by the City and/or the FMC in enforcing this indemnity.
- 23. INDEPENDENT CONTRACTOR STATUS**. The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City or FMC and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City and/or the FMC.
- 24. INVOICING**. The Contractor must submit invoices monthly (unless agreed otherwise between the parties to this Agreement) to the FMC electronically, via its email to [accounting@frenchmarket.org](mailto:accounting@frenchmarket.org) , for goods or services provided under this Agreement no later than 10 calendar days following the end of the period covered by the invoice. Untimely invoices may result in delayed payment for which the FMC is not liable. At a minimum, each invoice must include the following information: contract or purchase order number issued by the FMC, and the name of the department to be invoiced. The FMC may require changes to the form or the content of the invoice. The FMC may also require additional supporting documentation to be submitted with invoices.
- 25. LIMITATIONS OF THE CITY'S and FMC's OBLIGATIONS**. The City and FMC has no obligations not explicitly set forth in this Agreement or any incorporated documents or expressly imposed by law.
- 26. LIVING WAGES**.
- A. Definitions. Unless otherwise expressly provided in this Agreement, Capitalized terms used but not defined herein, shall have the definition attributed to them in Article VIII, Section 70-802 of the City Code.
- B. Compliance. To the fullest extent permitted by law, the Contractor agrees to abide by City Code Sections 70-801, *et seq.*, which requires, in pertinent part, the following:
1. Payment of an hourly wage to Covered Employees equal to the amounts defined in the City Code ("**Living Wage**");
  2. Receipt of at least seven (7) days per year of compensated leave for Covered Employees, as required by Section 70-807 of the City Code; and
  3. Post notice in a prominent place regarding the applicability of the Living Wage Ordinance in every workplace in which Covered Employees are working that is within the Covered Employer's custody and control, as required by Section 70-810 of the City Code.
- C. Current Living Wage. In accordance with the Living Wage Ordinance, the current Living Wage per the Consumer Price Index data is equal to \$11.19. The Contractor shall be responsible for confirming the Current Living Wage by visiting

<https://www.nola.gov/economic-development/workforce-development/>.

- D. Adjusted Living Wage. In accordance with Section 70-806(2) of the City Code, the Contractor acknowledges and agrees that the Living Wage may be increased during the term of the Agreement. Any City contract or City financial assistance agreement (a) extending from one calendar year into the next or (b) with a term of longer than one year, inclusive of any renewal terms or extensions, shall require the Covered Employer to pay the Covered Employee an Adjusted Living Wage, accounting for the annual Consumer Price Index adjustment. The indexing adjustment shall occur each year on July 1<sup>st</sup> using the Consumer Price Index figures provided for the calendar year ended December 31<sup>st</sup> of the preceding year, and thereafter on an annual basis.
- E. Subcontract Requirements. As required by Section 70-804 of the City Code, the Contractor, beneficiary, or other Covered Employer, prior to entering into a subcontract, shall notify subcontractors in writing of the requirements and applicability of Article VIII – The Living Wage Ordinance (“**Article**”). City contractors and beneficiaries shall be deemed responsible for violations of this Article by their subcontractors.
- F. Reporting. On or before January 31<sup>st</sup> and upon request by the City, the Contractor shall identify (a) the hourly wage earned by the lowest paid Covered Employee and (b) the number of days of compensated leave received by Covered Employees earning less than 130% of the then-prevailing wage during the current term of the Agreement, and provide the identified information to the following:
- Office of Workforce Development  
Living Wage - Compliance  
1340 Poydras Street – Suite 1800  
New Orleans, Louisiana 70112
- G. Compliance Monitoring. Covered Employers under this Agreement are subject to compliance monitoring and enforcement of the Living Wage requirements by the Office of Workforce Development (the “**OWD**”) and/or the Chief Administrative Office (“**CAO**”). Covered Employers will cooperate fully with the OWD and/or the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements. Steps and actions include, but are not limited to, requirements that: (i) the Contractor will cooperate fully with the OWD and the CAO and other City employees and agents authorized to assist in the administration and enforcement of the Living Wage requirements; (ii) the Contractor agrees that the OWD and the CAO and their designees, in the performance of their duties, shall have the right to engage in random inspections of job sites and to have access to the employees of the Contractor, payroll records and employee paychecks; and (ii) that the City may audit such records of the Contractor as he or she reasonably deems necessary to determine compliance with the Living Wage standards.
- H. Remedies. If the Contractor fails to comply with the Living Wage requirements during the term of the Agreement, said failure may result in termination of the Agreement or the pursuit of other remedies by the City, including, but not limited to, the penalties and enforcement mechanisms set forth in Section 70-811 of the City Code.



- 27. NO THIRD PARTY BENEFICIARIES.** The Contract is entered into for the exclusive benefit of the FMC and the Contractor, and the FMC and the Contractor expressly disclaim any intent to benefit anyone not a party to this Contract.
- 28. NON-EXCLUSIVITY.** This Contract is non-exclusive and the Contractor may provide services to other clients, subject to the FMC's approval of any potential conflicts with the performance of this Contract and the FMC may engage the services of others for the provision of some or all of the work to be performed under this Contract.
- 29. NON-SOLICITATION.** The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject Contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject Contract.
- 30. NON-WAIVER.** The failure of the FMC to insist upon strict compliance with any provision of the Contract, to enforce any right or to seek any remedy upon discovery of any default or breach of the Contractor at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of the FMC's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.
- 31. OWNERSHIP INTEREST DISCLOSURE.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the FMC may, after thirty (30) days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.
- 32. PAYMENT.** Unless otherwise agreed by the City, payment terms are NET 30 days upon providing that goods and/or services described under this Agreement have been delivered, installed (if required), rendered, and/or accepted and upon receipt by the FMC of properly submitted invoice via email at [accounting@frenchmarket.org](mailto:accounting@frenchmarket.org) or via mail to: French Market Corporation, ATTN: Accounts Payable, 1008. N. Peters St., Ste 300, New Orleans, LA 70116.
- 33. PERFORMANCE MEASURES.**
- A. *Factors.* The FMC will measure the performance of the Contractor according to the following non-exhaustive factors: work performed in compliance with the terms of the Agreement; staff availability; staff training; staff professionalism; staff experience; customer service; staff turnover; communication and accessibility; prompt and effective correction of situations and conditions; timeliness and completeness of submission of requested documentation (such as records, receipts, invoices, insurance certificates, and computer-generated reports).
- B. *Failure to Perform.* If the Contractor fails to perform according to the Agreement, the FMC will notify the Contractor. If there is a continued lack of performance after notification, the FMC may declare the Contractor in default and may pursue any appropriate remedies available under the Agreement and/or any applicable law. In the event of a notification of default, the FMC will invoice the defaulting contractor for

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

34. **PROHIBITION AGAINST FINANCIAL INTEREST IN AGREEMENT.** No elected official or employee of the City shall have a financial interest, direct or indirect, in the Contract, including through any financial interest held by the spouse, child, or parent. Any willful violation of this provision, with the expressed or implied knowledge of the Contractor, will render this Contract voidable by the FMC and shall entitle the FMC to recover, in addition to any other rights and remedies available to the FMC, all monies paid by the FMC to the Contractor pursuant to this Contract without regard to the Contractor's satisfactory performance.
35. **PROHIBITION ON POLITICAL ACTIVITY.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.
36. **REMEDIES CUMULATIVE.** No remedy set forth in the Contract or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to a party. Rather, each remedy shall be deemed distinct, separate and cumulative and each may be exercised from time to time as often as the occasion may arise or as may be deemed expedient.
37. **SEVERABILITY.** If a court of competent jurisdiction finds any provision of the Contract to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law, or, if reformation is not possible, the unenforceable provision will be fully severable and the remaining provisions of the Contract will remain in full force and effect and will be construed and enforced as if the unenforceable provision was never a part the Contract.
38. **SUBCONTRACTOR REPORTING.** The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Contract's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the FMC. For any subcontractor proposed to be retained by the Contractor to perform work on the Contract with the FMC, the Contractor must provide notice to the FMC within thirty (30) days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the FMC may, after thirty (30) days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.
39. **SURVIVAL.** All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, venue, choice of law, and warranties shall survive the expiration, suspension, or termination of the Contract and continue in full force and effect.
40. **SUSPENSION.** The FMC may suspend this Contract at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the FMC.
41. **TERMINATION FOR CAUSE.** The FMC may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including without limitation any failure to comply with the requirements of the City's Disadvantaged Business Enterprise program

and any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

42. **TERMINATION FOR CONVENIENCE**. The FMC may terminate this Contract at any time during the term of the Contract by giving the Contractor written notice of the FMC's intention to terminate at least thirty (30) days before the date of termination.
43. **TERMINATION FOR NON-APPROPRIATION**. This Contract will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Contract without the requirement of notice and the FMC will not be liable for any amounts beyond the funds appropriated and encumbered for this Contract.
44. **TERMS BINDING**. The terms and conditions of the Contract are binding on any heirs, successors, transferees, and assigns.
45. **WAIVER OF SICK AND ANNUAL LEAVE BENEFITS**. It is expressly agreed and understood between the parties entering into this Contract that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans or French Market Corporation.

**[END OF ATTACHMENT "B"]**

**City of New Orleans, Louisiana  
French Market Corporation  
Request for Proposals  
FMC Insurance Producer of Record  
Date:**

**Attachment “C”**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE) REQUIREMENTS**

(Must be submitted with proposal)

**City of New Orleans, Louisiana  
French Market Corporation  
Request for Proposals  
FMC Insurance Producer of Record  
Date:**

**Attachment “D”**

**TAX CLEARANCE AUTHORIZATION**

**Attachment "E"**

**CITY OF NEW ORLEANS**  
**FRENCH MARKET CORPORATION**  
**IDENTIFICATION OF SUBCONTRACTORS**

**STATE OF LOUISIANA**

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

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

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

2. The Respondent submits the attached proposal in response to City of New Orleans Proposal  
# \_\_\_\_\_.

3. The Respondent hereby identifies the following persons, natural or artificial, who are retained by  
Respondent at the time the attached proposal is submitted and who are expected to perform work as  
subcontractors in connection with the Respondent's work for the FMC. Respondent hereby acknowledges  
and agrees that when new subcontractors not previously named are added to the project, they must be  
promptly identified to the FMC User Department within 48 hours of the change. The official change may  
not take place unless and until the FMC provides its written approval.

\_\_\_\_\_  
Person(s) and Company Name (if applicable)

\_\_\_\_\_

\_\_\_\_\_

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

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

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

Sworn to and subscribed before me, \_\_\_\_\_, Notary Public, this \_\_\_\_ day of \_\_\_\_\_, 201\_\_.

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

Notary ID#/Bar Roll #

**Attachment "F"**

**CONFLICT OF INTEREST DISCLOSURE AFFIDAVIT**

**STATE OF LOUISIANA**

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

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

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

5. The Respondent submits the attached proposal in response to City of New Orleans Proposal # \_\_\_\_\_.

6. The Respondent hereby confirms that a conflict(s) of interest exists/does not exist/may exist in connection with this solicitation which might impair Respondent's ability to perform if awarded the contract, including any familial or business relationships that the Respondent, the proposed subcontractors, and their principals have with city officials or employees. *(If a conflict(s) of interest exists and/or may exist, describe in a letter the nature of the conflict, the parties involved and why there is a conflict. Attach said letter to this form).*

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

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

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

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

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

Notary ID#/Bar Roll #