

1 **AGREEMENT FOR PROFESSIONAL SERVICES**

2 **BETWEEN**

3 **THE CITY OF NEW ORLEANS**

4 **AND**

5 **ALLAN KATZ & ASSOCIATES**

6 THIS AGREEMENT made this 28th day of October, 2008 by and between the
7 City of New Orleans, herein represented by Jacquelyn Brechtel Clarkson, Council
8 President (hereinafter referred to as "the City"), and Allan Katz & Associates,
9 hereinafter referred to as "Contractor".

10 **W I T N E S S E T H**

11 **WHEREAS**, the City desires to engage Allan Katz & Associates, to conduct
12 an informational campaign to better inform the public as to the Master Plan/Force of
13 Law Charter Amendment Proposition on the November 4, 2008 ballot; and

14 **WHEREAS**, Allan Katz & Associates whose address is 814 Baronne Street,
15 New Orleans, LA 70113, and whose Taxpayer ID No. is 72-1166464 is qualified and
16 has appropriate experience to conduct such an informational campaign;

17 **WHEREAS**, the Council has authorized a contract with the Contractor by
18 Motion M-08-599, on October 28, 2008.

19 The City of New Orleans and the Contractor for the considerations and under
20 the conditions set forth below, do agree as follows:

21 **ARTICLE I. SCOPE OF SERVICES**

22 **Section 1. CONTRACTOR AGREES:**

23 A. To conduct a public informational campaign between the effective date of this
24 contract and election day, November 4, 2008, so as to better inform the

1 public as to the proposed Home Rule Charter amendment on the November
2 4, 2008 ballot relative to the Master Plan acquiring the force of law and
3 related matters. Such public information campaign shall utilize whatever
4 media and means contractor believes would be most effective in informing
5 the public of this important ballot proposition.

6 B. To not take a partisan position relative to the passage or defeat of said ballot
7 proposition; rather to simply inform and educate the public as to the existence
8 and significance of said Home Rule Charter amendment proposition on the
9 November 4, 2008 ballot.

10 C. After the election results have been tabulated, to make a presentation to the
11 City Council to provide an analysis of the result of said ballot proposition
12 election and the perceived result of the contractor's efforts relative thereto.

13 D. To provide a written invoice or invoices detailing services performed pursuant
14 to the contract.

15 **Section 2. THE CITY AGREES TO:**

16 A. Provide available information as requested.

17 B. Provide contract administration through the City Council Fiscal Office.

18 **ARTICLE II. REPRESENTATIONS AND WARRANTIES**

19 Section 1. Representations and Warranties of City. City represents and warrants
20 that:

21 A. City has the legal authority to enter into this Agreement; and

22 B. The undersigned Council President has the authority to execute this
23 Agreement on behalf of City.

24 Section 2. Representations and Warranties of Contractor. Contractor represents
25 and warrants that:

26 A. Contractor has not employed or retained any entity or person, other than a
27 bona fide employee working solely for Contractor, to solicit or secure this

1 Agreement nor has Contractor paid or agreed to pay any entity or person,
2 other than a bona fide employee, any gift, commission, percentage,
3 brokerage or any other such fee for the purpose of assisting Contractor in
4 securing this Agreement. Contractor acknowledges its understanding that
5 any gifts made or fees paid in contravention of this representation and
6 warranty shall be considered bribery pursuant to City Code Section 70-509
7 and shall subject the offender to criminal penalties in addition to suspension
8 from participation in City contracting for a period of not less than three years.
9 The execution of this Agreement by Contractor's duly authorized
10 representative shall be deemed a sworn statement by Contractor of its
11 compliance with this representation and warranty, as required by City Code
12 Section 46-51;

13 B. Contractor, has the full power and authority to enter into and execute this
14 Agreement and, as such, this Agreement is legally binding upon and
15 enforceable against Contractor in accordance with its terms;

16 C. Contractor is not under any obligation to any other party that would be
17 inconsistent with or in conflict with this Agreement or that would prevent, limit or
18 impair in any way its performance of any obligations hereunder;

19 D. Contractor has the requisite expertise, qualifications, staff, materials and
20 equipment in place and available to enable it to fully perform the Services
21 and Contractor, along with its employees, as required, and all sub-
22 contractors, if any and as required, possess all necessary permits, licenses,
23 consents, registrations and/or certifications required under federal, state
24 and/or local law to perform the Services;

25 E. As of the Effective Date of this Agreement, Contractor has no knowledge of
26 any undisclosed fact that could materially adversely affect its condition
27 (financial or otherwise), business operations or its ability to fulfill its
28 obligations under this Agreement;

29 F. Contractor is not in breach of any federal, state or local statute or regulation
30 applicable to Contractor or its operations;

31 G. Contractor's work shall be accurate and free from any material errors.
32 Contractor's duties as set forth in this Agreement shall at no time be in any

1 way diminished by reason of any approval by City nor shall Contractor be
2 released from liability by reason of such approval by City—it being
3 understood that City, at all times, is ultimately relying upon Contractor’s skill
4 and knowledge in performing the Services;

5 H. Contractor is bonded, if required by law, and fully and adequately insured for
6 the injury of its employees and any others incurring loss or injury as a result of
7 the actions of Contractor or its employees or subcontractors in the performance
8 of its obligations under this Agreement; and

9 I. Contractor has read and fully understands the terms, covenants and
10 conditions set forth in this Agreement and is executing the same willingly and
11 voluntarily of its own volition.

12 Section 3. Reliance on Representations, Warranties and Covenants. All
13 representations, warranties, covenants and agreements made in this Agreement are
14 intended to be material and shall be conclusively deemed to have been relied upon
15 by the receiving party.

16 **ARTICLE III. COMPENSATION:**

17 Section 1. Non-Liability for Costs and Expenses. City shall not be liable for any
18 costs or expenses paid or incurred by Contractor in the performance of the Services,
19 unless specific exception is provided herein.

20 Section 2. Truth-In-Negotiation. As of the Effective Date of this Agreement,
21 Contractor represents and warrants that the rates charged City as set forth in this
22 Article III for the performance of the Services are no higher than those charged
23 Contractor’s most favored customer for the same or substantially similar services. In
24 the event Contractor’s “most favored customer” rates are reduced during the term of
25 this Agreement, Contractor shall be obligated to promptly notify City of such reduction
26 in writing, and such reduced rates shall apply to any services provided on or after the
27 date that Contractor first reduced such rates. City shall have the right to enforce this
28 provision for up to one (1) year following the termination of this Agreement.

29 Section 3. Detailed Invoice. As a prerequisite to payment, Contractor shall submit
30 to City invoices describing in detail, at a minimum, the services performed and time
31 expended in the performance of such services. Indications of time shall be done in
32 increments of not greater than one-tenth of an hour.

1 Section 4. Maximum Compensation; Subject to Appropriation. City's obligation to
2 compensate Contractor hereunder shall not at any time exceed the maximum
3 compensation, in the aggregate, of \$15,000,00. Further, all compensation owed
4 Contractor pursuant to this Agreement is contingent upon the appropriation and
5 allocation of funds by City.

6 Section 5. No Payment for Services Beyond Scope of Agreement. Except as may
7 be provided by laws governing emergency procedures, officers and employees of
8 City are not authorized to request Contractor to provide additional services that
9 would result in the performance of services beyond the scope set forth in Article I,
10 unless this Agreement has been amended in accordance with its terms to authorize
11 such additional services and/or expenditures. City shall not be required to reimburse
12 Contractor for any services that are provided by Contractor that are beyond the
13 scope of this Agreement, in the absence of a duly authorized executed amendment
14 hereto.

15 Section 6. No Payments in Excess of Maximum Compensation. Officers and
16 employees of City are not authorized to offer or promise to Contractor additional
17 funding for the contract in excess of the maximum amount of funding set forth
18 above. Additional funding for services provided under this Agreement, unless this
19 Agreement has been amended in accordance with its terms to authorize such
20 increase and the Department of Finance has certified the availability of such
21 additional funding. Absent the prior duly authorized amendment of this Agreement
22 and the necessary certification of the Department of Finance, City shall not be
23 required to honor—and will not remit to Contractor—any offered or promised
24 additional funding for any of the Services performed pursuant to this Agreement in
25 excess of the maximum amount set forth above.

26 **ARTICLE IV. TERM**

27 This Agreement shall commence on the Effective Date and shall continue until
28 December 31, 2008. It is understood and acknowledged by Contractor that except
29 for the follow-up report to the Council, the services described above are expected to
30 be completed by no later than November 4, 2008 .

31 **ARTICLE V. NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY**

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

13 Section 2. Equal Employment Opportunity. Contractor further agrees not to
14 discriminate on the basis, whether in fact or perception, of a person's race, color,
15 creed, religion, national origin, ancestry, age, sex, sexual orientation, gender
16 identity, domestic partner status, marital status, physical or mental disability or AIDS-
17 or HIV-status against any applicant for employment with Contractor. Further,
18 Contractor agrees to take affirmative action to ensure that that the applicants are
19 considered for employment and that employees are treated during employment
20 without unlawful regard to such person's race, color, creed, religion, national origin,
21 ancestry, age, sex, sexual orientation, gender identity, domestic partner status,
22 marital status, physical or mental disability or AIDS- or HIV-status. Such action shall
23 include, without limitation, the following areas: employment, promotion, demotion,
24 transfer or layoff; recruitment or recruitment compensation; and selection for training.
25 Contractor agrees to post in conspicuous places, available to employees and
26 applicants for employment, notices setting forth the provisions of this non-
27 discrimination clause. Further, Contractor agrees all solicitations or advertisements
28 for employees placed by or on behalf of Contractor shall state that all qualified
29 applicants will receive consideration for employment without regard to race, creed,
30 color, sex or national origin.

31 Section 3. Subcontracts. Any and all subcontracts by the Contractor relating to
32 work under this contract shall be approved in advance by motion of the Council. The

1 Council may require information on ownership interests in the subcontractor prior to
2 approval of the subcontractor's retention. Contractor shall incorporate by reference
3 in all subcontracts the provisions of this Article and shall require all subcontractors to
4 comply with such provisions. Contractor's failure to comply with the obligations in
5 this subsection shall constitute a material breach of this Agreement.

6 **ARTICLE VI. INDEMNIFICATION**

7 Section 1. Duty to Indemnify City Against Loss. To the fullest extent permitted by
8 law, Contractor shall protect, defend, indemnify and hold harmless City, its agents,
9 elected officials and employees (collectively, the "Indemnified Parties") from and
10 against all claims, actions, liabilities, losses (including, without limitation, economic
11 losses) and costs, arising out of or related to (a) any actual or alleged act or
12 omission in the performance of the Services by Contractor or any subcontractor or
13 (b) any act outside the scope of the Services by Contractor or any subcontractor. By
14 way of illustration—not limitation, Contractor's obligation to indemnify City shall
15 extend to the following, provided that such claims arise out of or relate to the
16 performance of the Services by Contractor: (i) personal injury claims, (ii) property
17 damage or loss claims, (iii) fines or sanctions resulting from violations of any law,
18 statute, ordinance, rule, regulation or intellectual property rights by Contractor, and
19 (iv) liens, claims or actions made by Contractor, any subcontractor or any employees
20 thereof under workers compensation acts, disability benefits acts, other employee
21 benefit acts or any statutory bar.

22 Section 2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary
23 herein, Contractor shall not be required to indemnify the Indemnified Parties for any
24 loss that results from the gross negligence or willful misconduct of any of the
25 Indemnified Parties, provided that Contractor or any subcontractor did not contribute
26 to such gross negligence or willful misconduct. . Contractor shall also not be
27 required to indemnify any party to this agreement if the City Council or any agency
28 or subdivision thereof disregards the advice of Contractor.

29 Section 3. Independent Duty to Defend. Contractor specifically acknowledges and
30 agrees that it has an immediate and independent obligation to, at City's option, (a)
31 defend City from or (b) reimburse City for its costs incurred in the defense of: any
32 claim that actually or potentially falls within this Article V, even if the allegations are

1 or may be groundless, false or fraudulent. This obligation shall remain in full force
2 and effect even if Contractor is ultimately absolved from liability.

3 Section 4. Expenses. All expenses, including, without limitation, reasonable
4 attorney fees, incurred by City in enforcing this Agreement shall be borne by
5 Contractor.

6 **ARTICLE VII. INDEPENDENT CONTRACTOR STATUS**

7 Section 1. Independent Contractor Status. Contractor shall not be deemed an
8 employee, servant, agent, partner or joint venturer of City. Rather, Contractor herein
9 expressly acknowledges and agrees that it is providing services exclusively as an
10 independent contractor to City, as such term is defined in La. Rev. Stat. 23:1021(6).
11 As such, Contractor agrees that it shall not hold itself or any of its employees,
12 subcontractors or agents to be an employee, partner or agent of City. Further,
13 Contractor acknowledges and agrees that, as an independent contractor, neither
14 Contractor nor any of its employees shall be entitled to receive any benefits that
15 employees of City are entitled to receive, including, without limitation, workers'
16 compensation coverage, unemployment compensation coverage, medical
17 insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or
18 Social Security for any services rendered to City under this Agreement.

19 Section 2. No Withholding; Form 1099 Reporting. Contractor understands and agrees
20 that (a) City will not withhold on behalf of Contractor any sums for any federal, state or
21 local income tax, unemployment insurance, social security, or any other withholding
22 pursuant to any law or requirement of any governmental body, and that City will not
23 make available to Contractor any of the benefits afforded to employees of City; (b) all
24 of such withholdings and benefits, if applicable, are the sole responsibility of
25 Contractor; and (c) Contractor will indemnify and hold City harmless from any and all
26 loss or liability arising with respect to any such withholdings and benefits. The parties
27 agree that if the Internal Revenue Service questions or challenges Contractor's
28 independent contractor status, both Contractor and City shall have the right to
29 participate in any discussion or negotiation with the Internal Revenue Service.
30 Contractor acknowledges that all compensation paid to Contractor pursuant to this
31 Agreement will be reported annually by City to the Internal Revenue Service on Form
32 1099.

1 Section 3. No Control of Method of Performing Services. City is interested only in the
2 results obtained under this Agreement. With regard to Contractor's performance of the
3 Services, nothing herein shall be construed as giving City control over (a) the manner
4 or method of Contractor's performance or (b) the professional judgment of Contractor
5 with respect to such performance. City waives any rights to direct, instruct or control
6 Contractor as to the manner in which Contractor achieves the general and specific
7 objectives, except that Contractor agrees to perform the Services in a manner
8 designed to minimize delay, duplication of efforts, redundancy and expenses,
9 including, without limitation, Contractor's compensation. In sum, Contractor agrees
10 and shall be obligated to perform the Services in the most expeditious and economical
11 manner consistent with the interests of City.

12 **ARTICLE VIII. GOVERNING LAW, JURISDICTION AND VENUE**

13 Section 1. Governing Law. This Agreement shall be construed and enforced in
14 accordance with the laws of the State of Louisiana, excepting its conflict of laws
15 provisions.

16 Section 2. Exclusive Jurisdiction and Venue. For all claims arising out of or related
17 to this Agreement, Contractor hereby consents and yields to the exclusive
18 jurisdiction and venue of the Civil District Court for the Parish of Orleans and
19 expressly waives any (A) pleas of jurisdiction based upon Contractor's residence
20 and (B) right of removal to federal court based upon diversity of citizenship.

21 **ARTICLE IX. RETENTION, ACCESS AND OWNERSHIP OF RECORDS**

22 Section 1. Retention. Contractor agrees to keep all such business records related
23 to or arising out of this Agreement as would be kept by a reasonably prudent
24 practitioner of Contractor's profession for a period of six (6) years after the
25 termination of this Agreement. All accounting records shall be maintained in
26 accordance with generally accepted principles and practices.

27 Section 2. Right to Audit; Access. At any time during normal business hours, upon
28 receipt of reasonable notice and as often as City may deem necessary, Contractor
29 shall make all data, records, reports and all other materials relating to this
30 Agreement available to City for examination and copying. In addition, Contractor
31 shall permit City to audit, and shall cooperate fully in any such audit of, all invoices,
32 materials, payrolls, work papers, personnel records and other data necessary to

1 enable City to verify the accuracy of Contractor's invoices for payment for the
2 performance of the Services.

3 Section 3. Ownership. All data collected and all products of work prepared, created
4 or modified by Contractor in the performance of its obligations under this Agreement,
5 including, without limitation, any and all notes, tables, graphs, reports, files,
6 computer programs, source code, documents, records, disks, original drawings or
7 other such material, regardless of form and whether finished or unfinished,
8 (collectively, "Work Product") shall become the exclusive property of City, and no
9 reproduction of any portions of such Work Product may be made in any form without
10 the express written consent of City. City shall have all right, title and interest in such
11 Work Product, including, without limitation, the right to secure and maintain the
12 copyright, trademark and/or patent of Work Product in the name of City. All such
13 Work Product may be used and distributed for any purpose deemed appropriate by
14 City without the consent of and for no additional consideration owing to Contractor.

15 **ARTICLE X. TERMINATION**

16 Section 1. Termination for Cause. City and Contractor shall each have the right to
17 terminate this Agreement for cause, effective immediately upon the giving of written
18 notice to the other party of its intent to terminate and the reasons therefor. If the
19 termination for cause is subsequently challenged in a court of law and if the
20 challenging party prevails, the termination for cause shall be deemed to be a
21 termination for convenience and shall be effective thirty (30) days from the date that
22 the original written notice of termination for cause was given to the challenging party
23 and no further notice shall be required.

24 Section 2. Termination for Convenience. City and Contractor shall each have the
25 right to terminate this Agreement without cause by giving the other party written
26 notice of its intent to terminate at least thirty (30) days prior to the date of
27 termination. In the event City elects to terminate for convenience, City shall be
28 obligated to pay Contractor only for those Services performed up to and through the
29 date of termination.

30 Section 3. Survival of Certain Provisions. All representations and warranties and all
31 responsibilities regarding record retention, access and ownership, cooperation with
32 City Inspector General investigations, indemnification and payment for services

1 rendered shall survive the termination of this Agreement and continue in full force
2 and effect.

3 **ARTICLE XI. INSURANCE**

4 During the term of this Agreement, Contractor shall, at all times, maintain (a)
5 adequate worker's compensation and unemployment insurance coverage for its
6 employees in accordance with state law and (b) comprehensive general liability
7 insurance in amounts not less than \$1,000,000 per occurrence.

8 **ARTICLE XII. NOTICE**

9 Section 1. Any notice, demand, communication or request required or permitted
10 hereunder shall be in writing and delivered in person or by certified mail, return
11 receipt requested as follows:

12
13 If to City: Ronald J. Pursell, City Council Chief of Staff
14 New Orleans City Council, Room 1E06
15 City Hall, 1300 Perdido St.
16 New Orleans, Louisiana 70112

17 and
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Penya M. Moses-Fields
City Attorney
City of New Orleans
1300 Perdido St., Room 5E03
New Orleans, LA 70112

If to Contractor: Allan Katz
Allan Katz & Associates
814 Baronne Street
New Orleans, LA 70113

Section 2. Notices shall be effective when received by each of the above-referenced
individuals at the addresses specified above. Each party shall be responsible for
notifying the other in writing of any changes in the respective addresses set forth
above.

Section 3. Nothing contained in this Article shall be construed to restrict the
transmission of routine communications between representatives of City and
Contractor.

1 **ARTICLE XIII**

2 **GENERAL PROVISIONS**

3 Section 1. No Assignment Without Consent. This Agreement is personal to each of
4 the parties hereto, and neither party may assign or delegate any rights or obligations
5 hereunder without first obtaining the written consent of the other party. Subcontractors
6 must be approved by Motion of the City Council.

7 Section 2. Conflict of Interest.

8 **A.** Contractor agrees to decline any offer of work, whether as an independent
9 contractor or employee, if such work would (a) affect Contractor's
10 independent professional judgment with respect to its performance of the
11 Services or (b) in any way interfere with Contractor's ability to discharge any
12 of its obligations under this Agreement. The initial determination of whether
13 any offer of work would present such a conflict of interest shall rest with
14 Contractor. However, Contractor shall be obligated to notify the Council
15 Chief of Staff and provide full disclosure as to any possible adverse effects
16 of such work as it relates to Contractor's independent professional judgment
17 or the discharge of any of its obligations under this Agreement. Final
18 decision as to whether any such work proposes a prohibited conflict of
19 interest shall rest with the Council of the City of New Orleans. Such decision
20 by the Council as to whether any such work constitutes a prohibited conflict
21 of interest should be made only after the Council seeks advice from the City
22 Attorney. The City Attorney may provide any advice to the Council that
23 he/she deems appropriate.

24 **B.** Determination of a conflict of interest shall be made in accordance with the
25 following process:

- 26 • The Council Chief of Staff shall immediately notify (either electronically or in
27 writing) each Councilmember of any notice received pursuant to this section
28 or in the event knowledge of a potential conflict of interest is acquired
29 independently.
- 30 • If any Councilmember objects to the Contractor's proposed undertaking, he
31 or she must notify the Chief of Staff (either electronically or in writing) within
32 seven working days of the receipt of notice from the Chief of Staff of such

1 objection. The Chief of Staff shall prepare a motion for the Councilmember(s)
2 objecting calling for the approval or disapproval of the proposed undertaking
3 by a majority of all members of the Council at the next regular or special
4 meeting of the Council.

5 Section 3. Audit and Other Oversight: The Contractor understands and will abide by
6 all provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 2-
7 1120, as adopted by City Ordinance No. 22,888 M.C.S., (relative to the operations
8 and authority of the City Inspector General), incorporated herein by reference.

9 Section 4. Non-waiver. The failure of either party to insist upon strict compliance
10 with any provision of this Agreement to enforce any right or to seek any remedy
11 upon discovery of any default or breach of the other party at such time as the initial
12 discovery of the existence of such noncompliance, right, default or breach shall not
13 affect, nor constitute a waiver of, any party's right to insist upon such compliance,
14 exercise such right or seek such remedy with respect to that default or breach or any
15 prior, contemporaneous or subsequent default or breach.

16 Section 5. Severability. The parties hereto intend all provisions of this Agreement to
17 be enforced to the fullest extent permitted by law. Accordingly, should a court of
18 competent jurisdiction find any provision to be unenforceable as written, the parties
19 intend and desire that the court should reform the provision so that it is enforceable
20 to the maximum extent permitted by law. If, however, the court should find such
21 provision to be illegal and not subject to reformation, such provision shall be fully
22 severable. In such event, this Agreement shall be construed and enforced as if such
23 illegal, invalid or unenforceable provision was never a part hereof, and the remaining
24 provisions of this Agreement shall remain in full force and effect.

25 Section 6. Exhibits. The following Exhibits shall be and hereby are incorporated into
26 this Agreement as if fully rewritten herein:

27 Exhibit A Credentials—Resumés, Licenses or Certifications; and

28 Exhibit B IRS Form W-9.

29 Exhibit C Corporate Resolution – Authorization to Sign

30 Section 7. Rules of Construction. The headings and captions of this Agreement are
31 provided for convenience only and are not intended to have effect in the construction
32 or interpretation of this Agreement. Whenever herein the singular number is used,

1 the same shall include the plural, where appropriate, and neutral words and words of
2 any gender shall include the neutral and other gender, where appropriate. Neither
3 this Agreement nor any uncertainty or ambiguity herein shall be construed or
4 resolved in favor of or against City or Contractor on the basis of which party drafted
5 the uncertain or ambiguous language. On the contrary, this Agreement has been
6 reviewed by all parties and shall be construed and interpreted according to the
7 ordinary meaning of the words used so as to fairly accomplish the purposes and
8 intentions of all parties hereto.

9 Section 8. Amendment. No amendment of or modification to this Agreement shall
10 be valid unless and until executed in writing by the duly authorized representatives
11 of both parties to this Agreement.

12 Section 9. No Third-Party Beneficiaries. This Agreement is entered into for the
13 exclusive benefit of the parties, and the parties expressly disclaim any intent to
14 benefit anyone not a party hereto.

15 Section 10. Time is of the Essence. City and Contractor each acknowledge and
16 agree that time is of the essence in the performance of this Agreement.

17 Section 11. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly,
18 Contractor shall be free to provide services to other clients, and City shall be free to
19 engage the services of other contractors for the provision of some or all of the Services
20 set forth in this Agreement.

21 Section 12. Prohibition Against Financial Interest in Agreement. No elected official
22 or employee of City shall have a financial interest, direct or indirect, in this
23 Agreement. For purposes of this Section, a financial interest held by the spouse,
24 child or parent of any elected official or employee of City shall be deemed to be a
25 financial interest of such elected official or employee of City. Any willful violation of
26 this provision, with the expressed or implied knowledge of Contractor, shall render
27 this Agreement voidable by City and shall entitle City to recover, in addition to any
28 other rights and remedies available to City, all monies paid by City to Contractor
29 pursuant to this Agreement without regard to Contractor's satisfactory performance
30 of such Services.

31 Section 13. Remedies Cumulative. No remedy set forth in this Agreement or
32 otherwise conferred upon or reserved to any party shall be considered exclusive of

1 any other remedy available to a party. Rather, each remedy shall be deemed
2 distinct, separate and cumulative and each may be exercised from time to time as
3 often as the occasion may arise or as may be deemed expedient.

4 Section 14. Complete Agreement. Contractor, Allan Katz & Associates, specifically
5 acknowledges that in entering into and accepting this Agreement (comprised of 15
6 pages), Contractor relies solely upon the representations and
7 agreements contained in this Agreement and no others. This Agreement supersedes
8 and replaces any and all prior agreements, negotiations and discussions between the
9 parties hereto with regard to the terms, obligations and conditions herein.

10
11 IN WITNESS WHEREOF:

CITY OF NEW ORLEANS

12
13
14 _____
15 *Jacquelyn Brechtel Clarkson*
16 BY: JACQUELYN BRECHTEL CLARKSON
17 COUNCIL PRESIDENT

18 IN WITNESS WHEREOF:

ALLAN KATZ & ASSOCIATES

19
20 *E. Katz*
21 _____

22 *Allan Katz*
23 _____
24 By: ALLAN KATZ
25 814 BARONNE STREET
26 NEW ORLEANS, LA 70113

27 *Emil Wojcik*
28 _____

Taxpayer Identification Number: **72-1166464**

29 APPROVED: *Victoria Hines*

LAW DEPARTMENT

MOTION
M-08-599

CITY HALL: October 28, 2008

BY: COUNCILMEMBER CLARKSON *JCC*

SECONDED BY: COUNCILMEMBER WILLARD-LEWIS

WHEREAS, on the November 4, 2008 ballot there is a proposition relative to amending the Home Rule Charter to, among other things, to give the City's Master Plan the Force of Law; and

WHEREAS, it is the Council's belief that there is a need to better inform the public, through an informational campaign, as to said proposed Home Rule Charter amendment; and

WHEREAS, Allan Katz & Associates has the requisite qualifications and experience to conduct such an informational campaign; now, therefore

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the Council President is authorized and requested to sign a contract with Allan Katz & Associates to conduct an informational campaign between now and November 4, 2008 to better inform the public as to the Master Plan/Force of Law Home Rule Charter Amendment Ballot Proposition on the November 4, 2008 ballot, with the total amount of compensation not to exceed \$15,000.00.

THE FOREGOING MOTION WAS READ IN FULL, THE ROLL WAS CALLED ON THE ADOPTION THEREOF AND RESULTED AS FOLLOWS:

YEAS: Clarkson, Head, Hedge-Morrell, Midura - 4

NAYS: Willard-Lewis - 1

ABSENT: Carter, Fielkow - 2

AND THE MOTION WAS ADOPTED.

G:\CCADM\CRS-JLJ\2008\MASTERPLANCONTRACT-M

THE FOREGOING IS CERTIFIED
TO BE A TRUE AND CORRECT COPY
Peggy Lewis
CLERK OF COUNCIL