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AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE CITY OF NEW ORLEANS

AND

PGAV URBAN CONSULTING

THIS AGREEMENT made this 2nd day of October, 2008 by and between the City of New Orleans, herein represented by Jacquelyn Brechtel Clarkson, Council President (hereinafter referred to as "the City"), and PGAV Urban Consulting, herein represented by John Brancaglione, Vice President, (hereinafter referred to as "Contractor").

WITNESSETH

WHEREAS, the City desires to engage PGAV Urban Consulting, to assist the Special Development Projects and Economic Development Committee and the City Council in drafting a comprehensive ordinance required to promulgate the new Tax Increment Financing (TIF) policy; and

WHEREAS, PGAV Urban Consulting, whose address is 200 North Broadway, Suite 1000, St. Louis, MO 63102, and whose taxpayer ID number is 43-0831161 is fully qualified and experienced to perform the services desired by the Council;

WHEREAS, the Council has authorized a contract with the Contractor by Motion M-08-559, on October 2, 2008;

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

ARTICLE I. SCOPE OF SERVICES

1 **Section 1. CONTRACTOR AGREES:**

2 A. Document Review: PGAV will review the TIF Act to develop a clear
3 understanding of the criteria and process for designation of TIF areas and
4 identify sections within the Act where clarification may be warranted to the
5 benefit of both City staff and end users. PGAV will also review the City of
6 New Orleans' Application for Tax Increment Financing Assistance with the
7 intention of identifying areas in need of clarification or where possible
8 changes may be warranted, as well as reviewing any general policy
9 proposals, related to TIF, which have been put-forth since 2003 and that may
10 be germane to the task.

11 A summary memorandum regarding significant findings will be provided for
12 City review and comments. This document will be delivered to the City in a
13 digital format.

14 B. Kick-off Meeting: PGAV and the City will hold a project "kick-off" meeting to
15 establish the project schedule, data collection needs and sources. Review
16 findings of Task A with attendees to obtain local input in the evaluation
17 process associated with those documents.

18 Meeting minutes will be prepared for City review and comments and will be
19 delivered in a digital format.

20 C. City Interviews: PGAV will conduct interviews with key staff and City Council
21 Members to identify concerns and/or issues associated with current policies
22 and procedures for the designation of TIF areas and the use of Tax Increment
23 Financing (TIF). Interviews will be scheduled by the City in advance of the

1 Kick-off Meeting (Task B.) and be conducted by PGAV the day of the Kick-off
2 Meeting. If additional interviews are required, they may be scheduled for the
3 following day or be conducted by telephone. PGAV will prepare an interview
4 instrument prior to the actual interviews.

5 A summary memorandum will be prepared in a digital format that will highlight
6 major concerns, issues, and/or recommendations that evolved from the
7 interview process.

8 D. Best Practices Review: PGAV will locate and review the established policies
9 and procedures of three to five municipalities with recognized and successful
10 records of achievement in the designation of TIF areas and in the
11 administration and implementation of plans and programs associated with
12 those areas. Identify key elements of each that might be appropriate for
13 consideration by the City.

14 A summary memorandum will be prepared in a digital format that will outline
15 those elements of TIF programs that other communities have found to be
16 beneficial and which may merit consideration by the City.

17 E. Developer Interviews: With the assistance and approval of the City, three to
18 five development organizations that have been active in TIF related projects
19 will be identified and interviewed by PGAV relative to “best practices”
20 associated with those projects, as viewed from the developer perspective.

21
22 A memorandum will be prepared in a digital format for City review that will
23 outline the results of the developer interviews.
24

1 F. Draft Policy, Procedural and Monitoring Guidelines: Based on the results of
2 Tasks A through E, prepare a draft document that outlines:

- 3
- 4 • the City's intentions or policies related to the designation of TIF areas;
- 5 • the procedures which the City and potential developers will be
- 6 expected to follow when preparing, submitting and reviewing TIF
- 7 Plans, Proposals, and/or Applications; and
- 8 • the monitoring activities that will be undertaken by the City to insure
- 9 that the approved TIF project is proceeding as planned.

10

11 Up to twenty (20) hard copies and a digital copy of the draft document will be
12 delivered to the City.

13

14 G. Present Draft Documents: PGAV will formally present the products of Tasks
15 F and G at a City Council meeting to be arranged by the City.

16

17 H. Final Document: PGAV will revise as necessary the Policy, Procedural and
18 Monitoring Guidelines Ordinance that will be associated with the
19 implementation and administration of TIF areas within the City of New
20 Orleans. The final document will be delivered in both hard copy and digital
21 format (Up to twenty (20) hard copies will be provided).

22

23

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

25 A. Provide available information as requested.

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

27 **ARTICLE II. REPRESENTATIONS AND WARRANTIES**

28 Section 1. Representations and Warranties of City. City represents and warrants
29 that:

- 1 A. City has the legal authority to enter into this Agreement; and
- 2 B. The undersigned Council President has the authority to execute this
- 3 Agreement on behalf of City.

4 Section 2. Representations and Warranties of Contractor. Contractor represents
5 and warrants that:

- 6 A. Contractor has not employed or retained any entity or person, other than a
7 bona fide employee working solely for Contractor, to solicit or secure this
8 Agreement nor has Contractor paid or agreed to pay any entity or person,
9 other than a bona fide employee, any gift, commission, percentage,
10 brokerage or any other such fee for the purpose of assisting Contractor in
11 securing this Agreement. Contractor acknowledges its understanding that
12 any gifts made or fees paid in contravention of this representation and
13 warranty shall be considered bribery pursuant to City Code Section 70-509
14 and shall subject the offender to criminal penalties in addition to suspension
15 from participation in City contracting for a period of not less than three years.
16 The execution of this Agreement by Contractor's duly authorized
17 representative shall be deemed a sworn statement by Contractor of its
18 compliance with this representation and warranty, as required by City Code
19 Section 46-51;
- 20 B. Contractor, has the full power and authority to enter into and execute this
21 Agreement and, as such, this Agreement is legally binding upon and
22 enforceable against Contractor in accordance with its terms;
- 23 C. Contractor is not under any obligation to any other party that would be
24 inconsistent with or in conflict with this Agreement or that would prevent, limit or
25 impair in any way its performance of any obligations hereunder;
- 26 D. Contractor has the requisite expertise, qualifications, staff, materials and
27 equipment in place and available to enable it to fully perform the Services
28 and Contractor, along with its employees, as required, and all sub-
29 contractors, if any and as required, possess all necessary permits, licenses,
30 consents, registrations and/or certifications required under federal, state
31 and/or local law to perform the Services;

- 1 E. As of the Effective Date of this Agreement, Contractor has no knowledge of
2 any undisclosed fact that could materially adversely affect its condition
3 (financial or otherwise), business operations or its ability to fulfill its
4 obligations under this Agreement;
- 5 F. Contractor is not in breach of any federal, state or local statute or regulation
6 applicable to Contractor or its operations;
- 7 G. Contractor's work shall be accurate and free from any material errors.
8 Contractor's duties as set forth in this Agreement shall at no time be in any
9 way diminished by reason of any approval by City nor shall Contractor be
10 released from liability by reason of such approval by City, it being understood
11 that City, at all times, is ultimately relying upon Contractor's skill and
12 knowledge in performing the Services;
- 13 H. Contractor is bonded, if required by law, and fully and adequately insured for
14 the injury of its employees and any others incurring loss or injury as a result of
15 the actions of Contractor or its employees or subcontractors in the performance
16 of its obligations under this Agreement; and
- 17 I. Contractor has read and fully understands the terms, covenants and
18 conditions set forth in this Agreement and is executing the same willingly and
19 voluntarily of its own volition.

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

24 **ARTICLE III. COMPENSATION:**

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

28 Section 2. Truth-In-Negotiation. As of the Effective Date of this Agreement,
29 Contractor represents and warrants that the rates charged City as set forth in this
30 Article III for the performance of the Services are no higher than those charged

1 Contractor's most favored customer for the same or substantially similar services. In
2 the event Contractor's "most favored customer" rates are reduced during the term of
3 this Agreement, Contractor shall be obligated to promptly notify City of such reduction
4 in writing, and such reduced rates shall apply to any services provided on or after the
5 date that Contractor first reduced such rates. City shall have the right to enforce this
6 provision for up to one (1) year following the termination of this Agreement.

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

11 Section 4. Maximum Compensation; Subject to Appropriation. City's obligation to
12 compensate Contractor hereunder shall not at any time exceed the maximum
13 compensation, in the aggregate, of \$30,000, not including direct reimbursable
14 expenses, which payment will be made separately after approval of the Council
15 Chief of Staff. Further, all compensation owed Contractor pursuant to this
16 Agreement is contingent upon the appropriation and allocation of funds by City.

17 Section 5. No Payment for Services Beyond Scope of Agreement. Except as may
18 be provided by laws governing emergency procedures, officers and employees of
19 City are not authorized to request Contractor to provide additional services that
20 would result in the performance of services beyond the scope set forth in Article I,
21 unless this Agreement has been amended in accordance with its terms to authorize
22 such additional services and/or expenditures. City shall not be required to reimburse
23 Contractor for any services that are provided by Contractor that are beyond the
24 scope of this Agreement, in the absence of a duly authorized executed amendment
25 hereto.

26 Section 6. No Payments in Excess of Maximum Compensation. Officers and
27 employees of City are not authorized to offer or promise to Contractor additional
28 funding for the contract in excess of the maximum amount of funding set forth
29 above. Additional funding for services provided under this Agreement, unless this
30 Agreement has been amended in accordance with its terms to authorize such
31 increase and the Department of Finance has certified the availability of such

1 additional funding. Absent the prior duly authorized amendment of this Agreement
2 and the necessary certification of the Department of Finance, City shall not be
3 required to honor—and will not remit to Contractor—any offered or promised
4 additional funding for any of the Services performed pursuant to this Agreement in
5 excess of the maximum amount set forth above.

6 **ARTICLE IV. TERM**

7 This Agreement shall commence on the Effective Date and shall continue until
8 March 11, 2009. It is understood and acknowledged by Contractor that except for
9 the follow-up report to the Council, the services described above are expected to be
10 completed by no later than February 15, 2009 .

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

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

24 Section 2. Equal Employment Opportunity. Contractor further agrees not to
25 discriminate on the basis, whether in fact or perception, of a person's race, color,
26 creed, religion, national origin, ancestry, age, sex, sexual orientation, gender
27 identity, domestic partner status, marital status, physical or mental disability or AIDS-
28 or HIV-status against any applicant for employment with Contractor. Further,
29 Contractor agrees to take affirmative action to ensure that that the applicants are
30 considered for employment and that employees are treated during employment without unlawful regard
31 to such person's race, color, creed, religion, national origin, ancestry, age, sex,

1 sexual orientation, gender identity, domestic partner status, marital status, physical
2 or mental disability or AIDS- or HIV-status. Such action shall include, without
3 limitation, the following areas: employment, promotion, demotion, transfer or layoff;
4 recruitment or recruitment compensation; and selection for training. Contractor
5 agrees to post in conspicuous places, available to employees and applicants for
6 employment, notices setting forth the provisions of this non-discrimination clause.
7 Further, Contractor agrees all solicitations or advertisements for employees placed
8 by or on behalf of Contractor shall state that all qualified applicants will receive
9 consideration for employment without regard to race, creed, color, sex or national
10 origin.

11 Section 3. Subcontracts. Any and all subcontracts by the Contractor relating to
12 work under this contract shall be approved in advance by motion of the Council. The
13 Council may require information on ownership interests in the subcontractor prior to
14 approval of the subcontractor's retention. Contractor shall incorporate by reference
15 in all subcontracts the provisions of this Article and shall require all subcontractors to
16 comply with such provisions. Contractor's failure to comply with the obligations in
17 this subsection shall constitute a material breach of this Agreement.

18 **ARTICLE VI. INDEMNIFICATION**

19 Section 1. Duty to Indemnify City Against Loss. To the fullest extent permitted by
20 law, Contractor shall protect, defend, indemnify and hold harmless City, its agents,
21 elected officials and employees (collectively, the "Indemnified Parties") from and
22 against all claims, actions, liabilities, losses (including, without limitation, economic
23 losses) and costs, arising out of or related to (a) any actual or alleged act or
24 omission in the performance of the Services by Contractor or any subcontractor or
25 (b) any act outside the scope of the Services by Contractor or any subcontractor. By
26 way of illustration—not limitation, Contractor's obligation to indemnify City shall
27 extend to the following, provided that such claims arise out of or relate to the
28 performance of the Services by Contractor: (i) personal injury claims, (ii) property
29 damage or loss claims, (iii) fines or sanctions resulting from violations of any law,
30 statute, ordinance, rule, regulation or intellectual property rights by Contractor, and
31 (iv) liens, claims or actions made by Contractor, any subcontractor or any employees

1 thereof under workers compensation acts, disability benefits acts, other employee
2 benefit acts or any statutory bar.

3 Section 2. Limit on Duty to Indemnify. Notwithstanding anything to the contrary
4 herein, Contractor shall not be required to indemnify the Indemnified Parties for any
5 loss that results from the gross negligence or willful misconduct of any of the
6 Indemnified Parties, provided that Contractor or any subcontractor did not contribute
7 to such gross negligence or willful misconduct. . Contractor shall also not be
8 required to indemnify any party to this agreement if the City Council or any agency
9 or subdivision thereof disregards the advice of Contractor.

10 Section 3. Independent Duty to Defend. Contractor specifically acknowledges and
11 agrees that it has an immediate and independent obligation to, at City's option, (a)
12 defend City from or (b) reimburse City for its costs incurred in the defense of: any
13 claim that actually or potentially falls within this Article V, even if the allegations are
14 or may be groundless, false or fraudulent. This obligation shall remain in full force
15 and effect even if Contractor is ultimately absolved from liability.

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

19 **ARTICLE VII. INDEPENDENT CONTRACTOR STATUS**

20 Section 1. Independent Contractor Status. Contractor shall not be deemed an
21 employee, servant, agent, partner or joint venturer of City. Rather, Contractor herein
22 expressly acknowledges and agrees that it is providing services exclusively as an
23 independent contractor to City, as such term is defined in La. Rev. Stat. 23:1021(6).
24 As such, Contractor agrees that it shall not hold itself or any of its employees,
25 subcontractors or agents to be an employee, partner or agent of City. Further,
26 Contractor acknowledges and agrees that, as an independent contractor, neither
27 Contractor nor any of its employees shall be entitled to receive any benefits that
28 employees of City are entitled to receive, including, without limitation, workers'
29 compensation coverage, unemployment compensation coverage, medical
30 insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or
31 Social Security for any services rendered to City under this Agreement.

1 Section 2. No Withholding; Form 1099 Reporting. Contractor understands and agrees
2 that (a) City will not withhold on behalf of Contractor any sums for any federal, state or
3 local income tax, unemployment insurance, social security, or any other withholding
4 pursuant to any law or requirement of any governmental body, and that City will not
5 make available to Contractor any of the benefits afforded to employees of City; (b) all
6 of such withholdings and benefits, if applicable, are the sole responsibility of
7 Contractor; and (c) Contractor will indemnify and hold City harmless from any and all
8 loss or liability arising with respect to any such withholdings and benefits. The parties
9 agree that if the Internal Revenue Service questions or challenges Contractor's
10 independent contractor status, both Contractor and City shall have the right to
11 participate in any discussion or negotiation with the Internal Revenue Service.
12 Contractor acknowledges that all compensation paid to Contractor pursuant to this
13 Agreement will be reported annually by City to the Internal Revenue Service on Form
14 1099.

15 Section 3. No Control of Method of Performing Services. City is interested only in the
16 results obtained under this Agreement. With regard to Contractor's performance of the
17 Services, nothing herein shall be construed as giving City control over (a) the manner
18 or method of Contractor's performance or (b) the professional judgment of Contractor
19 with respect to such performance. City waives any rights to direct, instruct or control
20 Contractor as to the manner in which Contractor achieves the general and specific
21 objectives, except that Contractor agrees to perform the Services in a manner
22 designed to minimize delay, duplication of efforts, redundancy and expenses,
23 including, without limitation, Contractor's compensation. In sum, Contractor agrees
24 and shall be obligated to perform the Services in the most expeditious and economical
25 manner consistent with the interests of City.

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

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

30 Section 2. Exclusive Jurisdiction and Venue. For all claims arising out of or related
31 to this Agreement, Contractor hereby consents and yields to the exclusive

1 jurisdiction and venue of the Civil District Court for the Parish of Orleans and
2 expressly waives any (A) pleas of jurisdiction based upon Contractor's residence
3 and (B) right of removal to federal court based upon diversity of citizenship.

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

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

10 Section 2. Right to Audit; Access. At any time during normal business hours, upon
11 receipt of reasonable notice and as often as City may deem necessary, Contractor
12 shall make all data, records, reports and all other materials relating to this
13 Agreement available to City for examination and copying. In addition, Contractor
14 shall permit City to audit, and shall cooperate fully in any such audit of, all invoices,
15 materials, payrolls, work papers, personnel records and other data necessary to
16 enable City to verify the accuracy of Contractor's invoices for payment for the
17 performance of the Services.

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

30 **ARTICLE X. TERMINATION**

31 Section 1. Termination for Cause. City and Contractor shall each have the right to

1 terminate this Agreement for cause, effective immediately upon the giving of written
2 notice to the other party of its intent to terminate and the reasons therefor. If the
3 termination for cause is subsequently challenged in a court of law and if the
4 challenging party prevails, the termination for cause shall be deemed to be a
5 termination for convenience and shall be effective thirty (30) days from the date that
6 the original written notice of termination for cause was given to the challenging party
7 and no further notice shall be required.

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

14 Section 3. Survival of Certain Provisions. All representations and warranties and all
15 responsibilities regarding record retention, access and ownership, cooperation with
16 City Inspector General investigations, indemnification and payment for services
17 rendered shall survive the termination of this Agreement and continue in full force
18 and effect.

19 **ARTICLE XI. INSURANCE**

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

24 **ARTICLE XII. NOTICE**

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

28
29 If to City: Ronald J. Pursell, City Council Chief of Staff
30 New Orleans City Council, Room 1E06
31 City Hall, 1300 Perdido St.

1 New Orleans, Louisiana 70112
2 and
3 City Attorney
4 City of New Orleans
5 1300 Perdido St., Room 5E03
6 New Orleans, LA 70112

7 If to Contractor: John Brancaglione
8 PGAV Urban Consulting
9 200 North Broadway, Suite 1000
10 St. Louis, MO 63102

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

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

18 **ARTICLE XIII**

19 **GENERAL PROVISIONS**

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

24 Section 2. Conflict of Interest.

25 **A.** Contractor agrees to decline any offer of work, whether as an independent
26 contractor or employee, if such work would (a) affect Contractor's
27 independent professional judgment with respect to its performance of the
28 Services or (b) in any way interfere with Contractor's ability to discharge any
29 of its obligations under this Agreement. The initial determination of whether
30 any offer of work would present such a conflict of interest shall rest with
31 Contractor. However, Contractor shall be obligated to notify the Council
32 Chief of Staff and provide full disclosure as to any possible adverse effects

1 of such work as it relates to Contractor's independent professional judgment
2 or the discharge of any of its obligations under this Agreement. Final
3 decision as to whether any such work proposes a prohibited conflict of
4 interest shall rest with the Council of the City of New Orleans. Such decision
5 by the Council as to whether any such work constitutes a prohibited conflict
6 of interest should be made only after the Council seeks advice from the City
7 Attorney. The City Attorney may provide any advice to the Council that
8 he/she deems appropriate.

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

- 11 • The Council Chief of Staff shall immediately notify (either electronically or in
12 writing) each Councilmember of any notice received pursuant to this section
13 or in the event knowledge of a potential conflict of interest is acquired
14 independently.
- 15 • If any Councilmember objects to the Contractor's proposed undertaking, he or
16 she must notify the Chief of Staff (either electronically or in writing) within
17 seven working days of the receipt of notice from the Chief of Staff of such
18 objection. The Chief of Staff shall prepare a motion for the Councilmember(s)
19 objecting calling for the approval or disapproval of the proposed undertaking
20 by a majority of all members of the Council at the next regular or special
21 meeting of the Council.

22 Section 3. Audit and Other Oversight: The Contractor understands and will abide by
23 all provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 2-
24 1120, as adopted by City Ordinance No. 22,888 M.C.S., (relative to the operations
25 and authority of the City Inspector General), incorporated herein by reference.

26 Section 4. Non-waiver. The failure of either party to insist upon strict compliance
27 with any provision of this Agreement to enforce any right or to seek any remedy
28 upon discovery of any default or breach of the other party at such time as the initial
29 discovery of the existence of such noncompliance, right, default or breach shall not
30 affect, nor constitute a waiver of, any party's right to insist upon such compliance,
31 exercise such right or seek such remedy with respect to that default or breach or any

1 prior, contemporaneous or subsequent default or breach.

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

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

13 Exhibit A Credentials—Résumés, Licenses or Certifications; and

14 Exhibit B IRS Form W-9.

15 Exhibit C Corporate Resolution – Authorization to Sign

16 Section 7. Rules of Construction. The headings and captions of this Agreement are
17 provided for convenience only and are not intended to have effect in the construction
18 or interpretation of this Agreement. Whenever herein the singular number is used,
19 the same shall include the plural, where appropriate and neutral words and words of
20 any gender shall include the neutral and other gender, where appropriate. Neither
21 this Agreement nor any uncertainty or ambiguity herein shall be construed or
22 resolved in favor of or against City or Contractor on the basis of which party drafted
23 the uncertain or ambiguous language. On the contrary, this Agreement has been
24 reviewed by all parties and shall be construed and interpreted according to the
25 ordinary meaning of the words used so as to fairly accomplish the purposes and
26 intentions of all parties hereto.

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

30 Section 9. No Third-Party Beneficiaries. This Agreement is entered into for the
31 exclusive benefit of the parties, and the parties expressly disclaim any intent to

1 benefit anyone not a party hereto.

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

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

8 Section 12. Prohibition Against Financial Interest in Agreement. No elected official
9 or employee of City shall have a financial interest, direct or indirect, in this
10 Agreement. For purposes of this Section, a financial interest held by the spouse,
11 child or parent of any elected official or employee of City shall be deemed to be a
12 financial interest of such elected official or employee of City. Any willful violation of
13 this provision, with the expressed or implied knowledge of Contractor, shall render
14 this Agreement voidable by City and shall entitle City to recover, in addition to any
15 other rights and remedies available to City, all monies paid by City to Contractor
16 pursuant to this Agreement without regard to Contractor's satisfactory performance
17 of such Services.

18 Section 13. Remedies Cumulative. No remedy set forth in this Agreement or
19 otherwise conferred upon or reserved to any party shall be considered exclusive of
20 any other remedy available to a party. Rather, each remedy shall be deemed
21 distinct, separate and cumulative and each may be exercised from time to time as
22 often as the occasion may arise or as may be deemed expedient.

23 Section 14. Complete Agreement. Contractor, PGAV Urban Consulting, specifically
24 acknowledges that in entering into and accepting this Agreement (comprised of 17
25 pages), Contractor relies solely upon the representations and
26 agreements contained in this Agreement and no others. This Agreement supersedes
27 and replaces any and all prior agreements, negotiations and discussions between the
28 parties hereto with regard to the terms, obligations and conditions herein.

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30 IN WITNESS WHEREOF:

CITY OF NEW ORLEANS

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Jacquelyn Brechtel Clarkson
BY: JACQUELYN BRECHTEL CLARKSON
COUNCIL PRESIDENT

IN WITNESS WHEREOF:

PGAV URBAN CONSULTING

Michael Miller

John Brancaglione
By: JOHN BRANCAGLIONE
200 NORTH BROADWAY, SUITE 1000
ST. LOUIS, MO. 63102

Taxpayer Identification Number: 43-0831161

APPPROVED: *Victoria Jones*

LAW DEPARTMENT

MOTION
NO. M-08-559

CITY HALL: October 2, 2008


BY: COUNCILMEMBERS FIELKOW, HEDGE-MORRELL, WILLARD-LEWIS AND
HEAD

WHEREAS, the City Council previously adopted motion M-08-476 which authorized the re-issuance of a Request for Proposal (RFP) to solicit the services of a consultant to assist the Special Development Projects and Economic Development Committee and the City Council in developing a comprehensive ordinance required to promulgate the new Tax Increment Financing (TIF) policy; and

WHEREAS, in response to the RFP, the City Council received one proposal from Peckham Guyton Albers & Viets, Inc. (PGAV) Urban Consulting; and

WHEREAS, the Staff Selection Review Committee held an open public meeting on Wednesday September 10, 2008 to evaluate the proposal and submitted a written report to the City Council; and

WHEREAS, the Special Development Projects and Economic Development Committee, at it's meeting on Wednesday September 17, 2008, referred PGAV's proposal to the City Council for consideration; now therefore

BE IT MOVED BY THE COUNCIL OF THE CITY OF NEW ORLEANS, That the Council President is authorized and requested to execute a contract with PGAV Urban Consulting to provide TIF consulting services as outlined in the RFP.

OCT 16 2008

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

YEAS: Carter, Clarkson, Fielkow, Head, Hedge-Morrell, Midura, Willard-Lewis - 7

NAYS: 0

ABSENT: 0

AND THE MOTION WAS ADOPTED.

THE FOREGOING IS CERTIFIED
TO BE TRUE AND CORRECT COPY


CLERK OF COUNCIL