

RECEIVED  
OFFICE OF  
COMMUNITY DEVELOPMENT

2017 DEC -7 AM 9:17

DISASTER RECOVERY UNIT

STATE OF LOUISIANA

OFFICE OF COMMUNITY DEVELOPMENT/DISASTER RECOVERY UNIT

(OCD-DRU)

PO. # 2000313776

AND

FISHMAN HAYGOOD, L.L.P.

### CONTRACT FOR PROFESSIONAL LEGAL SERVICES

**BE IT KNOWN THAT** this agreement is entered into by and between the State of Louisiana, Division of Administration, Office of Community Development, Disaster Recovery Unit, hereinafter sometimes referred to as "State" or "OCD, and Fishman Haygood, L.L.P., hereinafter sometimes referred to as "Counsel", and collectively as "Party" or "Parties" .

#### I. SCOPE OF WORK

Counsel hereby agrees to furnish the following services:

A. Legal services in connection with the financing of various projects involving New Market Tax Credits. Services to include drafting of award letters from OCD to recipients who receive federal Community Development Block Grant monies, as well as including tax credit financing advice, as may be requested by OCD.

The agreements between the tax credit borrower/grantee and the State specify that the State's legal fees in connection with the financing shall be paid by the borrower/grantee. In connection with such financing, the amount of fees to be paid by the borrower/grantee shall be determined by agreement between Counsel and the borrower/grantee and such fees shall not be a part of the maximum compensation payable under this Agreement.

B. Legal services in support of the Community Development Block Grant funding in projects including Low Income Housing Tax Credits, (such as the Piggyback Program, the Affordable Rental Program (herein referred to as the "ARP Program"), program income funded projects and/or other similar programs yet to be defined, including programs occurring as a result of past and future disasters). The Piggyback, ARP and other programs are collectively known as the "Program".

The Program award agreements between the Program borrower/grantee and the State specify that the State's legal fees in connection with the award shall be paid by the borrower/grantee. In connection with such awards, the amount of fees to be paid by the borrower/grantee shall be determined by agreement between Counsel and the borrower/grantee and such fees shall not be a part of the maximum compensation payable under this Agreement.

C. Legal Services relating to matters involving the disaster recovery programs implemented by the Office of Community Development, Disaster Recovery Unit (OCD), including but not limited to contract, loan document and action plan drafting services, procurement processes, title and real estate transaction services, conferences with OCD staff, disaster recovery grant recipients and beneficiaries and third parties regarding the disaster recovery programs, contract disputes and legal research and writing assignments, all as assigned by OCD and the DOA Deputy Executive Counsel.

The scope of this contract does not include litigation or proceedings arising out of or involving tort or worker's compensation.

There is no guarantee of a minimum level of services which may be requested by the DRU under this Agreement.

## **II. TASK ASSIGNMENT and MONITORING, GOALS AND OBJECTIVES AND PERFORMANCE MEASURES**

Task assignment and monitoring:

These legal services are to be provided under the immediate supervision of the DOA Deputy Executive Counsel and subject to secondary review by the Department of Justice, Office of the Attorney General.

Assignments of tasks under this Agreement shall be by the DOA Deputy Executive Counsel who shall monitor the performance of Counsel and review all written and verbal reports submitted by Counsel. Upon the assignment of a task, Counsel shall work with the appropriate OCD staff related to the task.

The State and Counsel acknowledge and agree that the Louisiana Department of Justice has the right to review all records, reports, worksheets or any other material of either party related to this contract. The State and Counsel further agree that they or either of them will furnish to the Louisiana Department of Justice, upon request, copies of any and all records, reports, worksheets, bills, statements or any other material of Counsel or State related to this contract.

Goals and Objectives:

The State has entered into this contract in order to obtain professional and reliable legal services as referred to in the scope of work.

Performance Measures:

The services provided by Counsel shall be evaluated to determine that the services are provided timely and professionally.

### III. COMPENSATION

In consideration of services described hereinabove, State hereby agrees to pay Counsel as follows:

For services under Section I, paragraph A above:

John D. Werner (greater than 10 years experience)	\$295/hour
Megan Riess (greater than 10 years experience)	\$295/hour
F. Christopher Wooten (5-10 years experience)	\$190/hour
Martha A. Thibaut (3-5 years experience)	\$160/hour
Sarah Yednock (less than 3 years experience)	\$125/hour
Steven Cheatham (less than 3 years experience)	\$125/hour
Mark Macmurdo (less than 3 years experience)	\$125/hour
Paralegal	\$45/hour

For services under Section I, paragraphs B and C above:

Attorney (greater than 10 years experience)	\$225/hour
Attorney (5-10 years experience)	\$175/hour
Attorney (3-5 years experience)	\$150/hour
Attorney (less than 3 years experience)	\$125/hour
Paralegal	\$45/hour

The total of all sums payable by the State under this contract, including fees and reimbursement of expenses, shall not exceed \$80,000.00. This maximum amount is subject to amendment based on the level of need for services, upon agreement of the parties and duly executed amendment formally approved by the Louisiana Office of State Procurement, Professional Contracts. It is the responsibility of the Counsel to advise the State in advance if contract funds or contract terms may be insufficient to complete contract objectives.

Counsel will submit, at the end of each calendar month, an itemization of all work performed listing time by date for work performed by hours, down to the tenth of an hour, with specific reference to the nature of the work performed (e.g., drafting of contract, research, client conference, etc.). Travel expenses will be paid in accordance with PPM 49. Invoices for services shall be submitted by Counsel to DOA Deputy Executive Counsel for review and approval. All billings by Counsel for services rendered

shall be submitted in compliance with LSA - R.S. 39:1618 and PPM 50. Payment shall be issued upon approval by the DRU Financial Director or his designee.

Counsel shall be reimbursed for out-of-pocket expenses in accordance with the regulations issued by the Division of Administration. Travel time, at the direction and for the convenience of the State, is billable as services in accordance with PPM 50 at one-half the agreed upon pay rate if done during normal working hours and if it does not cause service charges for the day to exceed eight hours. Counsel agrees to comply with the instructions on Attachment #1 when submitting invoices.

Counsel agrees to submit monthly statements. It is understood that should Counsel fail to submit statements within thirty (30) days following the end of each month, State shall not be responsible for payment thereof without the express written authorization of DRU Legal Counsel.

#### **IV. TERM OF CONTRACT**

This contract is in effect for the period commencing June 30, 2017 and ending June 29, 2020. Notwithstanding the foregoing, in no event, shall this contract be valid until it has been approved in writing by the Attorney General and the Office of State Procurement in accordance with La. R.S. 39:1565 and R.S. 39:1595.1. It is the responsibility of the Counsel to advise the State in advance if contract funds or contract terms may be insufficient to complete Agreement objectives.

The effective date of this contract may be extended only if an amendment to that effect is duly executed by the contracting parties and approved by the necessary authorities prior to said termination date. Requests for extensions may be initiated by either party by the mailing of such request to the party, via Certified Mail, return receipt requested, not less than thirty (30) days before the termination date provided for herein or thirty (30) days before the termination of the first extension of this contract. If either party informs the other that an extension of this contract is deemed necessary, an amendment may be prepared by State and forwarded to the other party for appropriate action by the other party, and said amendment is to be returned to State with appropriate information and signatures not less than fifteen (15) days prior to termination date. Upon receipt of the amendment it will be forwarded to the necessary authorities for their approval.

Notwithstanding the foregoing, in no event shall the total term of this contract, including extensions hereto, be for a period of more than three (3) years, unless the laws governing the maximum period of contracts issued by the DRU hereafter are amended to permit a further extension.

The continuation of this Agreement is contingent upon the appropriation of funds to fulfill the requirements of the Agreement by the legislature or the availability of federal or other funds to fulfill such requirements. If the legislature fails to appropriate sufficient monies to provide for the continuation of the Agreement, or if such appropriation is reduced by the veto of the Governor or by any means provided in the appropriations act to prevent the total appropriation for the year from exceeding revenues for that year, or for any other lawful purpose, and the effect of such reduction is to provide insufficient

monies for the continuation of the Agreement, the Agreement shall terminate on the date of the beginning of the first fiscal year for which funds are not appropriated.

The State shall have the right to cancel this contract for any reason by giving the other party written notice sent to Counsel's address by certified mail. Counsel shall have the right to cancel this contract for any reason by giving the State 30 day's written notice by certified mail.

## **V. ADMINISTRATIVE AND COMPLIANCE PROVISIONS**

### **A. Taxes**

Counsel hereby agrees that the responsibility for payment of taxes from the funds thus received under this agreement and /or legislative appropriation shall be said Counsel's obligation and identified under Federal tax identification number 72-1329574, DUNS #847033198 and State tax identification number 9267931.

In accordance with R.S. 39:1624(A) (10), the Louisiana Department of Revenue (LDR) shall determine that the prospective contractor is current in the filing of all applicable tax returns and reports and in payment of all taxes, interest, penalties, and fees owed to the state and collected by the LDR prior to the approval of this contract by the Office of State Procurement (OSP). The prospective contractor hereby attest to its current and/or prospective compliance, and agrees to provide its seven-digit LDR Account Number to the contracting agency so that the prospective contractor's tax payment compliance may be verified. The prospective contractor further acknowledges understanding that issuance of a tax clearance certificate by LDR is a necessary precondition to the approval and effectiveness of this Contract by OSP. The contracting agency reserves the right to withdraw its consent to this Contract without penalty and proceed with alternate arrangements should the Contractor fail to resolve any identified apparent outstanding tax compliance discrepancies with LDR within seven (7) days of such notification.

### **B. State Furnished Resources**

The OCD will provide specific project information to Counsel necessary to complete Services described herein. All records, reports, documents and other material delivered or transmitted to Counsel by the OCD shall remain the property of the OCD and shall be returned by Counsel to the OCD, upon request, at termination, expiration or suspension of this Agreement.

All records, reports, documents, or other material or data, including electronic data, related to this Agreement and/or obtained or prepared by Counsel, and all repositories and databases compiled or used, regardless of the source of information included therein, in connection with performance of the Services contracted for herein shall become the property of the OCD, and shall, upon request, be returned by Counsel to the OCD at termination or expiration of this Agreement. Cost incurred by Counsel to compile and transfer information for return to the OCD shall be billed on a time and materials basis, subject to the maximum amount of this Agreement. Software and other materials owned by Counsel prior to the date of this Agreement and not related to this Agreement shall be and remain the property of Counsel.

**C. Subcontractors**

Counsel may, with prior written permission from the OCD, enter into subcontracts with third parties ("Subcontractors") for the performance of any part of Counsel's duties and obligations. In no event shall the existence of a subcontract operate to release or reduce the liability of Counsel to the OCD for any breach in the performance of Counsel's duties. Subcontractors' agreements must meet all contracting, indemnity, insurance and regulatory compliance requirements. The parties hereby agree that any non-compete agreement or similar agreement with any Subcontractors seeking to restrain the ability of the Subcontractors to perform any services for the OCD shall be deemed unenforceable, null and void, to the extent of such non-compete provision, but without invalidating the remaining provisions of the contract with the Subcontractor.

**D. Fund Use**

Counsel agrees not to use contract proceeds to urge any elector to vote for or against any candidate or proposition on an election ballot nor shall such funds be used to lobby for or against any proposition or matter having the effect of law or is being considered by the Louisiana Legislature or any local governing authority. This provision shall not prevent the normal dissemination of factual information relative to a proposition on any election ballot or a proposition or matter having the effect of law being considered by the Louisiana Legislature or any local governing authority.

Counsel and all Subcontractors shall certify that they have complied with the Byrd Anti-Lobbying Amendment (31 U.S.C. 1352) and that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or

employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Counsel and each Subcontractor shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award.

**E. Confidentiality of Data**

All financial, statistical, personal, technical and other data and information relating to the OCD's operation which are designated confidential by the OCD and made available to Counsel in order to carry out this Contract, or which become available to Counsel in carrying out this Contract, shall be protected by Counsel from unauthorized use and disclosure through the observance of the same or more effective procedural requirements as are applicable to the OCD. The identification of all such confidential data and information as well as the OCD's procedural requirements for protection of such data and information from unauthorized use and disclosure shall be provided by the OCD in writing to Counsel. If the methods and procedures employed by Counsel for the protection of Counsel's data and information are deemed by the OCD to be adequate for the protection of OCD's confidential information, such methods and procedures may be used, with the written consent of the OCD, to carry out the intent of this paragraph. Counsel shall not be required under the provisions of this paragraph to keep confidential any data or information which is or becomes publicly available, is already rightfully in Counsel's possession, is independently developed by Counsel outside the scope of this Contract, is obtained from other public agencies, or is rightfully obtained from third parties.

All of the reports, information, data, et cetera, prepared or assembled by Counsel under this Contract are confidential and Counsel agrees that they shall not be made available to any individual or organization without the prior written approval of the OCD. This does not extend to information that was obtained from the public domain such as public agencies or sources of information available to the general public.

All records, reports, documents and other material delivered or transmitted to Counsel by State shall remain the property of State, and shall be returned by Counsel to State, at Counsel's expense, at termination or expiration of this contract. All records, reports, documents, pleadings, exhibits or other material related to this contract and/or obtained or prepared by Counsel in connection with the performance of the services contracted for herein shall become the property of the State, and shall, upon request, be returned by Counsel to State, at Counsel's expense, at termination or expiration of this contract.

**F. Insurance**

Insurance shall be placed with insurers with an A.M. Best's rating of no less than A-:VI. This rating requirement may be waived for Worker's Compensation coverage only.

Counsel's Insurance. Counsel shall not commence work under this Contract until it has obtained all insurance required herein. Certificates of Insurance shall be filed with the OCD for approval. Counsel shall not allow any Subcontractor to commence work on his subcontract until all similar insurance required for the Subcontractors has been obtained and approved. If so requested, Counsel shall also submit copies of insurance policies for inspection and approval of the OCD before work is commenced. Said policies shall not hereafter be canceled, permitted to expire, or be changed without thirty (30) days notice in advance to the OCD and consented to by the OCD in writing and the policies shall so provide.

Compensation Insurance. Before any work is commenced, Counsel shall determine and substantiate with OCD whether Compensation Insurance will be required. If determined by the parties to be necessary, Counsel shall maintain during the life of the Contract, Workers' Compensation Insurance for all of Counsel's employees employed at the site of the project. In case any work is sublet, Counsel shall require the Subcontractors similarly to provide Workers' Compensation Insurance for all the latter's employees, unless such employees are covered by the protection afforded by Counsel. In case any class of employees engaged in work under the Contract at the site of the project is not protected under the Workers' Compensation Statute, Counsel shall provide for any such employees, and shall further provide or cause any and all Subcontractors to provide Employer's Liability Insurance for the protection of such employees not protected by the Workers' Compensation Statute.

Commercial General Liability Insurance. Counsel shall maintain during the life of this Contract such Commercial General Liability Insurance which shall protect him, the OCD, and any Subcontractors during the performance of work covered by the Contract from claims or damages for personal injury, including accidental death, as well as for claims for property damages, which may arise from operations under the Contract, whether such operations be by himself or by a Subcontractors, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability to the OCD. Such insurance shall name the OCD as additional insured for claims arising from or as the result of the operations of the Counsel or his Subcontractors. In the absence of specific regulations, the amount of coverage shall be as follows: Commercial General Liability Insurance, including bodily injury, property



damage and contractual liability, with combined single limits of \$1,000,000.

Professional Liability (Errors and Omissions). Professional Liability (Error & Omissions) insurance, which covers the professional errors, acts, or omissions of the Contractor, shall have a minimum limit of \$1,000,000. Claims-made coverage is acceptable. The date of the inception of the policy must be no later than the first date of the anticipated work under this contract. It shall provide coverage for the duration of this contract and shall have an expiration date no earlier than 30 days after the anticipated completion of the contract. The policy shall provide an extended reporting period of not less than 24 months from the expiration date of the policy, if the policy is not renewed.

Licensed and Non-Licensed Motor Vehicles. Counsel shall maintain during the life of the Contract Automobile Liability Insurance in an amount not less than combined single limits of \$1,000,000 per occurrence for bodily injury/property damage. Such insurance shall cover the use of any non-licensed motor vehicles engaged in operations within the terms of the Contract on the site of the work to be performed there under, unless such coverage is included in insurance elsewhere specified.

Subcontractor's Insurance. Counsel shall require that any and all Subcontractors, which are not protected under Counsel's own insurance policies, take and maintain insurance of the same nature and in the same amounts as required of Counsel.

**G. Right to Audit**

The OCD, the State of Louisiana Legislative auditor, federal auditors, State Inspector General and auditors of the Division of Administration ("DOA"), or others so designated by the DOA or the OCD, shall have the option to audit and/or inspect all accounts directly pertaining to the Agreement for a period of five (5) years from the date of the closeout of this Agreement. Records shall be made available during normal working hours for this purpose.

**H. Copyright**

No materials, to include but not limited to reports, maps, or documents produced as a result of this Contract, in whole or in part, shall be available to Counsel for copyright purposes. Any such material produced as a result of this Contract that might be subject to copyright shall be the property of the OCD and all such rights shall belong to the OCD.

**I. Covenant Against Contingent Fees and Conflicts of Interest**

Counsel shall warrant that no person or other organization has been employed or retained to solicit or secure this Agreement upon contract or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warrant, the OCD shall have the right to annul this Contract without liability or, in its discretion, to deduct from the Contract or otherwise recover the full amount of such commission, percentage, brokerage or contingent fee, or to seek such other remedies as legally may be available.

No member, officer, or employee of Counsel, or agents, Counsel, member of the governing body of Counsel or the locality in which the program is situated, or other public official who exercises or has exercised any functions or responsibilities with respect to this Agreement during his or her tenure, shall have any interest, direct or indirect, in any contract or subcontract, or the proceeds thereof, for work to be performed in connection with the Agreement or in any activity or benefit, which is part of this Agreement.

However, upon written request of Counsel, the OCD may agree in writing to grant an exception for a conflict otherwise prohibited by this provision whenever there has been full public disclosure of the conflict of interest, and the OCD determines that undue hardship will result either to Counsel or the person affected by applying the prohibition and that the granting of a waiver is in the public interest. No such request for exception shall be made by Counsel which would, in any way, permit a violation of State or local law or any statutory or regulatory provision.

With respect to conflicts of interest governed by the Louisiana Rules of Professional Conduct, the above paragraph does not apply. Requests for written waivers of conflict of interest shall be directed to OCD. Execution of this Agreement shall not constitute a waiver to any existing or future conflicts of interest, actual or perceived, under the Louisiana Rules of Professional Conduct, unless previously executed by OCD.

**J. Section 3 Compliance in the Provisions of Training, Employment and Business Opportunities**

The work to be performed under this contract is subject to the requirements of section 3 of the Housing and Urban Development Act of 1968, as amended, 12 U.S.C. 1701u (section 3). The purpose of section 3 is to ensure that employment and other economic opportunities generated by HUD assistance or HUD-assisted projects covered by section 3, shall, to the greatest extent feasible, be directed to low- and very low-income

persons, particularly persons who are recipients of HUD assistance for housing.

The parties to this contract agree to comply with HUD's regulations in 24 CFR part 135, which implement section 3. As evidenced by their execution of this contract, the parties to this contract certify that they are under no contractual or other impediment that would prevent them from complying with the part 135 regulations.

The contractor agrees to send to each labor organization or representative of workers with which the contractor has a collective bargaining agreement or other understanding, if any, a notice advising the labor organization or workers' representative of the contractor's commitments under this section 3 clause, and will post copies of the notice in conspicuous places at the work site where both employees and applicants for training and employment positions can see the notice. The notice shall describe the section 3 preference, shall set forth minimum number and job titles subject to hire, availability of apprenticeship and training positions, the qualifications for each; and the name and location of the person(s) taking applications for each of the positions; and the anticipated date the work shall begin.

The contractor agrees to include this section 3 clause in every subcontract subject to compliance with regulations in 24 CFR part 135, and agrees to take appropriate action, as provided in an applicable provision of the subcontract or in this section 3 clause, upon a finding that the subcontractor is in violation of the regulations in 24 CFR part 135. The contractor will not subcontract with any subcontractor where the contractor has notice or knowledge that the subcontractor has been found in violation of the regulations in 24 CFR part 135.

The contractor will certify that any vacant employment positions, including training positions, that are filled (1) after the contractor is selected but before the contract is executed, and (2) with persons other than those to whom the regulations of 24 CFR part 135 require employment opportunities to be directed, were not filled to circumvent the contractor's obligations under 24 CFR part 135.

Noncompliance with HUD's regulations in 24 CFR part 135 may result in sanctions, termination of this contract for default, and debarment or suspension from future HUD assisted contracts.

With respect to work performed in connection with section 3 covered Indian housing assistance, section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 5307) also applies to the work to be performed under this contract. Section 7(b) requires that to the greatest

extent feasible (i) preference and opportunities for training and employment shall be given to Indians, and (ii) preference in the award of contracts and subcontracts shall be given to Indian organizations and Indian-owned Economic Enterprises. Parties to this contract that are subject to the provisions of section 3 and section 7(b) agree to comply with section 3 to the maximum extent feasible, but not in derogation of compliance with section 7(b).

**K. Compliance with Civil Rights Laws**

Counsel agrees to abide by the requirements of the following as applicable: Title VI of the Civil Rights Act of 1964 and Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, Federal Executive Order 11246 as amended, the Rehabilitation Act of 1973, as amended, the Vietnam Era Veteran's Readjustment Assistance Act of 1974, Title IX of the Education Amendments of 1972, the Age Discrimination Act of 1975, the Fair Housing Act of 1968 as amended, and counsel agrees to abide by the requirements of the Americans with Disabilities Act of 1990.

Counsel agrees not to discriminate in its employment practices, and will render services under this contract without regard to race, color, religion, sex, sexual orientation, national origin, veteran status, political affiliation, or disabilities. Any act of discrimination committed by Counsel, or failure to comply with these statutory obligations when applicable shall be grounds for termination of this contract.

**L. Code of Ethics**

Counsel acknowledges that Chapter 15 of Title 42 of the Louisiana Revised Statutes (R.S. 42:1101 et. seq., Code of Governmental Ethics) applies to Counsel in the performance of Services called for in this Contract. Counsel agrees to immediately notify the OCD if potential violations of the Code of Governmental Ethics arise at any time during the term of this Contract.

**M. Section 109 of the Housing and Community Development Act of 1974**

No person in the United States shall on the grounds of race, color, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under Section 109 of Title I of the Housing and Community Development Act of 1974. Section 109 further provides that discrimination on the basis of age under the Age Discrimination Act of 1975 or with respect to an otherwise qualified

handicapped individual as provided in Section 504 of the Rehabilitation Act of 1973, as amended, is prohibited.

**N. Clean Air Act, Clean Water Act and Other Requirements**

Counsel agrees to comply with all applicable standards, orders, or requirements issued the Clean Air Act (42 U.S.C. 7401 et seq. (1970)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15). The OCD recognizes that Counsel is not responsible for environmental or safety compliance that Grant Recipients and their contractors may be subject to that are outside of the Scope of Services to be conducted under this Agreement.

**O. Energy Efficiency**

Counsel shall recognize mandatory standards and policies relating to energy efficiency, which are contained in the State Energy Conservation Plan issued in compliance with the Energy Policy and Conservation Act to the extent applicable to Counsel and its Subcontractors. The OCD will provide such standards and policies to Counsel as a pre-condition of this stipulation.

**P. Eligibility Status**

Counsel, and each tier of Subcontractors, shall certify that it is not on the List of Parties Excluded from Federal Procurement or Non-procurement Programs promulgated in accordance with E.O.s 12549 and 12689, "Debarment and Suspension," as set forth at 2 CFR part 2424.

Counsel has a continuing obligation to disclose any suspensions or debarment by any government entity, including but not limited to the General Services Administration (GSA). Failure to disclose may constitute grounds for suspension and/or termination of the Agreement and debarment from future contracts.

**Q. Drug-Free Workplace Requirement**

Counsel and Subcontractors will certify that they have provided a drug-free workplace in compliance with The Drug-Free Workplace Act of 1988, as amended. Further, in any contracts executed by and between Counsel and any third parties funded using funds under this Agreement there shall be a provision mandating compliance with the Drug-Free Workplace Act of 1988, as amended.

**R. Safety**

Counsel shall exercise proper precaution at all times for the protection of persons and property and shall be responsible for all damages or property, either on or off the worksite, which occur as a result of his performance of the work. The safety provisions of applicable laws and building and construction codes, in addition to specific safety and health regulations described by 29 CFR 1925, shall be observed and Counsel shall take or cause to be taken such additional safety and health measures as Counsel may determine to be reasonably necessary.

**VI. MISCELLANEOUS PROVISIONS**

**A. No Assignment**

No Counsel shall assign any interest in this contract by assignment, transfer, or novation, without prior written consent of the State. This provision shall not be construed to prohibit the Counsel from assigning his bank, trust company, or other financial institution any money due or to become due from approved contracts without such prior written consent. Notice of any such assignment or transfer shall be furnished promptly to the State and the Office of State Procurement, Professional Contracts.

**B. Severability**

The terms and provisions of this Agreement are severable. Unless the primary purpose of this Agreement would be frustrated, the invalidity or unenforceability of any term or condition of this Agreement shall not affect the validity or enforceability of any other term or provision of this Agreement. The Parties intend and request that any judicial or administrative authority that may deem any provision invalid, reform the provision, if possible, consistent with the intent and purposes of this Agreement, and if such a provision cannot be reformed, enforce this Agreement as set forth herein in the absence of such provision.

**C. Applicable Law, Remedies, and Venue**

This Agreement shall be governed by and construed in accordance with the laws of Louisiana. Any claim or controversy arising out of this Agreement shall be resolved under the processes set forth in La. R.S. 39:1672.2-1672.4. Exclusive venue and jurisdiction shall be vested in the Nineteenth Judicial District Court, Parish of East Baton Rouge, State of Louisiana.

**D. Entire Agreement**

This Agreement constitutes the entire understanding of the undertakings between the Parties with respect to the subject matter hereof and thereof, superseding all negotiations, prior discussions and preliminary agreements related hereto or thereto. There is no representation or warranty of any kind made in connection with the transactions contemplated hereby that is not expressly contained in this Agreement.

**E. No Authorship Presumptions**

Each of the Parties has had an opportunity to negotiate the language of this Agreement in consultation with legal counsel prior to its execution. No presumption shall arise or adverse inference be drawn by virtue of authorship, and each Party hereby waives the benefit of any rule of law that might otherwise be applicable in connection with the interpretation of this Agreement, including but not limited to any rule of law to the effect that any provision of this Agreement shall be interpreted or construed against the Party that (or whose counsel) drafted that provision. The rule of no authorship presumption set forth in this paragraph is equally applicable to any Person that becomes a Party by reason of assignment and/or assumption of this Agreement and any successor to a signatory Party.

**F. Amendments, Supplements and Modifications**

This Agreement may not be amended, supplemented or modified except in a writing signed by both Parties in which they expressly state their mutual intention to amend, supplement or modify this Agreement. No oral understanding or agreement not incorporated into the Contract is binding on any of the Parties.

**G. Delay or Omission**

No delay or omission in the exercise or enforcement of any right or remedy accruing to a Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein or therein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein or therein contained.

**H. Legal Authority**

Counsel assures and guarantees that it possesses the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, giving the Counsel legal authority to enter into this Agreement, receive funds, authorized by this Agreement and to perform the services the Counsel is obligated to perform under this Agreement.

**I. Provision Required by Law Deemed Inserted**

Each and every provision of law and clause required by law to be inserted in this Agreement shall be deemed to be inserted herein and the Agreement shall be read and enforced as though it were included herein, and if through mistake or otherwise any such provision is not inserted, or is not correctly inserted, then upon the request of either Party the Agreement shall forthwith be amended to make such insertion or correction.

**J. Prohibited Activity**

Counsel is prohibited from using, and shall be responsible for its sub-contractors being prohibited from using, the funds provided herein or personnel employed in the administration of the program for political activities, inherently religious activities, lobbying, political patronage, nepotism activities, and supporting either directly or indirectly the enactment, repeal, modification or adoption of any law, regulation or policy at any level of government. Counsel will comply with the provision of the Hatch Act (5 U.S.C. 1501 *et seq.*), which limits the political activity of employees.

**K. No Third Party Beneficiaries**

This Agreement does not create, nor is it intended to create, any third party beneficiaries or contain any stipulations pour autrui. The State and the Counsel are and shall remain the only parties to this Agreement and the only parties with the right to enforce any provision thereof and shall have the right, without the necessity of consent of any third party, to modify or rescind this Agreement.

**L. Substitution of Key Personnel**

The Counsel's personnel assigned to this Agreement may not be replaced without the written consent of the OCD. Such consent shall not be unreasonably withheld or delayed provided an equally qualified replacement is offered. In the event that any personnel of Counsel becomes unavailable due to the resignation, illness, or other factors,



excluding assignment to a project outside of this Agreement, outside of the Counsel's reasonable control, as the case may be, the Counsel shall be responsible for providing an equally qualified replacement in time to avoid delays in completing tasks.

**M. Public Communications**

Counsel shall not issue any public communications regarding the Counsel's activities under this Agreement without the prior consent of the OCD.

**N. Waiver Of Non-Competition Enforcement**

Counsel agrees to waive enforcement of each and every contract provision it may have restraining employees of Counsel, a subcontractor under this Agreement, or one or more subcontractors' employees from employment or contracting with the State.

**O. Counsel's Cooperation**

Counsel has the duty to fully cooperate with the State and provide any and all requested information, documentation, etc. to the State when requested. This applies even if this Agreement is terminated and/or a lawsuit is filed. Specifically, the Contractor shall not limit or impede the State's right to audit and shall not withhold State-owned documents.

**O. Notices**

Any notice required or permitted to be given under or in connection with this Agreement shall be in writing and shall be either hand-delivered or mailed, postage prepaid by first-class mail, registered or certified, return receipt requested, or delivered by private, commercial carrier, express mail, such as Federal Express, or sent by, telecopy or other similar form of rapid transmission confirmed by written confirmation mailed (postage prepaid by first-class mail, registered or certified, return receipt requested or private, commercial carrier, express mail, such as Federal Express) at substantially the same time as such rapid transmission. All such communications shall be transmitted to the address or numbers set forth below, or such other address or numbers as may be hereafter designated by a Party in written notice to the other Party compliant with this Section:

If to State: Daniel A. Rees  
Deputy Executive Counsel  
State of Louisiana

Division of Administration  
Office of Community Development  
Disaster Recovery Unit  
Mailing Address: P.O. Box 94095  
Baton Rouge, Louisiana 70804-9095  
(225)219.9600 (fax) (225) 219.9605  
E-mail: dan.rees@la.gov

If to Counsel:

John D. Werner

Fishman Haygood, L.L.P.

201 St. Charles Avenue

Suite 4600

New Orleans, LA 70170-4600

504-586-5252

504-586-5265 (direct)


504-586-5250 (fax)

[jwerner@fishmanhaygood.com](mailto:jwerner@fishmanhaygood.com)

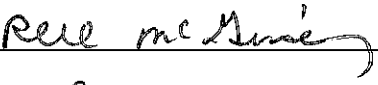
(Balance of this page left blank intentionally.)

DONE AND SIGNED by the Parties on the dates set forth below.

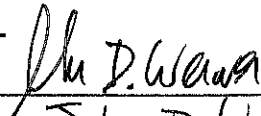
**OFFICE OF COMMUNITY DEVELOPMENT**

By:   
Name: Patrick W. Forbes  
Title: Executive Director  
Date: 12.21.17

**DIVISION OF ADMINISTRATION**

By:   
Name: Executive Council  
Title: Richard McGinley  
Date: 12-27-17

**COUNSEL**

By:   
Name: Soha D. Werner  
Title: Partner  
Date: 12/4/17

## ATTACHMENT #1

### INSTRUCTIONS FOR SUBMITTING INVOICES

At the end of each calendar month an itemization of all work performed, listing time by date for work performed by hours, down to the quarter of an hour with specific reference to the nature of the work performed (*e.g. drafting of expert reports, research, review of files, etc.*) should be invoiced to (*agency*).

Reimbursement for all expenses must have receipts or documentation attached to the invoices or reimbursement will not be made. Some examples of the receipts or documentation that will be accepted are given below:

1. Telephone expenses - a copy of the telephone bill indicating the telephone calls made in reference to the contract. A listing of telephone billings on the invoice with the original kept by Counsel for review by the State.
2. Postage expenses - date letter sent, person sent to, and amount of postage.
3. Express Mail - a copy of the invoice from the vendor.
4. Travel expenses - purpose of the trip, miles traveled or airline ticket receipt, parking receipts, taxi receipts, hotel receipts (credit card receipt will not be accepted).
5. Photocopying - number of copies and the amount per copy or if outside photocopying is utilized a receipt must be included.

When invoices are submitted at the end of each calendar month, you must indicate the amount of your contract, the amount billed to date and the remaining balance.

If your invoices are billed by each individual case that you have worked on please include a summary sheet for that month for that invoice. Do not include any previous balances owed on the summary sheet.

LSA - R.S. 39:1618 calls for invoices to be submitted in the form of an affidavit.

Note: In the event of any inconsistent or incompatible provisions between this Attachment #1 and PPM 50, PPM 50 shall take precedence.