

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
EC ADVERTISING

THIS AGREEMENT, made and entered into this 27th day of February 2007, by and between the City of New Orleans, herein represented by C. Ray Nagin, Mayor, (“City”) and EC Advertising, herein represented by Trellis Smith, its _____ (“Contractor”), witnesses that,

WHEREAS, the City desires to engage the Contractor to render professional production and management services to the City; and

WHEREAS, Contractor, whose office is located at 2239 Bayou Road, New Orleans, Louisiana, is qualified and willing to perform such services, and both the City and the Contractor desire hereby to detail their related agreement.

NOW THEREFORE, the City of New Orleans and the Contractor, for the consideration and under the conditions set forth, agree as follows:

1. **CONTRACTED SERVICES:** Professional graphic design services for the City in preparation for the “311 Campaign” which include but are not limited to the following:

- a) Creative design of 311 logo;
- b) Design and layout of 311 brochure; and
- c) Design and layout of 11x14 311 poster

2. **FEES:** The City will pay the Contractor \$1,715.00 to perform the contracted services. The maximum sum payable under this Agreement is \$1,715.00. The Contractor shall submit to the City a detailed monthly invoice for payment for services provided.

3. **TERM:** The term of this Agreement is November 15, 2007 to March 31, 2008.

4. **FURTHER PROVISIONS:**

a. The Contractor will obtain the City’s approval before it substitutes attorneys in the subject matter.

b. The City and the Contractor bind themselves under the Additional Terms and Conditions attached hereto.

5. **AMENDMENT:** This agreement is not modified except by written amendment executed by the parties hereto.

ATTACHMENT
ADDITIONAL TERMS AND CONDITIONS

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS (“City”)
AND
EC ADVERTISING (“Contractor”)

1. **EQUAL EMPLOYMENT OPPORTUNITY:** In all hiring or employment made possible by, or resulting from this contract, there (1) will not be any discrimination against any employee or applicant for employment because of race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where applicable, affirmative action will be taken to ensure that the Contractors employees are treated during employment without regard to their race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall apply to, but not be limited to the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation and selection for training, including apprenticeship. All solicitations or advertisements for employees shall state that all qualified applicants will receive consideration for employment without regard to race, color, religion, gender, age, physical or mental disability, national origin, sexual orientation, creed, culture, or ancestry.

2. **ASSIGNABILITY:** The Contractor shall not assign any interest in this agreement and shall not transfer any interest in the same without prior written consent of the City of New Orleans.

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

4. **INDEMNIFICATION:** The Contractor shall indemnify and save the City harmless against any and all claims, demands, suits, judgments of sums of money to any party accruing against the City for loss of life or injury or damage to persons or property growing out of, resulting from, or by reason of any act or omission or the operation of the Contractor, its agents, servants or employees while engaged in or about or in connection with the discharge or performance of the services to be done or performed by the Contractor hereunder and shall also hold the City harmless from any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of its obligation under this Agreement.

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

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

a. Contractor has been and will be free from any control or direction by the City over the performance of the services covered by this contract; and

b. Services to be performed by Contractor are outside the normal course and scope of the City's usual business; and

c. Contractor has been independently engaged in performing the services listed herein prior to the date of this agreement.

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

7. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS: It is expressly agreed and understood between the parties entering into this services agreement that the Contractor, acting as an independent agent, shall not receive any sick and annual leave benefits from the City of New Orleans.

8. JURISDICTION: The Contractor hereby consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans, and does hereby formally waive any pleas of jurisdiction on account of the residence elsewhere of the Contractor.

9. DURATION: The services to be provided under the terms of this agreement shall begin on November 15, 2007 and shall end no later than March 31, 2008. It is understood and acknowledged by all signers to this Agreement that work described under these terms is to be accomplished during the time period specified herein. The terms, conditions and duration of this agreement may be modified by an executed, written amendment to this Agreement.

10. EXTENSION: This agreement may be extended at the option of the City, provided that funds are allocated by the Council of the City of New Orleans and the extension of the agreement facilitates the continuity of services provided herein. This agreement may be extended by the City on an annual basis for no longer than five one year periods.

11. CANCELLATION: Either party to this contract may terminate the agreement at any time during the term of the agreement by giving the other party written notice of said intention to terminate at least (30) days before the date of termination.

12. SOLICITATION: The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for him, to solicit or secure the subject contract. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for him, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the subject contract.

13. DISADVANTAGED BUSINESS ENTERPRISE PROGRAM:

a. DBE Program Compliance. Contractor agrees to use its best efforts to fully and completely carry out the applicable requirements of the City's DBE Program in the award and administration of this Agreement, including, without limitation, all reporting requirements and specific DBE participation goals.

Contractor's failure to carry out these requirements, as determined in good faith by the DBE Compliance Officer, shall be deemed a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as set forth in the City's Policy Memorandum for the DBE Program."

b. DBE Compliance Reporting. Contractor agrees to provide quarterly written reports to the DBE Compliance Officer on all expenditures made to achieve compliance with the DBE participation goals for this Agreement. The report shall, at a minimum, include the following:

- i. The name and business address of each DBE involved in the contract;
- ii. A description of the work performed and/or the product or service supplied by each DBE;
- iii. The date and amount of each expenditure made to a DBE; and
- iv. Such other information as may assist the DBE Compliance Officer in determining Contractor's compliance with the DBE Program and the status of any DBE performing any portion of the contract."

c. Access to Books and Records. Contractor agrees to grant DBE Compliance Officer reasonable access to its books and records for purposes of verifying compliance with the DBE Program."

IN WITNESS WHEREOF the parties hereto have made and executed this Agreement effective the day and year first above written:

WITNESSES:

CITY OF NEW ORLEANS

By: C. RAY NAGIN, MAYOR

EC ADVERTISING

By: TRELIS SMITH

Tax ID No.:

APPROVED AS TO FORM AND LEGALITY:

LAW DEPARTMENT, CITY OF NEW ORLEANS