

AGREEMENT FOR PROFESSIONAL SERVICES

BETWEEN

THE COUNCIL OF THE CITY OF NEW ORLEANS

AND

WINDFEEL PROPERTIES

THIS AGREEMENT made this 14th day of September 2012, by and between the Council of the City of New Orleans, herein represented by Stacy Head, Council President (hereinafter referred to as "the City"), and Windfeel Properties, (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, the City Council desires to engage Contractors for the performance of certain professional services as described in Attachment "A" to this Agreement; and

WHEREAS, Windfeel Properties, whose address is 603 Saint Joseph Street, New Orleans, Louisiana 70130 and whose Taxpayer ID Number is 72-1450240, is qualified and desires to perform such services on behalf of the Council;

NOW THEREFORE, the Council of the City of New Orleans and Windfeel Properties, for the consideration and under the terms set forth herein, do agree as follows:

I. SCOPE OF SERVICES

- A. Services to be performed by Contractors.** Contractor shall perform each of the services as set forth in Attachment "A" attached hereto and made a part hereof (collectively, the "Services").
- B. Standard of Care.** Contractor hereby represents and warrants that it has the requisite skills and expertise necessary to perform the Services. Accordingly, Contractor shall be obligated to perform such services with the same degree of care, skill and diligence as would be ordinarily exercised by a competent

practitioner of the same profession in which Contractor is engaged in providing similar services in major United States metropolitan areas under the same or similar circumstances. Contractor acknowledges and agrees that, at Council's option, Contractor shall be obligated to re-perform, at no additional cost to Council, any or all of the Services that fail to satisfy the foregoing standard of care.

- C. Services to be performed by the Council.** Council shall perform each of the following services:
1. Provide administration of the Agreement through Council staff; and
 2. Liaise with other Council offices to facilitate contractor's gathering of information enumerated in Attachment "A", attached hereto and made a part hereof.

II. COMPENSATION:

- A. Rate of Compensation.** Council shall compensate Contractor for the Services set forth in Attachment "B", attached hereto and made a part hereof. Council shall not be liable for any other costs or expenses paid or incurred by Contractor in the performance of the Services, unless specific exception is provided herein.
- B. Truth in Negotiation.** As of the Effective Date of this Agreement, Contractor represents and warrants that the rates charged Council are reasonable and were negotiated at arm's length.
- C. Detailed Monthly Invoices.** As a prerequisite to payment, Contractor shall submit to Council, monthly invoices describing in detail, at a minimum, the services performed and time expended in the performance of such services.
- D. Maximum Compensation; Subject to Appropriation.** Council's obligation to compensate Contractor hereunder shall not at any time exceed the maximum compensation, in the aggregate, of five thousand dollars (\$5,000). Further, all compensation owed to the Contractor pursuant to this Agreement is contingent upon the appropriation and allocation of funds by Council. The amount of this Agreement shall not exceed five thousand dollars (\$5,000).
- E. No Payment for Services Beyond Scope of Agreement.** Except as may be provided by laws governing emergency procedures, officers and employees of

Council are not authorized to request Contractors to provide additional services that would result in the performance of services beyond the scope set forth in Article I, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such additional services and/or expenditures. Council shall not be required to reimburse Contractors for any services that are provided by Contractors that are beyond the scope of this Agreement, in the absence of a duly authorized executed amendment hereto.

F. No Payments in Excess of Maximum Compensation. Officers and employees of Council are not authorized to offer or promise to Contractors additional funding for the contract in excess of the maximum amount of funding set forth above. Additional funding for services provided under this Agreement, unless this Agreement has been amended in accordance with the terms of this Agreement to authorize such increase, and the Department of Finance has certified the availability of such additional funding, is not authorized. Absent the prior duly authorized amendment of this Agreement and the necessary certification of the Department of Finance, Council shall not be required to honor—and will not remit to Contractors—any offered or promised additional funding for any of the Services performed pursuant to this Agreement in excess of the maximum amount set forth above.

III. REPRESENTATIONS AND WARRANTIES

A. Representations and Warranties of Council. Council represents and warrants that:

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

B. Representations and Warranties of Contractors. Contractors represent and warrant that:

1. Contractors have not employed or retained any entity or person, other than a bona fide employee working solely for Contractors, to solicit or secure this Agreement nor have Contractors paid or agreed to pay any entity or person,

other than a bona fide employee, any gift, commission, percentage, brokerage or any other such fee for the purpose of assisting Contractors in securing this Agreement. Contractors acknowledge their understanding that any gifts made or fees paid in contravention of this representation and warranty shall be considered bribery pursuant to Council Code Section 70-509 and shall subject the offender to criminal penalties in addition to suspension from participation in Council contracting for a period of not less than three years. The execution of this Agreement by Contractors' duly authorized representatives shall be deemed a sworn statement by Contractors of their compliance with this representation and warranty, as required by City Code Section 46-51;

2. Contractors, through their duly authorized representatives, have the full power and authority to enter into and execute this Agreement and, as such, this Agreement is legally binding upon and enforceable against Contractors in accordance with its terms;
3. Contractors are not under any obligation to any other party that would be inconsistent with or in conflict with this Agreement or that would prevent, limit or impair in any way their performance of any obligations hereunder;
4. Contractors have the requisite expertise, qualifications, staff, materials and equipment in place and available to enable them to fully perform the Services and Contractors, along with their employees, as required, and all sub-Contractors, if any and as required, possess all necessary permits, licenses, consents, registrations and/or certifications required under federal, state and/or local law to perform the Services;
5. As of the Effective Date of this Agreement, Contractors have no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations or their ability to fulfill their obligations under this Agreement;
6. Contractors are not in breach of any federal, state or local statute or regulation applicable to Contractors or their operations;
7. Contractors' work shall be accurate and free from any material errors. Contractors' duties as set forth in this Agreement shall at no time be in any

way diminished by reason of any approval by Council nor shall Contractors be released from liability by reason of such approval by Council, it being understood that Council, at all times, is ultimately relying upon Contractors' skill and knowledge in performing the Services;

8. Contractors are bonded, if required by law, and fully and adequately insured for the injury of their employees and any others incurring loss or injury as a result of the actions of Contractors or their employees or subcontractors in the performance of their obligations under this Agreement; and
9. Contractors have read and fully understand the terms, covenants and conditions set forth in this Agreement and are executing the same willingly and voluntarily of their own volition.

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

IV. FURTHER PROVISIONS:

The City and the Contractor bind themselves under the Additional Terms and Conditions attached hereto as Attachment "C."

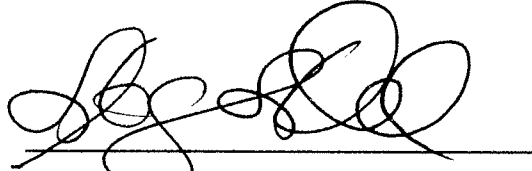
V. DURATION OF AGREEMENT:

- A. Initial Term.** This Agreement shall commence on September 14, 2012, and shall end on October 31, 2012. It is understood and acknowledged by Contractors that the Services described above are expected to be completed within this time period.
- B. Renewal.** At the option of Council, this Agreement may be renewed on an annual basis at Council's sole and unrestrained discretion for no longer than four one-year periods, provided that (A) additional funding, if required, is allocated by Council and incorporated herein by a duly authorized amendment to this

Agreement and (B) the renewal of this Agreement will facilitate the continuity of the services described herein.

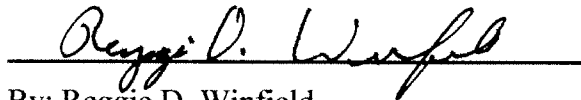
IN WITNESS THEREOF:

**THE COUNCIL OF THE
CITY OF NEW ORLEANS**



Stacy Head
President-City Council

Windfeel Properties



By: Reggie D. Winfield
603 St. Joseph Street
New Orleans, Louisiana 70130
Tax Payer ID #: 72-1450240

FORM AND LEGALITY APPROVED:


Law Department, City of New Orleans

ATTACHMENT “A”

SCOPE OF SERVICES

Contractor agrees to provide the following services:

1. Provide demographic consulting services on behalf of district Councilmember from the Eastern region of New Orleans.
2. Collect and analyze demographic data from New Orleans East, which can be utilized for attracting national retailers and restaurant chains.
3. Determine and evaluate the number of subsidized housing in New Orleans East.

ATTACHMENT "B"

A. Contractors' Rate Schedule is set forth below:

Windfeel Properties

Project manager	\$75
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B. Schedule of invoices: Contractors, in accordance with the provisions of Article III, Section 3 of this Agreement, will submit invoices to the Council monthly.

C. Schedule of payments: City Council agrees to pay duly prepared invoices within sixty (60) days of submission.

D. Subject to the terms of the Agreement, all compensation is subject to the limit of total maximum charges for five thousand dollars, (\$5,000.00).

ATTACHMENT "C"

PROFESSIONAL SERVICES AGREEMENT

BETWEEN
THE CITY OF NEW ORLEANS ("City")
AND
WINDFEEL PROPERTIES ("Contractor")

ADDITIONAL TERMS AND CONDITIONS

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.
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. 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.

10. 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.

11. AUDIT AND OTHER OVERSIGHT: The Contractor understands and will abide by all provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 2-1120, as adopted by City Ordinance No. 22,888 M.C.S., (relative to the operations and authority of the City Inspector General), incorporated herein by reference.

12. CONVICTED FELON PROVISION: The Contractor swears that it complies with Section 2-8 (c) of the Code of the City of New Orleans. No Contractor principal, member, or officer has, within the preceding five years, been convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of public funds, bribery, or falsification or destruction of public records.

13. NON-SOLICITATION PROVISION: The Contractor swears that it 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.

14. INSPECTOR GENERAL PROVISION: It is agreed that the contractor or applicant will abide by all provisions of City Code §2-1120, including but not limited to City Code §2-1120(12), which requires the contractor to provide the Office of Inspector General with documents and information as requested. Failure to comply with such requests shall constitute a material breach of the contract. In signing this contract, the contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

15. ATTORNEY FEE WAIVER: By reference to laws concerning open accounts and otherwise, the Contractor unconditionally waives all rights to recover attorney fees from the City in any enforcement action or claim arising from this contract.