

1 ARTICLE III - PAYMENT

2 A. Monthly Detailed Invoice. The Contractor shall each submit to the City Council
3 Chief of Staff Office a detailed monthly invoice for payment of services rendered. The
4 Contractor's work shall be detailed in increments of one-tenth of an hour. Those invoices are
5 subject to review and approval by the City Council Chief of Staff Office.

6 B. Review and Approval. The Council shall review and approve the invoices
7 submitted by the Contractor.

8 ARTICLE IV - DURATION AND TERMINATION

9 A. Term. The term of this agreement shall be for 1 year, beginning the Effective
10 Date. This Agreement shall automatically terminate with respect to any period of time for which
11 funds are not so encumbered. It is understood and acknowledged by the Contractor that the
12 obligations described under these terms is to be accomplished during the time period specified
13 herein.

14 B. Termination for Convenience. The City may terminate this Agreement at any
15 time during the term of the Agreement by giving the Contractor written notice of the termination
16 at least 30 calendar days before the intended date of termination.

17 C. Termination for Non-Appropriation. This Agreement will terminate
18 immediately in the event of non-appropriation of funds sufficient to maintain this Agreement
19 without the requirement of notice and the City will not be liable for any amounts beyond the
20 funds appropriated and encumbered for this Agreement.

21 D. Termination for Cause. The City may terminate this Agreement immediately for
22 cause by sending written notice to the Contractor. "Cause" includes without limitation any
23 failure to perform any obligation or abide by any condition of this Agreement or the failure of

1 any representation or warranty in this Agreement, including without limitation any failure to
2 comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General.
3 If a termination for cause is subsequently challenged in a court of law and the challenging party
4 prevails, the termination will be deemed to be a termination for convenience effective 30 days
5 from the date of the original written notice of termination for cause was sent to the challenging
6 party; no further notice will be required.

7 ARTICLE V – INSURANCE

8 A. Except as otherwise noted, at all times during this Agreement or the performance
9 of work required by this Agreement, Contractor will maintain the following insurance in full
10 force and effect for the duration of the work under this Agreement:

11 1. Minimum Requirements:

12 i. Commercial General Liability (“CGL”): Insurance Services Office
13 Form CG 00 01 or similar form acceptable to the City, covering CGL,
14 including products and completed operations, property damage, bodily
15 injury and personal & advertising injury with limits no less than
16 \$1,000,000.00 per occurrence. If a general aggregate limit applies,
17 either the general aggregate limit shall apply separately to this
18 project/location or the general aggregate limit shall be at least twice
19 the required occurrence limit.

20 ii. Professional Liability (Errors and Omissions): Contractor with limits
21 no less than \$1,000,000.00 per claim.

22 2. Other Insurance Provisions. The insurance policies are to contain, or be
23 endorsed to contain, the following provisions:

1 i. Additional Insured Status. Contractor will provide, and maintain
2 current, a Certificate of Insurance naming The City of New Orleans,
3 its departments, political subdivisions, officers, officials, employees,
4 and volunteers are to be covered as “Additional Insureds” on the CGL
5 policy with respect to liability arising out of the performance of this
6 agreement. General liability coverage can be provided in the form of
7 an endorsement to Contractor’s insurance (at least as broad as ISO
8 Form CG 20 10 11-85 or both CG 20 10 and CG 20 37 forms if later
9 revisions used). The Certificate of Insurance, as evidence of all
10 required coverage, should name the City of New Orleans Risk
11 Manager as Certificateholder and be delivered via U.S. Mail to 1300
12 Perdido Street, 9E06—City Hall, New Orleans, LA 70112.

13 ii. Primary Coverage. For any claims related to this contract,
14 Contractor’s insurance coverage shall be primary insurance as respects
15 the City, its departments, political subdivisions, officers, officials,
16 employees, and volunteers. Any insurance or self-insurance
17 maintained by the City shall be non-contributing to Contractor’s
18 coverage.

19 iii. Claims Made Policies. If applicable, the retroactive date must be
20 shown and must be before the date of the contract or the beginning of
21 work. If the coverage is canceled or non-renewed, and not replaced
22 with another claims-made policy, Contractor must purchase “extended
23 reporting” coverage for minimum of 5 years after the termination of

1 this agreement

2 iv. Waiver of Subrogation. Contractor and its insurers agree to waive any
3 right of subrogation which any insurer may acquire against the City by
4 virtue of the payment of any loss under insurance required by this
5 contract.

6 v. Notice of Cancellation. Each insurance policy required above shall
7 provide that coverage shall not be canceled, except with prior notice to
8 the City of no less than 60 days.

9 vi. Acceptability of Insurers. Insurance is to be placed with insurers
10 licensed and authorized to do business in the State of Louisiana with a
11 current A.M. Best's rating of no less than A:VII, unless otherwise
12 acceptable to the City.

13 **B.** Contractor will provide the City's Risk Manager (at City of New Orleans Attn:
14 Risk Manager, 1300 Perdido Street, Suite 9E06, New Orleans, LA 70112 – Ref.: Vieux Carre
15 Litigation) within 10 calendar days of the Effective Date and at any other time at the City's
16 request the following documents:

- 17 a. Proof of coverage for each policy of insurance required by this Agreement;
18 b. Copy of the fully executed Agreement;
19 c. Copies of all policies of insurance, including all policies, forms, and
20 endorsements; and
21 d. Statements disclosing any policy aggregate limit.

22 **C.** Without notice from the City, Contractor will:

- 1 a. Replenish any policy aggregate limit that is impaired before commencement
2 of any work or continuation of any work under this Agreement;
- 3 b. Substitute insurance coverage acceptable to the City within 30 calendar days
4 if any insurance company providing any insurance with respect to this
5 Agreement is declared bankrupt, becomes insolvent, loses the right to do
6 business in Louisiana, or ceases to meet the requirements of this Agreement;
7 and
- 8 c. Notify the City's Risk Manager in writing within 48 hours of its receipt of any
9 notice of non-renewal, cancellation, or reduction in coverage or limits
10 affecting any policy of insurance maintained under this Agreement.

11 **ARTICLE VI - INDEMNITY**

12 The Contractor shall indemnify and save harmless the City against any and all claims,
13 demands, suits, judgments of sum of money to any party accruing against the City for loss of life
14 or injury or damage to persons or property growing out of, resulting from, or by reason of any act
15 of omission of the operation of the Contractor, their agents, servants or employees while engaged
16 in or about or in connection with the discharge or performance of the services to be done or
17 performed by the Contractor hereunder, and shall also hold the City harmless from any and all
18 claims and/or liens for labor, services, or materials furnished to the Contractor in connection with
19 the performance of their obligations under this Agreement.

20 **ARTICLE VII - NON-DISCRIMINATION**

21 A. **Equal Employment Opportunity.** In all hiring or employment made possible by,
22 or resulting from this Agreement, the Contractor (1) will not discriminate against any employee

1 or applicant for employment because of race, color, religion, gender, age, physical or mental
2 disability, national origin, sexual orientation, creed, culture, or ancestry, and (2) where
3 applicable, will take affirmative action to ensure that Contractor's employees are treated during
4 employment without regard to their race, color, religion, gender, age, physical or mental
5 disability, national origin, sexual orientation, creed, culture, or ancestry. This requirement shall
6 apply to, but not be limited to the following: employment, upgrading, demotion or transfer,
7 recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of
8 compensation, and selection for training, including apprenticeship. All solicitations or
9 advertisements for employees shall state that all qualified applicants will receive consideration
10 for employment without regard to race, color, religion, gender, age, physical or mental disability,
11 national origin, sexual orientation, creed, culture, or ancestry.

12 **B. Non-Discrimination.** In the performance of this Agreement, the Contractor will
13 not discriminate on the basis, whether in fact or perception, of a person's race, color, creed,
14 religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic
15 partner status, marital status, physical or mental disability, or AIDS- or HIV-status against (1)
16 any employee of the City working with Contractor in any of Contractor's operations within
17 Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges,
18 services, or membership in all business, social, or other establishments or organizations operated
19 by Contractor. Contractor agrees to comply with and abide by all applicable federal, state and
20 local laws relating to non-discrimination, including, without limitation, Title VI of the Civil
21 Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with
22 Disabilities Act of 1990.

23 **C. Incorporation into Subcontracts.** The Contractor will incorporate the terms and

1 conditions of this Article into all subcontracts, by reference or otherwise, and will require all
2 subcontractors to comply with those provisions.

3 D. The City may terminate this Agreement for cause if Contractor fails to comply
4 with any obligation in this Article, which failure is a material breach of this Agreement.

5 **ARTICLE VIII - INDEPENDENT CONTRACTOR**

6 A. **Independent Contractor Status.** The Contractor is an independent contractor and
7 shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not
8 hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent
9 of the City.

10 B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to
11 the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits
12 or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under
13 the provisions of La. R.S. 23:1034, any person employed by Contractor will not be considered an
14 employee of the City for the purpose of Worker's Compensation coverage.

15 C. **Exclusion of Unemployment Compensation Coverage.** The Contractor, as an
16 independent contractor, is being hired by the City under this Agreement for hire and defined in
17 La. R.S. 23:1472(E) and neither Contractor nor anyone employed by them will be considered an
18 employee of the City for the purpose of unemployment compensation coverage, which coverage
19 same being hereby expressly waived and excluded by the Parties, because: (a) Contractor has
20 been and will be free from any control or direction by the City over the performance of the
21 services covered by this Agreement; (b) the services to be performed by Contractor are outside
22 the normal course and scope of the City's usual business; and (c) Contractor has been
23 independently engaged in performing the services required under this Agreement prior to the

1 unless and until executed in writing by the duly authorized representatives of both parties to this
2 Agreement.

3 **B. Assignment.** This Agreement and any part of Contractor’s interest in it are not
4 assignable or transferable without the City’s prior written consent.

5 **C. Audit and Oversight.** The Contractor will abide by all provisions of City Code §
6 2-1120, including but not limited to City Code § 2-1120(12), which requires Contractor to
7 provide the Office of Inspector General with documents and information as requested subject to
8 attorney-client privilege. Failure to comply with such requests shall constitute a material breach
9 of the contract. Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil
10 District Court for purposes of challenging a subpoena.

11 **D. Conflicting Employment.** As set forth above, this Professional Services
12 Agreement retains Contractor to provide legal services to the Council solely in the matter *Vieux*
13 *Carré Commission Foundation v. The City of New Orleans, et al*, No. 17-3823, Civil District
14 Court for the Parish of Orleans and No. 2017-CA-0527 before the Fourth Circuit Court of
15 Appeal, State of Louisiana (the “representation”). In light of the limited scope of this
16 representation, the City will not claim a conflict in any future cases that would prevent Kuchler
17 Polk Weiner from representing its existing clients, ConocoPhillips Company and Anadarko
18 Petroleum Corporation, their subsidiaries and affiliates, and predecessors of same, including
19 without limitation Louisiana Land & Exploration LLC, Burlington Resources Oil & Gas
20 Company LP, Inexo Oil Company, Anadarko E&P Onshore LLC, and Kerr-McGee Oil and Gas
21 Onshore LP, in any future litigation in which the City and those companies may have adverse
22 interests.

23 **E. Construction of Agreement.** Neither party will be deemed to have drafted this

1 Agreement. This Agreement has been reviewed by the Parties and shall be construed and
2 interpreted according to the ordinary meaning of the words used so as to fairly accomplish the
3 purposes and intentions of the Parties. No term of this Agreement shall be construed or resolved
4 in favor of or against the City or Contractors on the basis of which party drafted the uncertain or
5 ambiguous language. The headings and captions of this Agreement are provided for convenience
6 only and are not intended to have effect in the construction or interpretation of this Agreement.
7 Where appropriate, the singular includes the plural and neutral words and words of any gender
8 shall include the neutral and other gender.

9 **F. Convicted Felon Statement.** The Contractor complies with City Code § 2-8(c)
10 and no principal, member, or officer of Contractor has, within the preceding 5 years, been
11 convicted of, or pled guilty to, a felony under state or federal statutes for embezzlement, theft of
12 public funds, bribery, or falsification or destruction of public records.

13 **G. Entire Agreement.** This Agreement, including all incorporated documents,
14 constitutes the final and complete agreement and understanding between the Parties. All prior
15 and contemporaneous agreements and understandings, whether oral or written, are superseded by
16 this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

17 **H. Jurisdiction.** The Contractor consent and yield to the jurisdiction of the State
18 Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction
19 on account of the residence of Contractor.

20 **I. Limitations of the City's Obligations.** The City has no obligations not explicitly
21 set forth in this Agreement or any incorporated documents or expressly imposed by law.

22 **J. Non-Solicitation Statement.** The Contractor has not employed or retained any
23 company or person, other than a bona fide employee working solely for it, to solicit or secure

1 this Agreement. Contractor has not paid or agreed to pay any person, other than a bona fide
2 employee working for it, any fee, commission, percentage, gift, or any other consideration
3 contingent upon or resulting from this Agreement.

4 **K. Non-Waiver.** The failure of either party to insist upon strict compliance with any
5 provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any
6 default or breach of the other party at such time as the initial discovery of the existence of such
7 noncompliance, right, default or breach shall not affect or constitute a waiver of either party's
8 right to insist upon such compliance, exercise such right or seek such remedy with respect to that
9 default or breach or any prior contemporaneous or subsequent default or breach.

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

19 **M. Prohibition on Political Activity.** None of the funds, materials, property, or
20 services provided directly or indirectly under the terms of this Agreement shall be used in the
21 performance of this Agreement for any partisan political activity, or to further the election or
22 defeat of any candidate for public office.

23 **N. Remedies Cumulative.** No remedy set forth in the Agreement or otherwise

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

5 O. Severability. Should a court of competent jurisdiction find any provision of this
6 Agreement to be unenforceable as written, the unenforceable provision should be reformed, if
7 possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is
8 not possible, the unenforceable provision shall be fully severable and the remaining provisions of
9 the Agreement remain in full force and effect and shall be construed and enforced as if the
10 unenforceable provision was never a part the Agreement.

11 P. Survival of Certain Provisions. All representations and warranties and all
12 obligations concerning audits, indemnification, payment, remedies, jurisdiction, and choice of
13 law shall survive the expiration, suspension, or termination of this Agreement and continue in
14 full force and effect.

15 Q. Terms Binding. The terms and conditions of this Agreement are binding on any
16 heirs, successors, transferees, and assigns.

17 ARTICLE X - ELECTRONIC SIGNATURE AND DELIVERY

18 The Parties agree that a manually signed copy of this Agreement and any other
19 document(s) attached to this Agreement delivered by email shall be deemed to have the same
20 legal effect as delivery of an original signed copy of this Agreement. No legally binding
21 obligation shall be created with respect to a party until such party has delivered or caused to be
22 delivered a manually signed copy of this Agreement.

