

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is effective as of this \_\_\_ day of \_\_\_\_\_, 201\_, by and between the MISSISSIPPI CONFERENCE OF BLACK MAYORS, a \_\_\_\_\_, ("MCBM") and \_\_\_\_\_, a \_\_\_\_\_, ("Consultant"), collectively referred to as the "Parties".

WITNESSETH THAT:

WHEREAS, MCBM desires to \_\_\_\_\_ ("work"); and

WHEREAS, MCBM finds that specialized knowledge, skills, and training are necessary to render the services necessary to do the work contemplated under this Agreement; and

WHEREAS, MCBM has determined that the Consultant is qualified by training and experience to render such services; and

WHEREAS, the Consultant desires to provide such services and has submitted a proposal dated \_\_\_\_\_, with the approved proposal attached and incorporated as Exhibit A; and

WHEREAS, add clauses as necessary; and

NOW, THEREFORE, the Parties hereto do mutually agree as follows:

I. SCOPE OF SERVICES AND TERMINATION DATE

A. Project Description

B. Services

The services to be completed under this Agreement ("services") are:

C. Schedule and Completion Date

II. WORK CHANGES

A. MCBM reserves the right to order changes in the work to be performed under this Agreement by altering, adding to or deducting from the work. All such changes shall be incorporated in written change orders executed by the Consultant and MCBM. Such change orders shall specify the changes ordered and any necessary adjustment of compensation and completion time. If the parties cannot reach an agreement on the terms for performing the changed work within a

reasonable time to avoid delay or other unfavorable impacts as determined by MCBM in its sole discretion, MCBM shall have the right to determine reasonable terms and the Consultant shall proceed with the changed work.

B. Any work added to the scope of this Agreement by a change order shall be executed under all the applicable conditions of this Agreement. No claim for additional compensation or extension of time shall be recognized unless contained in a change order duly executed on behalf of MCBM and the Consultant.

C. The Executive Director has authority to execute without further action of the MCBM Board, any number of change orders so long as their total effect does not materially alter the terms of this Agreement or increase the total amount to be paid under this Agreement, as set forth in Section 3.B below. Any such change orders materially altering the terms of this Agreement or increasing the total amount to be paid under this Agreement must be approved by resolution of the MCBM Board.

### III COMPENSATION AND METHOD OF PAYMENT

A. MCBM agrees to pay the Consultant for the services performed and costs incurred by Consultant upon certification by MCBM that the services were actually performed and costs actually incurred in accordance with the Agreement. Compensation for services performed and reimbursement for costs incurred shall be paid to the Consultant upon receipt and approval by MCBM of invoices setting forth in detail the services performed and costs incurred. MCBM shall pay the Consultant within forty-five (45) days after approval of the invoice by MCBM staff.

B. The total amount paid under this Agreement as compensation for services performed and reimbursement for costs incurred shall not, in any case, exceed [dollar amount] except as outlined in Section 2.C above. The compensation for services performed shall be computed based upon [hourly rate or other basis]

Reimbursement for costs incurred shall be limited as follows. Long distance telephone and telecommunications, facsimile transmission, normal postage and express mail charges, photocopying and microcomputer time shall be at cost. Supplies and outside services, transportation, lodging, meals and authorized subcontracts shall be at cost plus no more than a 10% administrative burden. Automobile mileage shall be no more than the current deductible rate set by the Internal Revenue Service.

### IV COVENANTS OF CONSULTANT

#### A. Assignment of Agreement

The Consultant covenants and agrees not to assign or transfer any interest in, nor delegate any duties of this Agreement, without the prior express written consent of

MCBM. As to any approved subcontractors, the Consultant shall be solely responsible for reimbursing them and MCBM shall have no obligation to them.

B. Responsibility of Consultant and Indemnification of MCBM

The Consultant covenants and agrees to take and assume all responsibility for the services rendered in connection with this Agreement. The Consultant shall bear all losses and damages directly or indirectly resulting to it or MCBM on account of the performance or character of the services rendered pursuant to this Agreement. The Consultant shall assume the defense and indemnify and save harmless MCBM and its members, officers, agents, employees and volunteers from all claims, loss, damage, injury, proceedings and liability of every kind, nature and description, directly or indirectly, whether actual, alleged or threatened, arising from the performance of this Agreement, save and except the sole negligence or willful misconduct of MCBM and from any and all claims, loss, damage, injury, and liability, howsoever the same may be caused, resulting directly or indirectly from the nature of the services covered by the Agreement, save and except the sole negligence or willful misconduct of MCBM. This obligation to indemnify and defend MCBM, its members, officers, agents, employees and volunteers shall survive termination of this Agreement.

C. Independent Contractor

The Consultant hereby covenants and declares that it is engaged in an independent business and agrees to perform the services as an independent contractor and not as the agent or employee of MCBM. The Consultant agrees to be solely responsible for its own matters relating to the time and place the services are performed; the instrumentalities, tools, supplies and/or materials necessary to complete the services; hiring of consultants, agents or employees to complete the services; and the payment of employees, including compliance with Social Security, withholding and all other regulations governing such matters. The Consultant agrees to be solely responsible for its own acts and those of its subordinates and employees during the life of this Agreement.

D. Insurance

1. Requirements: The Consultant shall have and maintain in full force and effect for the duration of this Agreement, insurance insuring against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work by the Consultant, its agents, representatives, employees or subcontractors. All policies shall be subject to approval by MCBM General Counsel to form and content. These requirements are subject to amendment or waiver if so approved in writing by the Executive Director.

2. Minimum Limits of Insurance: Consultant shall maintain limits no less than:

a. Comprehensive General Liability of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

b. Comprehensive Automobile Liability (owned, non-owned, hired) of \$1,000,000 combined single limit per occurrence for bodily and personal injury, sickness, disease or death, injury to or destruction of property, including loss of use resulting therefrom.

c. Professional Liability of \$1,000,000 limit for claims arising out of professional services caused by the Consultant's errors, commissions, or negligent acts.

d. Workers' Compensation limits as required by the Labor Code of the State of Mississippi and Employers Liability limits of \$1,000,000 per accident.

Deductibles and Self-Insured Retentions: Any deductibles or self-insured retentions must be declared to and approved by MCBM.

Other Insurance Provisions: The policy is to contain, or be endorsed to contain, the following provisions:

a. General Liability and Automobile Liability Coverage.

i. MCBM, its officials, employees and volunteers are to be covered as insureds as respects: liability arising out of activities performed by or on behalf of the Consultant; products and completed operations of the Consultant; premises owned, leased, or used by the Consultant; automobiles owned, leased, hired, or borrowed by the Consultant. The coverage shall contain no special limitations on the scope of protection afforded to MCBM, its officials, employees, or volunteers.

ii. The Consultant's insurance coverage shall be primary noncontributing insurance as respects to any other insurance or self-insurance available to MCBM, its officials, employees or volunteers. Any insurance or self-insurance maintained by MCBM, its officials, employees or volunteers shall be excess of the Consultant's insurance and shall not contribute with it.

iii. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to MCBM, its officials, employees or volunteers.

iv. Coverage shall state that the Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

Coverage shall be provided on a "pay on behalf" basis, with defense costs payable in addition to policy limits. There shall be no cross liability exclusion.

v. The insurer agrees to waive all rights of subrogation against MCBM, its officials, employees and volunteer for losses arising from work performed by the Consultant for MCBM.

vi. All endorsements to policies shall be executed by an authorized representative of the insurer.

b. Workers' Compensation Coverage

The insurer will agree to waive all rights of subrogation against MCBM, its officials, employees, and volunteers for losses arising from work performed by the Consultant for MCBM.

c. All Coverages

i. Each insurance policy required by this clause shall be endorsed to state that coverage shall not be suspended, voided, canceled, reduced in coverage or in limits except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to MCBM.

Policies shall have concurrent starting and ending dates.

5. Acceptability of Insurers: Insurance is to be placed with insurers with an A.M. Bests' rating of no less than A:VII.

6. Verification of Coverage: Consultant shall furnish MCBM with certificates of insurance evidencing coverage required by this clause prior to the start of work. The certificates of insurance for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. The Certificate of Insurance shall be on a form utilized by Consultant's insurer in its normal course of business and shall be received and approved by MCBM prior to execution of this Agreement by MCBM. MCBM reserves the right to require complete, certified copies of all required insurance policies, at any time. The Consultant shall provide proof that any expiring coverage has been renewed or replaced at least two (2) weeks prior to the expiration of the coverage.

7. Subcontractors: Consultant shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to all of the requirements stated in this Agreement, including but not limited to naming the parties as additional insureds.

E. Records, Reports and Audits

1. Records

a. Records shall be established and maintained by the Consultant in accordance with requirements prescribed by MCBM with respect to all matters covered by this Agreement. Except as otherwise authorized, such records shall be maintained for a period of three years from the date that final payment is made under this Agreement. Furthermore, records that are the subject of audit findings shall be retained for three years or until such audit findings have been resolved, whichever is later.

b. All costs shall be supported by properly executed payrolls, time records, invoices, contracts, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this Agreement shall be clearly identified and readily accessible.

2. Reports and Information: Upon request, the Consultant shall furnish to MCBM any and all statements, records, reports, data and information related to matters covered by this Agreement in the form requested by MCBM.

3. Audits and Inspections: At any time during normal business hours and as often as MCBM may deem necessary, there shall be made available to MCBM for examination all records with respect to all matters covered by this Agreement. The Consultant will permit MCBM to audit, examine, and make excerpts or transcripts from such records, and to audit all contracts, invoices, materials, payrolls, records of personnel, conditions of employment and or data relating to all matters covered by this Agreement.

#### F. Conflicts of Interest

The Consultant covenants and declares that, other than this Agreement, it has no holdings or interests within the Mississippi Conference of Black Mayors, nor business holdings or agreements with any official, employee or other representative of MCBM. For the duration of this Agreement, in the event the Consultant or its principals, agents or employees acquire such a holding, interest or agreement within the Mississippi Conference of Black Mayors or with any official, employee or representative of MCBM in the future, the Consultant will immediately notify MCBM of such holding, interest or agreement in writing.

#### G. Confidentiality

The Consultant agrees that such reports, information, opinions or conclusions shall not be made available to or discussed with any individual or organization, including the news media, without prior written approval of MCBM. The Consultant shall exercise reasonable precautions to prevent the unauthorized disclosure and use of MCBM information whether deemed confidential or not.

#### H. Discrimination Prohibited

The Consultant covenants and agrees that in performing the services required under this Agreement, the Consultant shall not discriminate against any person on the basis of race, color, religion, sex, sexual orientation, national origin or ancestry, age or disability.

#### I. Licenses, Certifications and Permits

The Consultant covenants and declares that it has obtained all diplomas, certificates, licenses, permits or the like required of the Consultant by any and all national, state, regional, county, city or local boards, agencies, commissions, committees or other regulatory bodies in order to perform the services contracted for under this Agreement. All work performed by Consultant under this Agreement shall be in accordance with applicable legal requirements and shall meet the standard of quality ordinarily expected of competent professionals.

#### J. Key Personnel

All of the individuals identified in Exhibit A are necessary for the successful prosecution of the work due to their unique expertise and depth and breadth of experience. There shall be no change in Consultant's Project Manager or members of the project team, as listed in Exhibit A, without written approval of MCBM. Consultant recognizes that the composition of this team was instrumental in MCBM's decision to award the work to Consultant and that compelling reasons for substituting these individuals must be demonstrated for MCBM's consent to be granted. Any substitutes shall be persons of comparable or superior expertise and experience. Failure to comply with the provisions of this section shall constitute a material breach of Consultant's obligations under this Agreement and shall be grounds for termination.

#### K. Authority to Contract

The Consultant covenants and declares that it has obtained all necessary approvals of its board of directors, stockholders, general partners, limited partners or similar authorities to simultaneously execute and bind Consultant to the terms of this Agreement, if applicable.

#### L. Ownership of Work

All reports, designs, drawings, plans, specifications, schedules, work product and other materials prepared or in the process of being prepared for the services to be performed by the Consultant ("materials") shall be an are the property of MCBM and MCBM shall be entitled to full access and copies of all such materials. Any such materials remaining in the hands of the Consultant or subcontractor upon completion or termination of the work shall be delivered

immediately to MCBM. The Consultant assumes all risk of loss, damage or destruction of or to such materials. If any materials are lost, damaged or destroyed before final delivery to MCBM, the Consultant shall replace them at its own expense. Any and all copyrightable subject matter in all materials is hereby assigned to MCBM and the Consultant agrees to execute any additional documents that may be necessary to evidence such assignment.

## V. TERMINATION

A. MCBM shall have the right to terminate this Agreement for any reason whatsoever by providing written notice thereof at least five (5) calendar days in advance of the termination date.

B. All termination notice periods triggered pursuant to written notice shall begin to run from the date of the United States Postal Service postmark.

C. Upon termination, MCBM shall provide for payment to the Consultant for services rendered and expenses incurred prior to the termination date.

D. Upon receipt of a termination notice the Consultant shall: (1) promptly discontinue all services affected, unless the notice directs otherwise; and (2) promptly deliver to MCBM all data, drawings, reports, summaries, and such other information and materials as may have been generated or used by the Consultant in performing this Agreement, whether completed or in process, in the form specified by MCBM.

E. The rights and remedies of MCBM and the Consultant provided in this Section are in addition to any other rights and remedies provided under this Agreement or at law or in equity.

## VI. NO PERSONAL LIABILITY

No member, official or employee of MCBM shall be personally liable to the Consultant or any successor in interest in the event of any default or breach by MCBM or for any amount which may become due to the Consultant or successor or on any obligation under the terms of this Agreement.

## VII. ENTIRE AGREEMENT

This Agreement constitutes the complete agreement between the parties and supersedes any and all other agreements, either oral or in writing, between the parties with respect to the subject matter of this Agreement. No other agreement, statement or promise relating to the subject matter of this Agreement not contained in this Agreement shall be valid or binding. This Agreement may be modified or amended only by a written document signed by representatives of both parties with appropriate authorization.

## VIII. SUCCESSORS AND ASSIGNS

Subject to the provision of this Agreement regarding assignment, this Agreement shall be binding on the heirs, executors, administrators, successors and assigns of the respective parties.

## IX. APPLICABLE LAW AND ATTORNEY'S FEES

If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement, the rules, regulations, statutes and laws of the State of Mississippi will control. The prevailing party shall be entitled to reasonable attorney's fees in addition to any other relief to which said party may be entitled.

## X SEVERABILITY

The caption or headnote on articles or sections of this Agreement are intended for convenience and reference purposes only and in no way define, limit or describe the scope or intent thereof, or of this Agreement nor in any way affect this Agreement. Should any article(s) or section(s), or any part thereof, later be deemed unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain in full force and effect to the extent possible.

## XI. FEDERAL CROSSCUTTING CONTRACTING REQUIREMENTS

The services covered under this agreement will be paid from grant funds received by MCBM from the U.S. Environmental Protection Agency. MCBM and the Consultant shall adhere to the EPA contracting requirements found in Exhibit B.

## XII NOTICES

### Communications Relating to Daily Activities

All communications relating to the day-to-day activities of the work shall be exchanged between \_\_\_\_\_ for MCBM and \_\_\_\_\_ for the Consultant.

### Official Notices

All other notices, writings or correspondence as required by this Agreement shall be directed to MCBM and the Consultant, respectively, as follows:

MCBM

CONSULTANT

Silbrina Wright  
Executive Director  
Mississippi Conference of Black Mayors

P.O. Box 255  
Jackson, MS 39205  
swright@mcbm.ms  
601-979-6361

XIII. WAIVER OF AGREEMENT

MCBM's failure to enforce any provision of this Agreement or the waiver in a particular instance shall not be construed as a general waiver of any future breach or default.

IN WITNESS WHEREOF MCBM and the Consultant have executed this Agreement effective as of the date the Executive Director executes this Agreement on behalf of MCBM.

MISSISSIPPI CONFERENCE OF BLACK MAYORS

Dated: \_\_\_\_\_, 201\_

\_\_\_\_\_  
SILBRINA WRIGHT, EXECUTIVE DIRECTOR

CONSULTANT

Dated: \_\_\_\_\_, 201\_

By: \_\_\_\_\_

Its: \_\_\_\_\_