

K15-1091

**PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
OFFICE OF INSPECTOR GENERAL
AND
JON LUCENIUS D/B/A iSTORM RESEARCH
RE: CYBERSECURITY CONSULTING**

THIS AGREEMENT (the "Agreement") is entered into this 30 day of SEPT, 2015, but shall be effective as of September 2, 2015 ("effective date"), by and between the City of New Orleans Office of Inspector General ("OIG"), represented by E.R. Quatrevaux, Inspector General, and Mitchell J. Landrieu, Mayor (the "City"), and Jon Lucenius d/b/a iStorm Research, a sole proprietorship ("Contractor").

NOW THEREFORE, the City and the Contractor agree as follows:

I. CONTRACTOR'S OBLIGATIONS.

A. **Services.** The Contractor will provide emergency cybersecurity consulting services.

Contractor will also:

A.1. Submit complete and accurate invoices, maintain records, submit to audits and inspections, and perform all other obligations of the Contractor set forth in this Agreement;

A.2. Promptly correct any of its own errors or omissions and any work deemed unsatisfactory or unacceptable by the OIG, at no additional compensation;

A.3. Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;

A.4. Cooperate with the OIG and any person performing work for the OIG.

OIG officers and employees are not authorized to request or instruct the Contractor to perform any work beyond the scope or duration of this Agreement in the absence of an executed amendment to this Agreement.

B. **Compliance with Laws.** The Contractor, and any person performing work on its behalf, will comply with all applicable federal, state, and local laws and ordinances.

C. Invoices.

A.1. The Contractor will submit invoices for work performed under this Agreement to the OIG no later than ten (10) calendar days following the completion of the Work Product covered by the invoice. Untimely invoices may result in delayed payment for which the City is not liable. At a minimum, each invoice must include the following information:

- A.1.a. Description of the work completed by all key personnel, total amount invoiced to date;
- A.1.b. An authorized signature under penalty of perjury attesting to the validity and accuracy of the invoice.

A.2. Invoices will be processed upon OIG's written acknowledgement of receipt of the satisfactory work products.

A.3. The OIG has the sole right to approve or require changes to the form of the invoice. The City or OIG may require additional supporting documentation to be submitted with invoices.

A.4. The OIG retains the right to cancel this project at any time if it determines that the work being provided by the contractor is not of adequate quality.

D. Records and Reporting.

1. The Contractor will maintain all documents (in any form, whether written or electronic) relating or pertaining to this Agreement, including without limitation all ledgers, books, invoices, receipts, vouchers, reports, correspondence, lists, notes, and memoranda, for the duration of this contract or agreement. All documents relating to this Agreement will be provided to OIG at the completion of this Agreement.

2. The Contractor will report regularly to the OIG on the status of the project and will respond within one (1) business day when contacted by the project manager. The OIG designates Nadiene Van Dyke as its primary point of contact for all dealings with Contractor related to carrying out this Agreement. All Contractor communications should be directed to Ms. Van Dyke.

E. Audit and Inspection.

1. The Contractor will submit to any City audit, inspection, and review and, at the City's request, will make available all documents relating or pertaining to this Agreement maintained by or under the control of the Contractor, its employees, agents, assigns, successors and subcontractors, during normal business hours at the Contractor's office or place of business in Louisiana. If no such location is available, the Contractor will make the documents available at a time and location that is convenient for the City.

2. The Contractor 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. The Contractor agrees that it is subject to the jurisdiction of the Orleans Parish Civil District Court for purposes of challenging a subpoena.

F. Indemnity.

1. The Contractor will indemnify, defend, and hold harmless the City, its agents, employees, officials, insurers, self-insurance funds, and assigns (collectively, the "Indemnified Parties") from and against any and all claims, demands, suits, and judgments of sums of money accruing against the Released Parties: for all liability, costs and expenses arising directly or indirectly out of any act or omission of the Contractor, its agents, subcontractors, or employees or otherwise arising out of the performance of the services pursuant to this Agreement.

2. The Contractor's indemnity does not extend to any loss arising from the gross negligence or willful misconduct of any of the Indemnified Parties, provided that neither the Contractor nor any of its agents, subcontractors, or employees contributed to such gross negligence or willful misconduct.

3. The Contractor has an immediate and independent obligation to, at the City's option: (a) defend the City from or (b) reimburse the City for its costs incurred in the defense of any claim that actually or potentially falls within this indemnity, even if: (a) the allegations are or may be groundless, false, or fraudulent; or (b) the Contractor is ultimately absolved from liability.

II. REPRESENTATIONS AND WARRANTIES.

A. The Contractor represents and warrants to the City that:

- i. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;
- ii. The Contractor has the requisite expertise, qualifications, staff, materials, equipment, licenses, permits, consents, registrations, and certifications in place and available for the performance of all work required under this Agreement;
- iii. The Contractor is bonded, if required by law, and fully and adequately insured for any injury or loss to its employees and any other person resulting from the actions or omissions of the Contractor, its employees, or its subcontractors in the performance of this Agreement;
- iv. The Contractor is not under any obligation to any other person that is inconsistent or in conflict with this Agreement or that could prevent, limit, or impair the Contractor's performance of this Agreement;
- v. The Contractor has no knowledge of any facts that could prevent, limit, or impair the performance of this Agreement, except as otherwise disclosed to the City/OIG and incorporated into this Agreement;
- vi. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;
- vii. Any rate of compensation established for the performance of services under this Agreement are no higher than those charged to the Contractor's

most favored customer for the same or substantially similar services;

- viii. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and
- ix. All of the representations and warranties in this Article and elsewhere in this Agreement are true and correct as of the date of this Agreement by the Contractor and the execution of this Agreement by the Contractor's representative constitutes a sworn statement, under penalty of perjury, by the Contractor as to the truth of the foregoing representations and warranties.

B. Convicted Felon Statement. The Contractor complies with City Code § 2-8(c) and no principal, member, or officer of the Contractor 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.

C. Non-Solicitation Statement. The Contractor has not employed or retained any company or person, other than a bona fide employee working solely for it, to solicit or secure this Agreement. The Contractor has not paid or agreed to pay any person, other than a bona fide employee working for it, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from this Agreement.

D. Employee Verification. The Contractor swears that it has no employees in the State of Louisiana. The Contractor will provide immediate notice to the City if it hires any employees State of Louisiana. Contractor will provide a sworn affidavit attesting to the above provisions if requested by the City. The City may terminate this Agreement for cause if the Contractor fails to provide such the requested affidavit or violates any provision of this paragraph.

E. The Contractor acknowledges that the City/OIG is relying on these representations and warranties and Contractor's expertise, skill, and knowledge and that the Contractor's obligations and liabilities will not be diminished by reason of any approval by the City/OIG.

III. **THE CITY'S OBLIGATIONS.**

A. Administration. The City will:

A.i. Administer this Agreement through the Office of Inspector General (OIG), which will assign or authorize work under this Agreement;

A.ii. Provide the Contractor any documents deemed necessary for the Contractor's performance of any work required under this Agreement;

A.iii. Provide the Contractor with project oversight, including developing evaluation objectives, reviewing and approving the Contractor's evaluation plan, determining milestones, and consulting with the Contractor on the final report; and

A.iv. Provide access to Department personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. **Payment.** The City will make payments to the Contractor at the rate of compensation established in this Agreement within thirty (30) days of the receipt of the Contractor's certified invoices, except:

B.i. The City's obligation to make any payment is contingent upon the Contractor's: (a) submission of a complete and accurate invoice, including all required information and documents; (b) satisfactory performance of the services and conditions required by this Agreement, including, without limitation, satisfactory deliverables, reports, affidavits, and insurance;

B.ii. Unless specifically authorized by a validly executed amendment, the City/OIG is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that:

B.ii.1. Exceed the maximum aggregate amount payable established by this Agreement;

B.ii.2. Are beyond the scope or duration of this Agreement;

B.ii.3. Arise from or relate to the any change order within the scope of the Agreement;

B.ii.4. Arise from or relate to the correction of errors or omissions of the Contractor; or

B.ii.5. The City is not expressly obligated to pay under this Agreement.

B.iii. The OIG, in its discretion, may withhold payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute.

B.iv. If this Agreement is terminated for any reason, the City will pay the Contractor only for the work requested by the OIG and satisfactorily performed by the Contractor through the date of termination, except as otherwise provided in this Agreement.

IV. **COMPENSATION.**

A. **Rate of Compensation.**

The maximum aggregate amount payable by the City under this Agreement is \$15,000 (FIFTEEN THOUSAND DOLLARS).

This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the OIG in accordance with the terms and conditions of this Agreement. The stated compensation is inclusive, and includes no additional amounts for the Contractor's costs, including without limitation all expenses relating to overhead, administration, subcontractors, employees, bid preparation, bonds, scheduling, invoicing, insurance, record retention, reporting, inspections, audits, the correction of errors and omissions, or minor changes within the scope of this Agreement.

V. DURATION AND TERMINATION.

A. **Term.** The term of this Agreement is one (1) year from the effective date of the Agreement. The Contractor will be released from this Agreement upon satisfactory completion of the project. The OIG will provide written acknowledgement that releases the Contractor from this Agreement.

B. **Termination for Convenience.** The OIG may terminate this Agreement at any time during the term of the Agreement by giving the Contractor written notice of the termination at least thirty (30) calendar days before the intended date of termination.

C. **Termination for Non-Appropriation.** This Agreement will terminate immediately in the event of non-appropriation of funds sufficient to maintain this Agreement without the requirement of notice.

D. **Termination for Cause.** The OIG may terminate this Agreement immediately for cause by sending written notice to the Contractor. "Cause" includes without limitation any failure to perform any obligation or abide by any condition of this Agreement or the failure of any representation or warranty in this Agreement, including any failure to comply with any provision of City Code § 2-1120 or requests of the Office of Inspector General.

E. **Suspension.** The OIG may suspend this Agreement at any time and for any reason by giving two (2) business day's written notice to the Contractor. The Contractor will resume work upon five (5) business day's written notice from the OIG.

VI. NON-DISCRIMINATION.

A. **Equal Employment Opportunity.** In all hiring or employment made possible by, or resulting from this Agreement, the Contractor (1) will not be discriminate 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, will take affirmative action to ensure that the Contractor's 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.

B. **Non-Discrimination.** In the performance of this Agreement, the Contractor will not discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex (gender), sexual orientation, gender identity, domestic partner status, marital status, physical or

mental disability, or AIDS- or HIV-status against (1) any employee of the City working with the Contractor in any of Contractor's operations within Orleans Parish or (2) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by the Contractor. The Contractor agrees to comply with and abide by all applicable federal, state and local laws relating to non-discrimination, including, without limitation, Title VI of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973, and the Americans with Disabilities Act of 1990.

- C. The OIG may terminate this Agreement for cause if the Contractor fails to comply with any obligation in this Article, which failure is a material breach of this Agreement.

VII. **INDEPENDENT CONTRACTOR.**

- A. **Independent Contractor Status.** The Contractor is an independent contractor and shall not be deemed an employee, servant, agent, partner, or joint venture of the City and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the City.
- B. **Exclusion of Worker's Compensation Coverage.** The City will not be liable to the Contractor, as an independent contractor as defined in La. R.S. 23:1021(6), for any benefits or coverage as provided by the Workmen's Compensation Law of the State of Louisiana. Under the provisions of La. R.S. 23:1034, any person employed by the Contractor will not be considered an employee of the City for the purpose of Worker's Compensation coverage.
- C. **Exclusion of Unemployment Compensation Coverage.** The Contractor, as an independent contractor, is being hired by the City under this Agreement for hire and defined in La. R.S. 23:1472(E) and neither the Contractor nor anyone employed by it will be considered an employee of the City for the purpose of unemployment compensation coverage, which coverage same being hereby expressly waived and excluded by the parties, because: (a) the 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; (b) the services to be performed by the Contractor are outside the normal course and scope of the City's usual business; and (c) the Contractor has been independently engaged in performing the services required under this Agreement prior to the date of this Agreement.
- D. **Waiver of Benefits.** The Contractor, as an independent contractor, will not receive from the City any sick and annual leave benefits, medical insurance, life insurance, paid vacations, paid holidays, sick leave, pension, or Social Security for any services rendered to the City under this Agreement.

VIII. **NOTICE.**

A. **Notice Requirements.** Any notice, demand, communication or request required or permitted under this Agreement (except for any routine communications) shall be in writing and delivered in person or by certified mail, return receipt requested, as follows:

a.i. To the OIG:

Office of Inspector General, General Counsel
City of New Orleans
525 St. Charles Avenue
New Orleans, LA 70130

a.ii. To the Contractor:

Attn: Jon Lucenius
iStorm Research
2402 Rambler Road
Wilmington, DE 19810

All changes of address or recipient(s) must be provided to each party in a writing that specifically identifies this Agreement. Nothing contained in this Article shall be construed to restrict the transmission of routine communications between representatives of OIG and the Contractor.

B. **Receipt of Notices.** Notices are effective upon receipt at the address specified above. Any notice sent but not received by or delivered to the intended recipient because of any refusal or evasion of delivery shall be deemed effective on the date of the first attempted delivery.

IX. **ADDITIONAL PROVISIONS.**

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

B. **Ownership Interest Disclosure.** The Contractor will provide a sworn affidavit listing all natural or artificial persons with an ownership interest in the Contractor and stating that no other person holds an ownership interest in the Contractor via a counter letter. For the purposes of this provision, an "ownership interest" shall not be deemed to include ownership of stock in a publicly traded corporation or ownership of an interest in a mutual fund or trust that holds an interest in a publicly traded corporation. If the Contractor fails to submit the required affidavits, the OIG may, after 30 days' written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payments until such the required affidavits are submitted.

C. **Prohibition of Financial Interest in Agreement.** No elected official or employee of the City shall have a financial interest, direct or indirect, in this Agreement. For purposes of this provision, a financial interest held by the spouse, child, or parent

of any elected official or employee of the City shall be deemed to be a financial interest of such elected official or employee of the City. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the City and shall entitle the City to recover, in addition to any other rights and remedies available to the City, all monies paid by the City to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

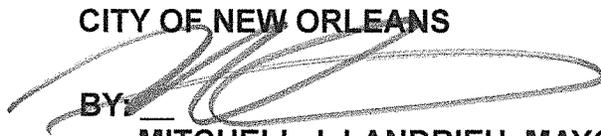
- D. **Prohibition on Political Activity.** None of the funds, materials, property, or services provided directly or indirectly under the terms of this Agreement shall be used in the performance of this Agreement for any partisan political activity, or to further the election or defeat of any candidate for public office.
- E. **Conflicting Employment.** To ensure that the Contractor's efforts do not conflict with the City's interests, and in recognition of the Contractor's obligations to the OIG, the Contractor will decline any offer of other employment if its performance of this Agreement is likely to be adversely affected by the acceptance of the other employment. The Contractor will promptly notify the OIG in writing of its intention to accept the other employment and will disclose all possible effects of the other employment on the Contractor's performance of this Agreement. The OIG will make the final determination whether the Contractor may accept the other employment.
- F. **Non-Exclusivity.** This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the OIG's approval of any potential conflicts with the performance of this Agreement and the City may engage the services of others for the provision of some or all of the work to be performed under this Agreement.
- G. **Assignment.** This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the OIG's prior written consent.
- H. **Terms Binding.** The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.
- I. **Jurisdiction.** The Contractor consents and yields to the jurisdiction of the State Civil Courts of the Parish of Orleans and formally waives any pleas or exceptions of jurisdiction on account of the residence of the Contractor.
- J. **Choice of Law.** This Agreement will be construed and enforced in accordance with the laws of the State of Louisiana without regard to its conflict of laws provisions.
- K. **Construction of Agreement.** Neither party will be deemed to have drafted this Agreement. This Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to fairly accomplish the purposes and intentions of all parties. No term of this Agreement shall be construed or resolved in favor of or against the City or the Contractor on the basis of which party drafted the uncertain or ambiguous language. The headings and captions of this Agreement are provided for convenience only and are not intended to have effect in the construction or

interpretation of this Agreement. Where appropriate, the singular includes the plural and neutral words and words of any gender shall include the neutral and other gender.

- L. **Severability**. Should a court of competent jurisdiction find any provision of this Agreement to be unenforceable as written, the unenforceable provision should be reformed, if possible, so that it is enforceable to the maximum extent permitted by law or, if reformation is not possible, the unenforceable provision shall be fully severable and the remaining provisions of the Agreement remain in full force and effect and shall be construed and enforced as if the unenforceable provision was never a part the Agreement.
- M. **Survival of Certain Provisions**. All representations and warranties and all obligations concerning record retention, inspections, audits, ownership, indemnification, payment, remedies, jurisdiction, and choice of law shall survive the expiration, suspension, or termination of this Agreement and continue in full force and effect.
- N. **No Third Party Beneficiaries**. This Agreement is entered into for the exclusive benefit of the parties and the parties expressly disclaim any intent to benefit anyone not a party to this Agreement.
- O. **Amendment**. No amendment of or modification to this Agreement shall be valid unless and until executed in writing by the duly authorized representatives of both parties to this Agreement.
- P. **Non-Waiver**. The failure of either party to insist upon strict compliance with any provision of this Agreement, to enforce any right or to seek any remedy upon discovery of any default or breach of the other party at such time as the initial discovery of the existence of such noncompliance, right, default or breach shall not affect or constitute a waiver of either party's right to insist upon such compliance, exercise such right or seek such remedy with respect to that default or breach or any prior contemporaneous or subsequent default or breach.
- Q. **Entire Agreement**. This Agreement, including all incorporated documents, constitutes the final and complete agreement and understanding between the parties. All prior and contemporaneous agreements and understandings, whether oral or written, are superseded by this Agreement and are without effect to vary or alter any terms or conditions of this Agreement.

IN WITNESS WHEREOF, the City and the Contractor execute this Agreement.

CITY OF NEW ORLEANS

BY: 

MITCHELL J. LANDRIEU, MAYOR

10/20/15

**FORM AND LEGALITY APPROVED:
Law Department**

By:

Printed Name:

Jon Lucenius

JON LUCENIUS

BY: 

JON LUCENIUS D/B/A iSTORM RESEARCH

REDACTED