



St. Bernard Parish Council

8201 West Judge Perez Drive Chalmette, Louisiana, 70043
(504) 278-4228 Fax (504) 278-4209
www.sbp.org

#17

EXTRACT OF THE OFFICIAL PROCEEDINGS OF THE COUNCIL OF THE PARISH OF ST. BERNARD, STATE OF LOUISIANA, TAKEN AT A REGULAR MEETING HELD IN THE COUNCIL CHAMBERS OF THE ST. BERNARD PARISH GOVERNMENT COMPLEX, 8201 WEST JUDGE PEREZ DRIVE, CHALMETTE, LOUISIANA ON TUESDAY, JUNE 5, 2018 AT SEVEN O'CLOCK P.M.

On motion of Mr. Lewis, seconded by Mr. McCloskey, it was moved to adopt the following resolution:

RESOLUTION SBPC #1848-06-18

A RESOLUTION AUTHORIZING THE PARISH PRESIDENT TO ENTER INTO AN AGREEMENT WITH GAFFNEY & GAFFNEY, A LAW CORPORATION, CUSIMANO LAW FIRM, BERNARD PLAIA, AND LYNN WILTZ REGARDING PROFESSIONAL SERVICES FOR A CONSULTANT TO PROVIDE FEMA DIRECT AND INDIRECT MANAGEMENT SERVICES CONCERNING STORM DRAIN REPAIR PROJECT.

WHEREAS, the St. Bernard Parish Government has a need for certain professional services and to engage a Consultant to provide FEMA Direct and Indirect Management Services (also known as Direct Administrative Services or Regulatory Compliance) including if appropriate the filing of any appeals and or/arbitrations regarding the FEMA Public Assistance program concerning the Storm Drain Repair Project;

WHEREAS, Consultant, whose office is located at 3015 19th Street, Metairie, Louisiana 70002 is a duly qualified Consultant and desires to provide the specified requested Direct Management or Regulatory Services related to Project Worksheet 20824 Storm Drain Line Repairs.

NOW THEREFORE, BE IT RESOLVED, that the St. Bernard Parish Council, the governing authority of St. Bernard Parish, does hereby authorize the Parish President to enter into an agreement (Exhibit A) with Gaffney & Gaffney, A Law Corporation, Cusimano Law Firm, Bernard Plaia and Lynn Wiltz for professional services and consultant services to provide FEMA Direct and Indirect Management Services concerning Storm Drain Repair Project.

The above and foregoing having been submitted to a vote, the vote thereupon resulted as follows:

YEAS: McCloskey, Luna, Alcon, Lewis

NAYS: None

ABSENT: Gorbaty, Montelongo

Kerri Callais
Councilmember
at Large

Richard "Richie" Lewis
Councilmember
at Large

Gillis McCloskey
Councilmember
District A

Nathan Gorbaty
Councilmember
District B

Howard Luna
Councilmember
District C

Wanda Alcon
Councilmember
District D

Manuel "Monty" Montelongo III
Councilmember
District E

Roxanne Adams
Clerk of Council



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Kerri Callais
*Councilmember
at Large*

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Extract #17 continued
June 5, 2018

Richard "Richie" Lewis
*Councilmember
at Large*

Gillis McCloskey
*Councilmember
District A*

The Council Chair, Ms. Callais, cast her vote as YEA.

And the motion was declared **adopted** on the 5th day of June, 2018.

Nathan Gorbaty
*Councilmember
District B*

Howard Luna
*Councilmember
District C*

Wanda Alcon
*Councilmember
District D*

**Manuel "Monty"
Montelongo III**
*Councilmember
District E*

Roxanne Adams
Clerk of Council

CERTIFICATE

I HEREBY CERTIFY that the above and foregoing is a true and correct copy of a motion adopted at a Regular Meeting of the Council of the Parish of St. Bernard, held at June 5, 2018.

Witness my hand and the seal
of the Parish of St. Bernard on
this 5th day of June, 2018.

ROXANNE ADAMS
CLERK OF COUNCIL

**AGREEMENT FOR PROFESSIONAL SERVICES
(Direct and Indirect Management/Administrative Services and Appeals/Arbitration)**

BETWEEN

THE ST. BERNARD PARISH GOVERNMENT

AND

**GAFFNEY & GAFFNEY, a Law Corporation, CUSIMANO Law Firm, BERNARD
PLAIA, and LYNN WILTZ**

This agreement is made and entered into this _____ day of _____ 2018, effective as of April 1, 2018 by and between the **St. Bernard Parish Government** and **GAFFNEY & GAFFNEY, a Law Corporation, CUSIMANO LAW FIRM, BERNARD PLAIA, and LYNN WILTZ** (hereinafter sometimes collectively referred to as "Consultant")

WITNESSETH

WHEREAS, the St. Bernard Parish Government has a need for certain professional services and to engage a Consultant to provide FEMA Direct and Indirect Management Services (also known as Direct Administrative Services or Regulatory Compliance) including if appropriate the filing of any appeals and or/arbitrations regarding the FEMA Public Assistance program concerning the Storm Drain Repair Project;

WHEREAS, Consultant, whose office is located at 3015 19th Street, Metairie, Louisiana 70002 is a duly qualified Consultant and desires to provide the specified requested Direct Management or Regulatory Services related to Project Worksheet 20824 Storm Drain Line Repairs.

NOW THEREFORE, the St. Bernard Parish Government and the Consultant for the consideration and under the conditions set forth, do agree as follows:

I. SCOPE OF SERVICE:

A. The purpose of these services is to supplement the existing staff of St. Bernard Parish Government and to consult with and advise St. Bernard Parish Government by providing the oversight, consulting, management, administrative and organizational services as set forth herein concerning St. Bernard Parish Government following Hurricane Katrina and Hurricane Rita (“Program”) on a “as needed” basis. Specifically, this shall be for an Direct Management Services relating to and the Appeal/Arbitration of PW 20824- Strom Drain Line Repair.

II. COMPENSATION:

The St. Bernard Parish Government shall compensate the Consultant at the Maximum Hourly Fee Schedule as established by the Louisiana Attorney General, which currently is the following rates:

Rate Schedule:

| | |
|---------------------------|--------------|
| <u>Rate Schedule:</u> | |
| Michael G. Gaffney | \$225/hour |
| Chuck Cusimano | \$225/hour |
| Bernard Plaia..... | \$225/hour |
| Christopher Gaffney | \$175/hour |
| Lynn Wiltz | \$225/hour |
| Paralegal | \$60.00/hour |
| Clerical Support | \$40/hour |

The Consultant shall also be reimbursed for reasonable ordinary necessary expenses and costs. The Consultant shall submit to St. Bernard Parish Government or to its designee a detailed invoice for payment of the services provided. The Consultant may advance all costs incurred in

the investigation and prosecution of these matters.

The obligation of the St. Bernard Parish Government to compensate Consultant hereunder shall not at any time exceed the maximum compensation, in the aggregate, of \$300,000.

III. ST. BERNARD PARISH GOVERNMENT DUTIES:

The St. Bernard Parish Government shall perform each of the following services as set forth in this Article:

- A. Provide reasonable access to all personnel and records deemed necessary for the proper performance of the services by Consultant;
- B. Provide basic information regarding the FEMA funding of the projects;
- C. Render decisions in a timely manner pertaining to documents submitted by the Consultant in order to avoid unreasonable delay in the orderly and sequential progress of the Consultant's services;
- D. The services, information and reports required by this Section shall be furnished at St. Bernard Parish Government's expense, and the Consultant shall be entitled to rely upon the accuracy and completeness thereof;
- E. Information or services under St. Bernard Parish Government control shall be furnished by St. Bernard Parish Government with reasonable promptness to avoid delay in the orderly progress of the Consultant's services and the progress of the Work.

IV. NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY:

Section 1. Consultant Shall Not Discriminate. In the performance of this Agreement,

Consultant agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status against (A) any employee of Consultant or any St. Bernard Parish Government employee working with Consultant in any of Consultant's operations within St. Bernard Parish Government or (B) any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Consultant. Consultant 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.

Section 2. Equal Employment Opportunity. Consultant further agrees not to discriminate on the basis, whether in fact or perception, of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status against any applicant for employment with Consultant. Further, Consultant agrees to take affirmative action to ensure that all applicants are so considered for employment and that employees are treated during employment without unlawful regard to such person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability or AIDS- or HIV-status. Such affirmative action shall include, without limitation, the following areas:

employment, promotion, demotion, transfer or layoff; recruitment or recruitment compensation; and selection for training. Consultant agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause. Further, Consultant agrees all solicitations or advertisements for employees placed by or on behalf of Consultant shall state that all qualified applicants shall receive consideration for employment without regard to race, creed, color, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, physical or mental disability, or AIDS or HIV status.

Section 3. Contract Work Hours. Consultant agrees that all Services under this Agreement shall comply with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5).

Section 4. Davis-Bacon Act Compliance. Unless duly suspended or revoked, Consultant where allocable shall comply with the Davis-Bacon Act (40 U.S.C. 276a to 276a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) for all construction under this Agreement in excess of \$2000 awarded by St. Bernard Parish Government when required by Federal grant program legislation.

Section 5. Subcontracts. Consultant shall incorporate by reference in all subcontracts the provisions of this Article and shall require all subcontractors to comply with such provisions.

V. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S COMPENSATION COVERAGE:

Consultant herein expressly agrees and acknowledges that he is an independent contractor as defined in R.S. 23:1021 (6). As such, it is expressly agreed and understood between the parties hereto, in entering into this professional services contract, that the St. Bernard Parish Government shall not be liable to the Consultant or his employees for any benefits or coverage as provided by the Worker's Compensation Law of the State of Louisiana.

VI. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT COMPENSATION COVERAGE:

Consultant herein expressly declares and acknowledges that he is an independent contractor, and, as such, is being hired by the St. Bernard Parish Government under this contract of 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 professional services contract, or contract for hire, and in connection with unemployment compensation coverage only that:

- A. Consultant has been and will be free from any control or direction by the St. Bernard Parish Government over the performance of the services covered by this Agreement;
- B. Services to be performed by Consultant are outside the normal course and scope of the St. Bernard Parish Government's usual business; and
- C. Consultant has been independently engaged in performing the services listed herein prior to the date of this Agreement.

Consequently, neither Consultant nor anyone employed by Consultant shall be considered an employee of the St. Bernard Parish Government for the purpose of unemployment

compensation coverage, the same being hereby expressly waived and excluded by the parties hereto.

VII. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS:

It is expressly agreed and understood between the parties entering into this professional services contract that the Consultant, acting as an independent agent and the Consultants employees, shall not receive any sick or annual leave benefits from the St. Bernard Parish Government.

VIII. DURATION OF AGREEMENT:

The services to be provided under the terms of this Agreement shall begin on April 1, 2018 and shall end no later than December 31, 2019. It is understood and acknowledged by all parties 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 amendment to this Agreement.

IX. EXTENSION:

This Agreement may be extended at the option of the St. Bernard Parish Government when the extension of the Agreement facilitates the continuity of services provided herein. This Agreement may be extended by the St. Bernard Parish Government on an annual basis for no longer than two one-year periods. Any changes to this Agreement shall be incorporated in a written amendment to this Agreement.

X. CONFLICT OF INTEREST:

1. Consultant, by signing this Agreement, covenants that Consultant has no public or

private interest, direct or indirect, and shall not acquire directly or indirectly any such interest which does or may conflict in any manner with the performance of Consultant's services and obligations under this Agreement. Any conflicts shall be disclosed to the St. Bernard Parish Government and the St. Bernard Parish Government shall determine whether the conflict is cause for the non-execution or termination of this Agreement. Consultant further covenants that, in the performance of this Agreement, no person having such interest as described above shall be employed by Consultant. Consultant has not employed or retained any entity or person, other than a bona fide employee working solely for Consultant, to solicit or secure this Agreement nor has Consultant 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 Consultant in securing this Agreement.

2. Consultant is 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 his performance of any obligations hereunder.

3. Consultant has the requisite expertise, qualifications, staff, materials and equipment in place and available to enable it to fully perform all Services contemplated by Article I hereof, along with its 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 all Services contemplated by Article I hereof.

4. As of the Effective Date of this Agreement, Consultant has no knowledge of any undisclosed fact that could materially adversely affect its condition (financial or otherwise), business operations or his ability to fulfill his obligations under this Agreement.

5. Consultant is not in breach of any federal, state or local statute or regulation applicable to Consultant or its operations relating to this Agreement.

6. Consultant in the performance of the Services contemplated by Article I hereof shall comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)), section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15) for all contracts, subcontracts, and sub grants of amounts in excess of \$100,000.

7. Consultant, in the performance of the Services shall adhere to the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163, 89 Stat. 871).\

XI. POWERS CONFERRED ON CONSULTANT:

The Consultant is also to be designated as an Agent on behalf of the St. Bernard Parish Government with FEMA, GOHSEP and DHS-OIG.

XII. ERRORS AND OMISSIONS INSURANCE

It will be the Consultant's responsibility to maintain Errors and Omissions and/or

Malpractice coverage with limits of \$1,000,000.00. This coverage must be maintained throughout the period of this Agreement.

XIII. NOTICE:

Notice shall be sent Certified Mail, return receipt requested, to the following addresses:

If to the St. Bernard Parish Government:

Guy Mcinnis
Parish President
8201 W. Judge Perez Drive
Chalmette, LA 70043

If to Consultant:

Michael G. Gaffney
Consultant
3015 19th Street
Metairie, LA 70002

ARTICLE XIV GOVERNING LAW, JURISDICTION AND VENUE

Section 1. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Louisiana, excepting its conflict of laws provisions.

Section 2. Exclusive Jurisdiction and Venue. For all claims arising out of or related to this Agreement, Consultant hereby consents and yields to the exclusive jurisdiction and venue of the 34th Judicial District Court for the Parish of St. Bernatd and expressly waives any (a) pleas of jurisdiction or venue based upon Consultant's residence and (b) right of removal to federal court based upon diversity of citizenship.

ARTICLE XV RETENTION, ACCESS AND OWNERSHIP OF RECORDS

Section 1. Retention. Consultant agrees to keep all such business records related to, or arising out of, this Agreement as would be kept by a reasonably prudent practitioner of Consultant's profession for a period of five (5) years after the termination of this Agreement. All accounting records shall be maintained in accordance with generally accepted principles and practices.

Section 2. Right to Audit; Access. At any time during normal business hours, upon receipt of reasonable notice and as often as the St. Bernard Parish Government may deem necessary, Consultant shall make all data, records, reports and all other materials relating to this Agreement available to the St. Bernard Parish Government for examination and copying. In addition, Consultant shall permit the St. Bernard Parish Government to audit, and shall cooperate fully in any such audit of, all invoices, materials, payrolls, work papers, personnel records and other data necessary to enable the St. Bernard Parish Government to verify the accuracy of Consultant's invoices for payment for the performance of all Services contemplated by Article I hereof.

Section 3. Ownership. All data collected and all products of work prepared, created or modified by Consultant in the performance of his obligations under this Agreement, including, without limitation, any and all notes, tables, graphs, reports, files, computer programs, source code, documents, records, disks, original drawings or other such material, regardless of form and whether finished or unfinished, (collectively, "Work Product"), but excluding Consultant's proprietary instruments of services, including internal software, procedures, protocols and systems for developing the Work Product,

shall become the exclusive property of the St. Bernard Parish Government. However, Consultant has a right to retain a copy of all said documents. The St. Bernard Parish Government shall have all right, title and interest in such Work Product, including, without limitation, the right to secure and maintain the copyright, trademark and/or patent of Work Product in the name of the St. Bernard Parish Government. All such Work Product may be used and distributed for any purpose deemed appropriate by the St. Bernard Parish Government without the consent of and for no additional consideration owing to Consultant.

ARTICLE XVI TERMINATION

Section 1. Termination for Cause. The St. Bernard Parish Government and Consultant shall each have the right to terminate this Agreement for cause, effective immediately upon the giving of written notice to the other party of its intent to terminate and the reasons therefor. If the termination for cause is subsequently challenged in a court of law and if the challenging party prevails, the termination for cause shall be deemed to be a termination for convenience and shall be effective thirty (30) days from the date that the original written notice of termination for cause was given to the challenging party and no further notice shall be required.

Section 2. Termination for Convenience. The St. Bernard Parish Government shall have the right to terminate this Agreement without cause by giving the Consultant written notice of its intent to terminate at least thirty (30) days prior to the date of termination. The Consultant shall have the right to terminate this Agreement without cause by giving the St.

Bernard Parish Government written notice of his intent to terminate at least sixty (60) days prior to the date of termination. In the event the St. Bernard Parish Government elects to terminate for convenience, the St. Bernard Parish Government shall be obligated to pay Consultant only for those Services performed up to and through the date of termination and associated termination costs, and for which detailed invoices shall have been submitted, which are agreed to represent the maximum amount which may be due to the Consultant upon termination. Consultant shall provide to the St. Bernard Parish Government all close out documents compiled to that point.

ARTICLE XVII GENERAL PROVISIONS

Section 1. No Assignment Without Consent. This Agreement is personal to each of the parties hereto, and neither party may assign or delegate any rights or obligations hereunder without first obtaining the written consent of the other party.

Section 2. Nonwaiver. 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, nor constitute a waiver of, any 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.

Section 3. Severability. The parties hereto intend all provisions of this Agreement to be enforced to the fullest extent permitted by law. Accordingly, should a court of competent

jurisdiction find any provision to be unenforceable as written, the parties intend and desire that the court should reform the provision so that it is enforceable to the maximum extent permitted by law. If, however, the court should find such provision to be illegal and not subject to reformation, such provision shall be fully severable. In such event, this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision was never a part hereof, and the remaining provisions of this Agreement shall remain in full force and effect.

Section 4. Rules of Construction. 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. Whenever herein the singular number is used, the same shall include the plural, where appropriate, and neutral words and words of any gender shall include the neutral and other gender, where appropriate. Neither this Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in favor of nor against the St. Bernard Parish Government or Consultant on the basis of which party drafted the uncertain or ambiguous language. On the contrary, 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 hereto.

Section 5. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly, Consultant shall be free to provide services to other clients, and the St. Bernard Parish Government shall be free to engage the services of other contractors for the provision of some or all of the Services set forth in this Agreement.

For the consideration and under the terms set forth above, Michael G. Gaffney has agreed to perform the specified services for the St. Bernard Parish Government.

WITNESSES:

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

Printed Name: _____

St. Bernard Parish Government

By: _____
Its: _____

Gaffney and Gaffney, A Law Corporation

By: _____
MICHAEL G. GAFFNEY

Cusimano Law Firm

By: _____
CHARLES V. CUSIMANO, III

BERNARD PLAIA

LYNN WILTZ

DRAFT