

the **RECOVERY** of **NEW ORLEANS**



a discussion of
CURRENT PROBLEMS
& **POSSIBLE SOLUTIONS**

CURRENT PROBLEMS

Contracting

- Negotiations and constant changes to the proposed contract version are delaying projects from getting started.
- Our scope and fee keep getting adjusted for the worse. We are not satisfied with the contract and we are not protected adequately according to our legal and insurance counsel.

CITY OF NEW ORLEANS
PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
[REDACTED]

THIS AGREEMENT made and entered into this ____ day of _____, 20____, by and between the City of New Orleans, hereinafter referred to as "Owner" or "City" and [REDACTED] hereinafter referred to as "Designer"; witnesses that,

WHEREAS, Owner desires to retain Designer for the purpose of providing professional design and contract administration services to repair damages to the site as a result of Hurricane Katrina for the following project: [REDACTED], and;

WHEREAS, Designer is a licensed firm in the State qualified to perform the required design services, and is agreeable to undertake the services under the conditions and for the fees satisfactory to Owner;

NOW, THEREFORE, for and in consideration of the mutual covenant herein contained, the parties hereto agree that Designer shall perform the services as set forth in Schedule A ("Scope of Basic Services"). If the contract includes multiple sites, work for each must be developed separately as directed by Owner.

1. **BASIC SERVICES** Refer to Schedule A. Compensation for these basic services shall be paid in accordance with Schedule C, Compensation.
2. **ADDITIONAL SERVICES** If Owner provides written authorization for any of the following additional services, additional compensation shall be subject to renegotiation and confirmed by an Amendment hereto as hereinafter provided.
 - A. Providing design services related to future facilities, systems and equipment not intended to be constructed as part of the project.
 - B. Making major revisions to drawings, specification or other documents when such revisions are inconsistent with previous written approvals or instructions and due to causes beyond the control of Designer.
 - C. Providing consultation concerning replacement of any work damaged by fire or other cause during construction, and furnishing professional services of the type set forth in the provisions of the basic services as may be required in connection with the replacement of such work.
 - D. Providing professional services made necessary by the default of the Contractor or by major defects in the work of the Contractor in the performance of the Construction Contract.
 - E. Providing services, or extensive follow-ups of deficiencies other than the normal One-Year Warranty Review and Report, after issuance to Owner of the final Certificate of Payment.
 - F. Providing services of professional consultants for other than architectural, structural, mechanical, electrical, landscape or other engineering services, which are part of basic services for the project.

CURRENT PROBLEMS

Contracting

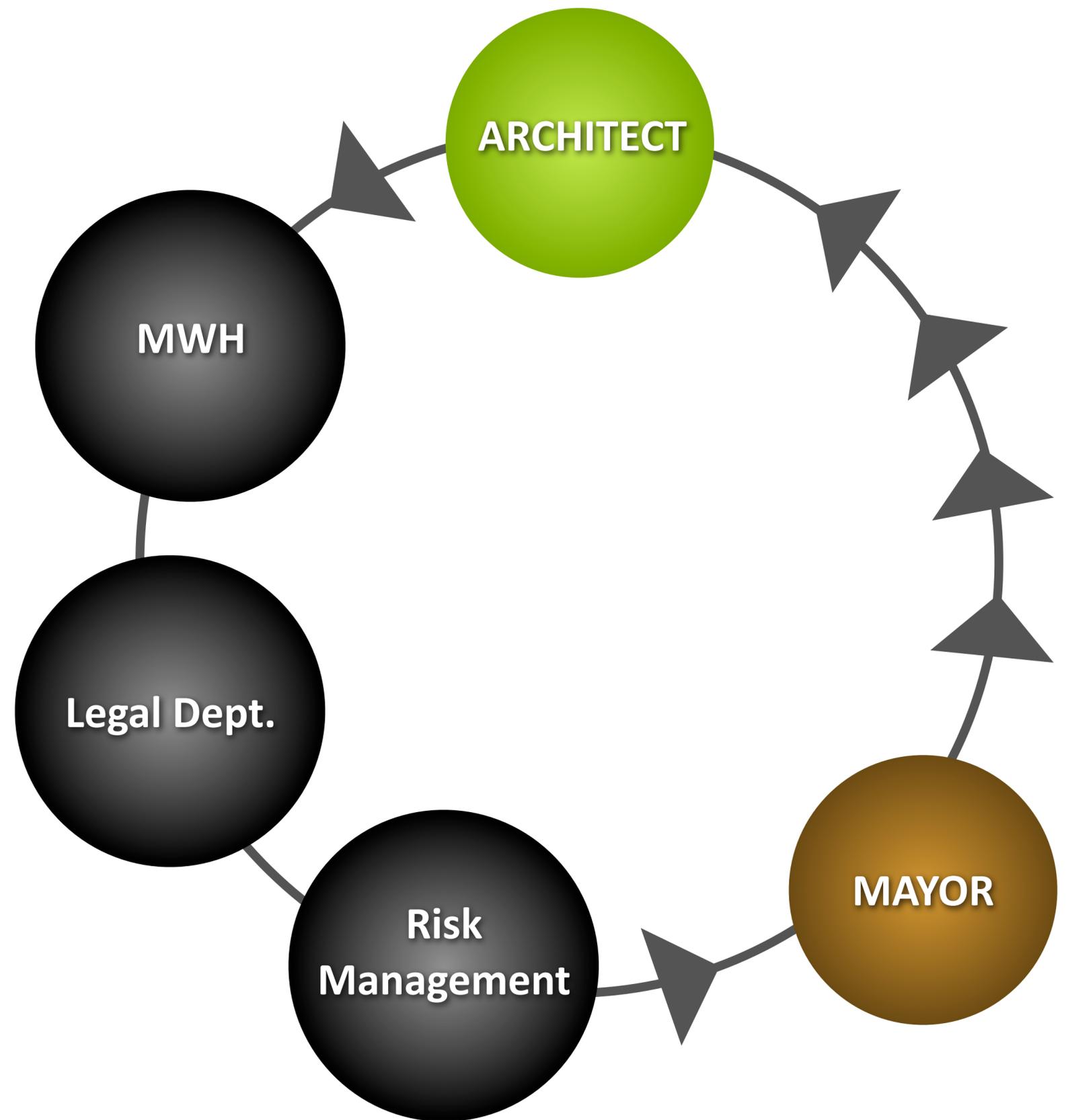
- Even though the state fee formula is being used, the scope has been recrafted to include services normally considered additional, expenses that are typically reimbursable are included in our basic fee, and they want to delete 15% from the state fee formula on new construction projects.

	ORIGINAL CITY CONTRACT	NEW CITY CONTRACT	STATE CONTRACT
Fee percentage	9.3%	7.2%	9.3%
Payment Phases:			
Scoping	0	15%	5%
Preliminary Design	15%	30%	15%
DD	35%	45%	30%
CD	75%	75%	70%
Bid	80%	80%	75%
CA	100%	100%	95%
		Constr. Close-Out	100%
Scope (Sched A):			
Scoping	Included	N/A	Program Completion
Preliminary Design	included	included	Schematic Design
DD	included	included	DD
CD	included	included	CD
Bid	included	included	Bid
CA	included	included	CA
			Constr. Close-Out

CURRENT PROBLEMS

Contracting

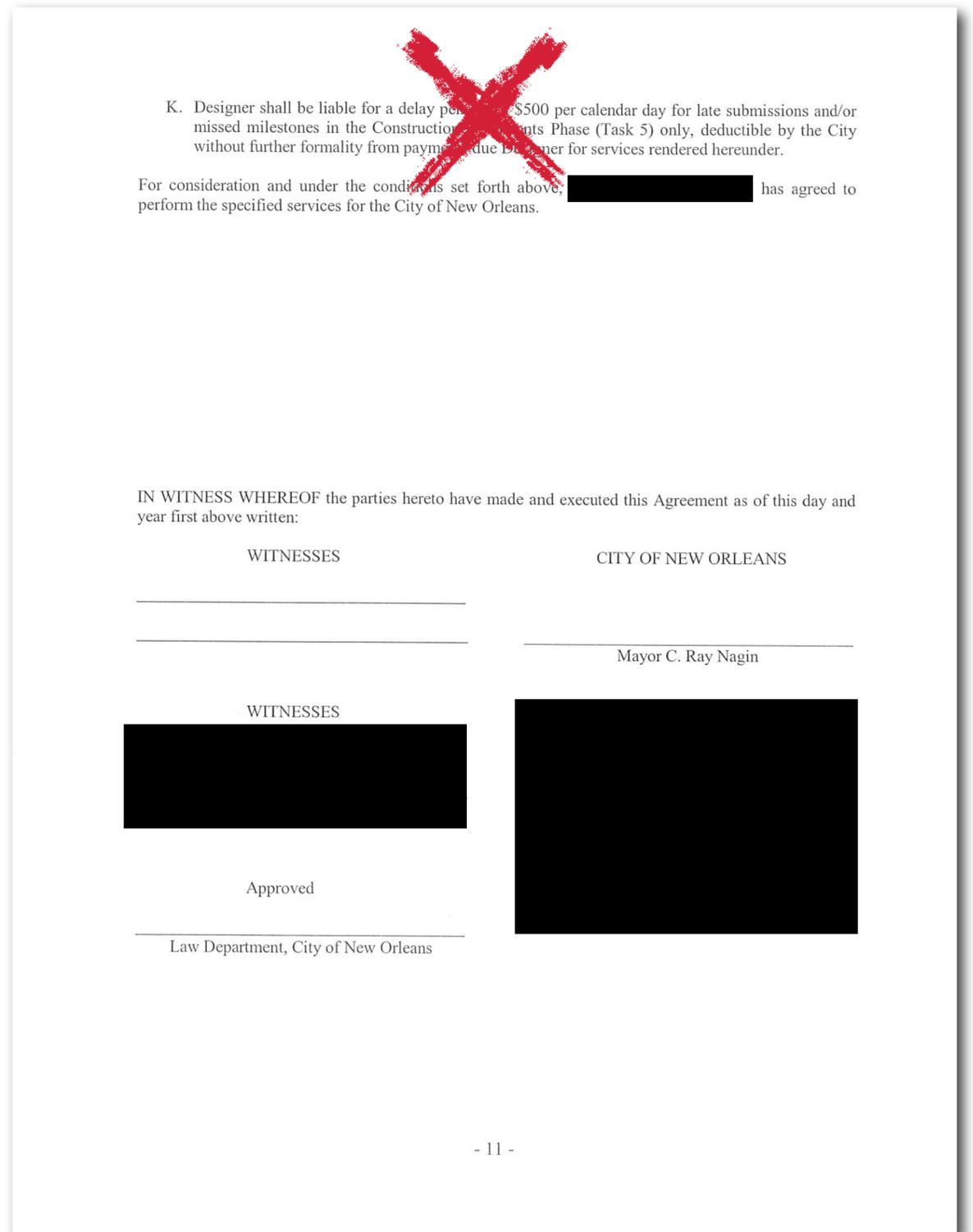
- The contract negotiation process is too lengthy. The contracts go through an approval process with MWH and the City. They are ultimately signed by the Mayor. **This process takes many months.** It should be streamlined.



CURRENT PROBLEMS

Contracting

- **Liquidated Damages** - Liquidated damages should be removed from the Owner-Architect Agreement. This is language that is customarily used for a construction contractor agreement, not a professional services agreement. If this practice is to be used on recovery projects, then the language should be used on all professional service agreements, such as legal and accounting work retained by the City.
- Why should architects be singled out?



CURRENT PROBLEMS

Contracting

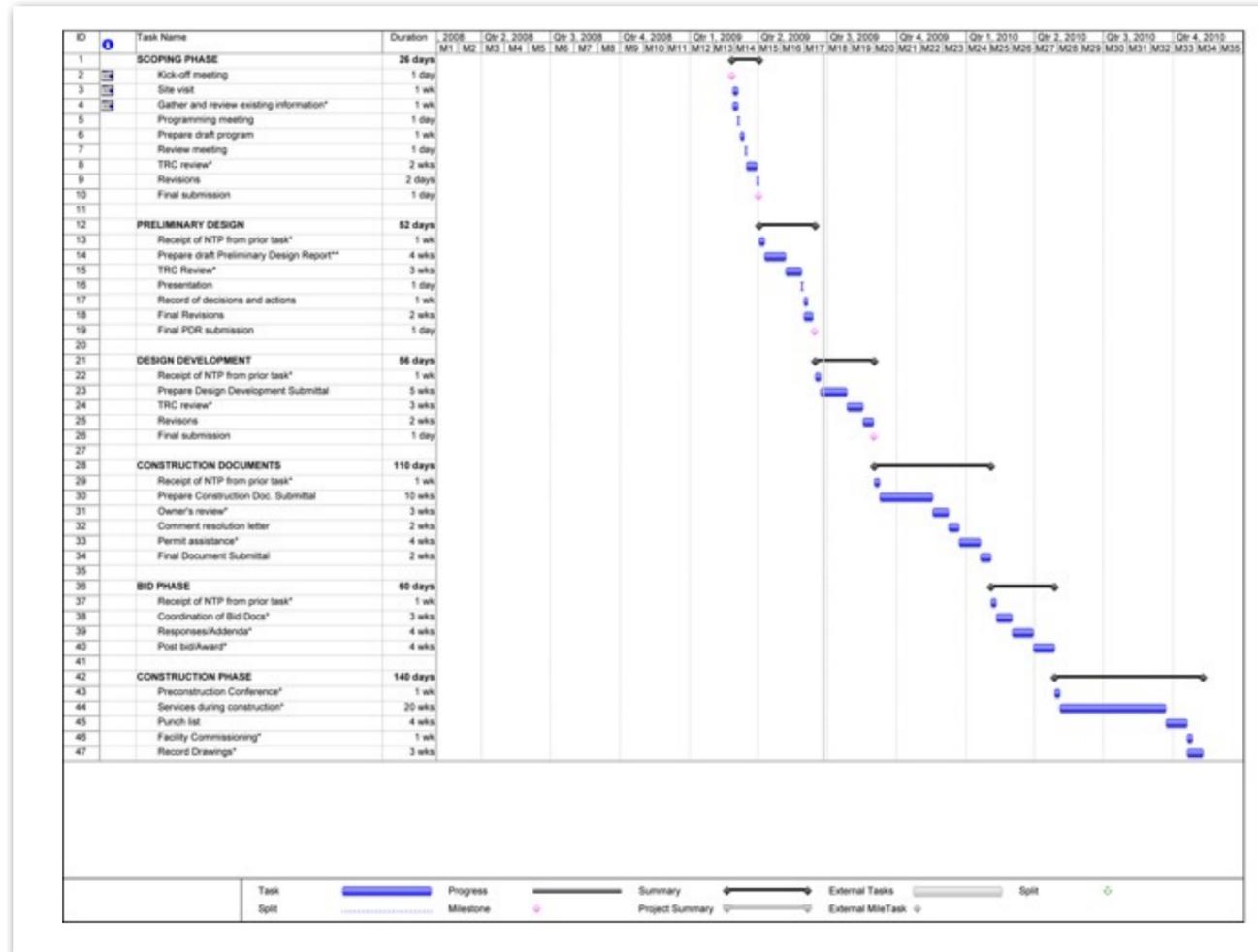
- ***Insurance Provisions*** - A knowledgeable insurance advisor should handle the insurance issues in the contract, or, the State of Louisiana provisions for insurance, including coverage requirements, could be used. Some of the items put forth in the City agreement are uninsurable.

CURRENT PROBLEMS

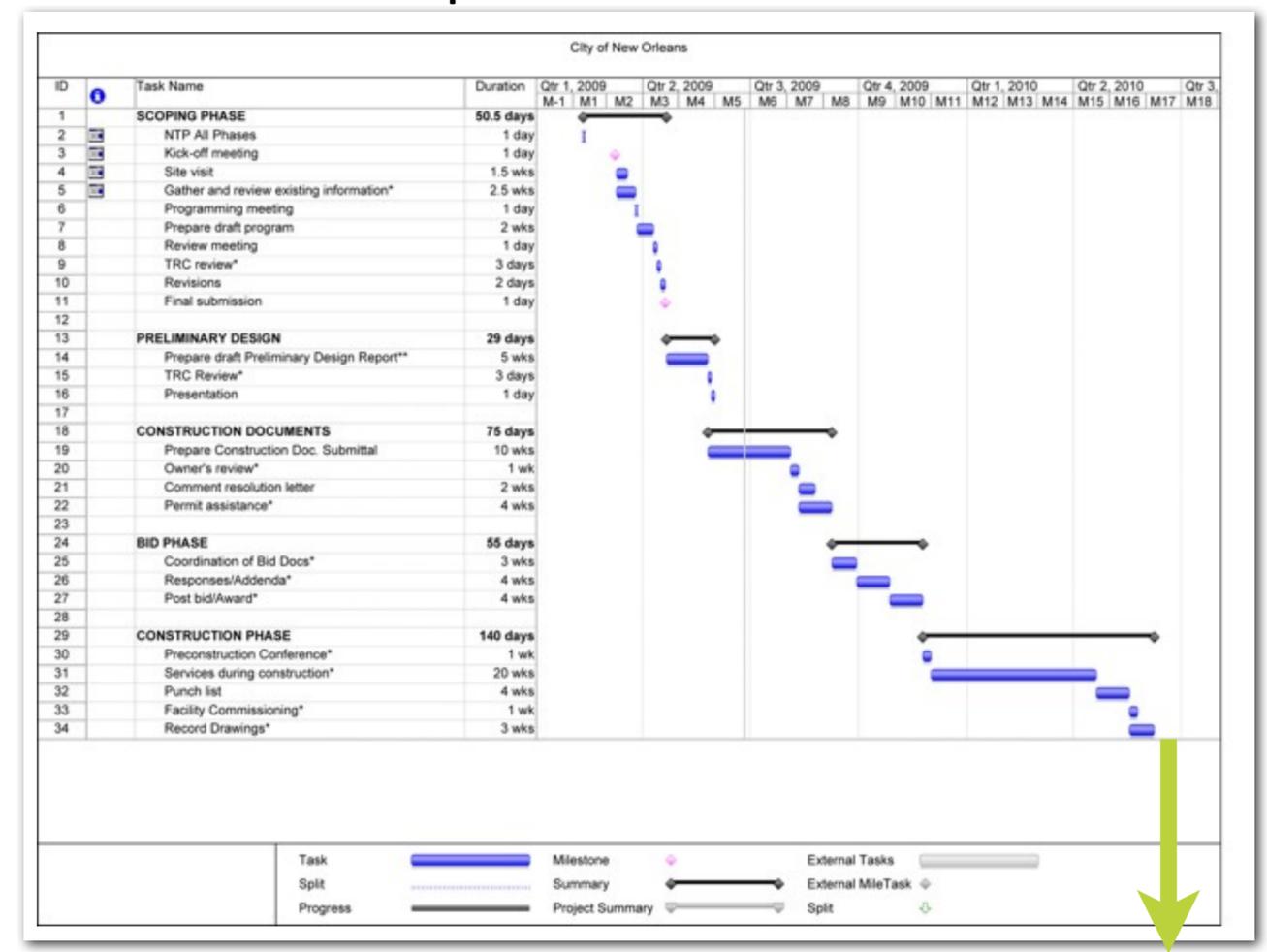
Contracting

- Projects are slow to get started due to contract negotiations, and are further delayed by the project delivery methodology required in the contract.
- Furthermore, schedules are delayed by our not getting review comments in a timely way for our phase submittals.

Standard schedule according to contract



Proposed modified schedule



4.5 months saved

CURRENT PROBLEMS

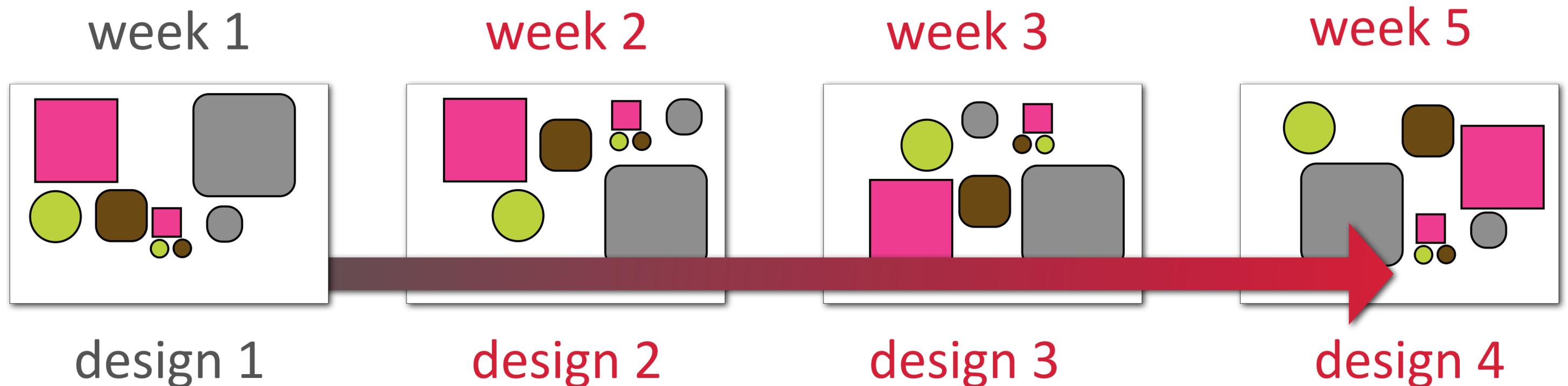
Project Management

- The project manager should act as the Owner's representative and provide direction for the project. The staff at the project manager level seem to have no authority whatsoever, and must always take issues back to someone else within MWH. **Many of the project managers have no architectural (or similar) training and do not understand the process.**

CURRENT PROBLEMS

Project Management

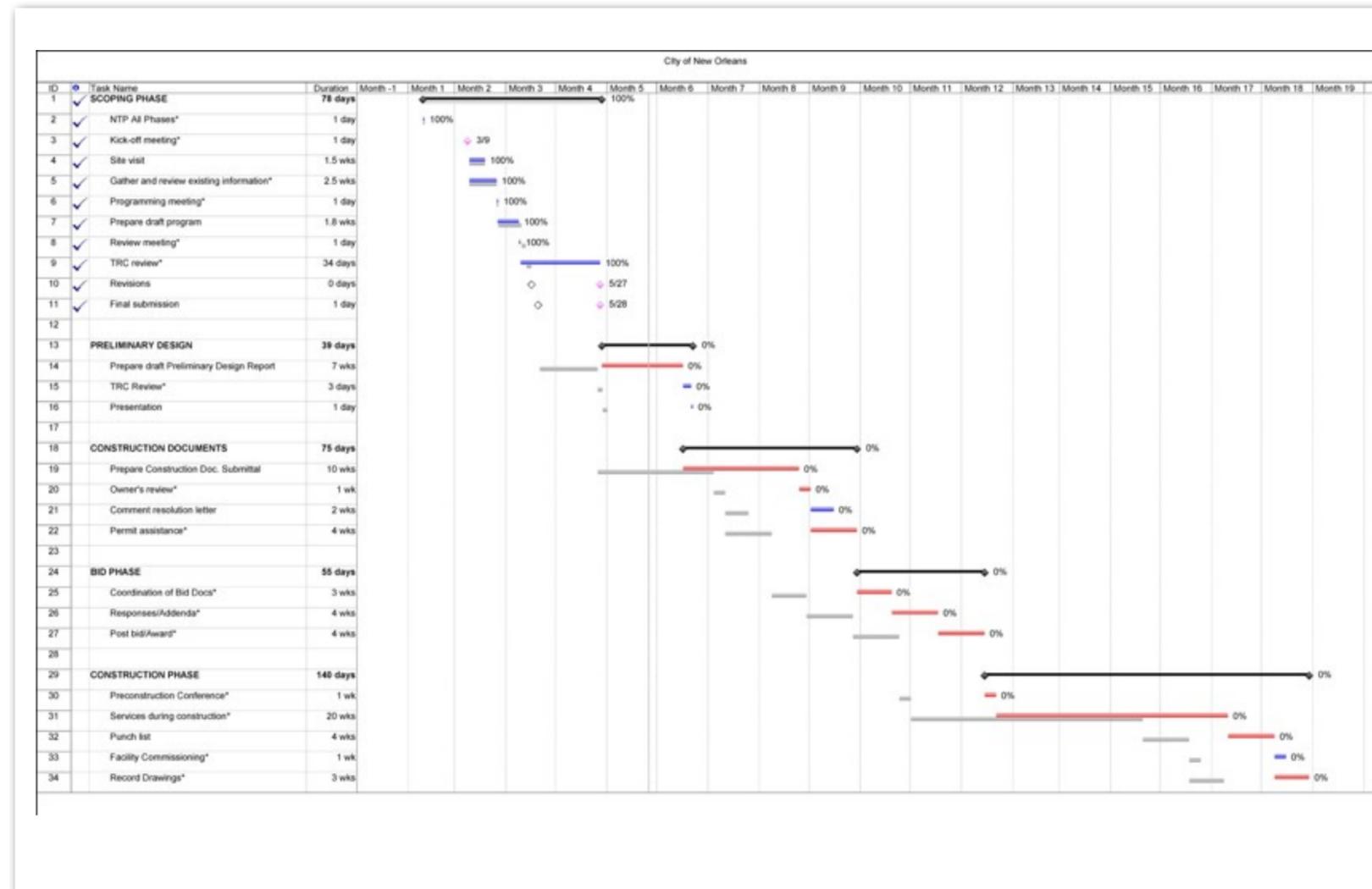
- They also should be managing the projects and having decision-makers at meetings. We have had multiple meetings on programming with various interested groups, requiring multiple iterations of the program document.



CURRENT PROBLEMS

Project Management

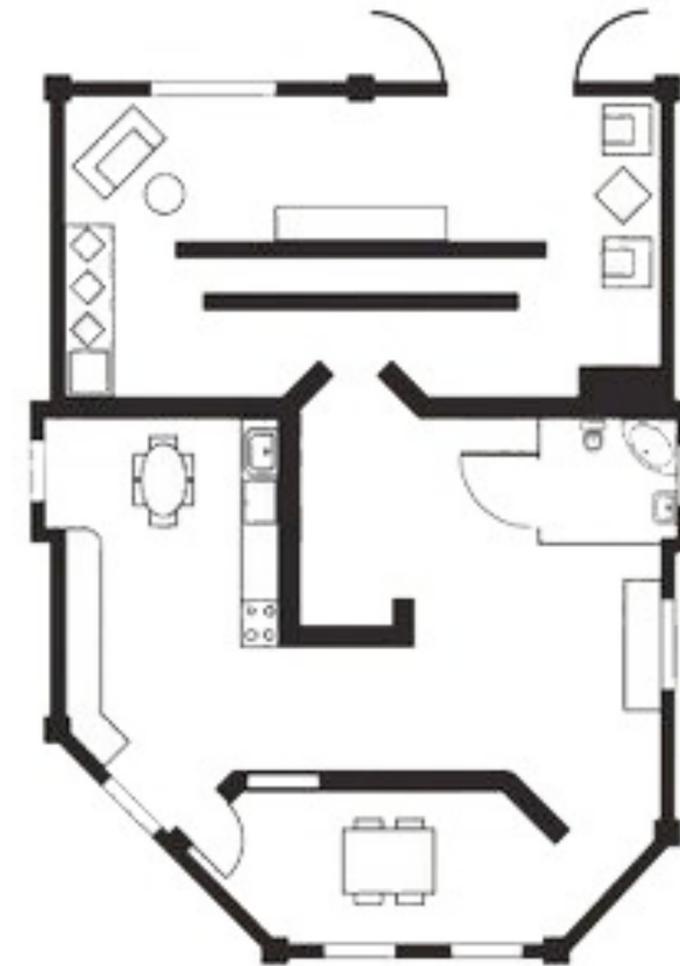
- The contract is written that for any phase submittal, we turn in a draft, get written review comments from MWH, then we produce the final document. We don't get written comments from MWH, rather they call multiple meetings with different people and we get various verbal comments from the meeting participants. Then it is up to us to put it all together, with sometimes conflicting comments. We then are required to make modifications based on the latest round of meetings. This requires additional time and effort on our part.



CURRENT PROBLEMS

Invoicing

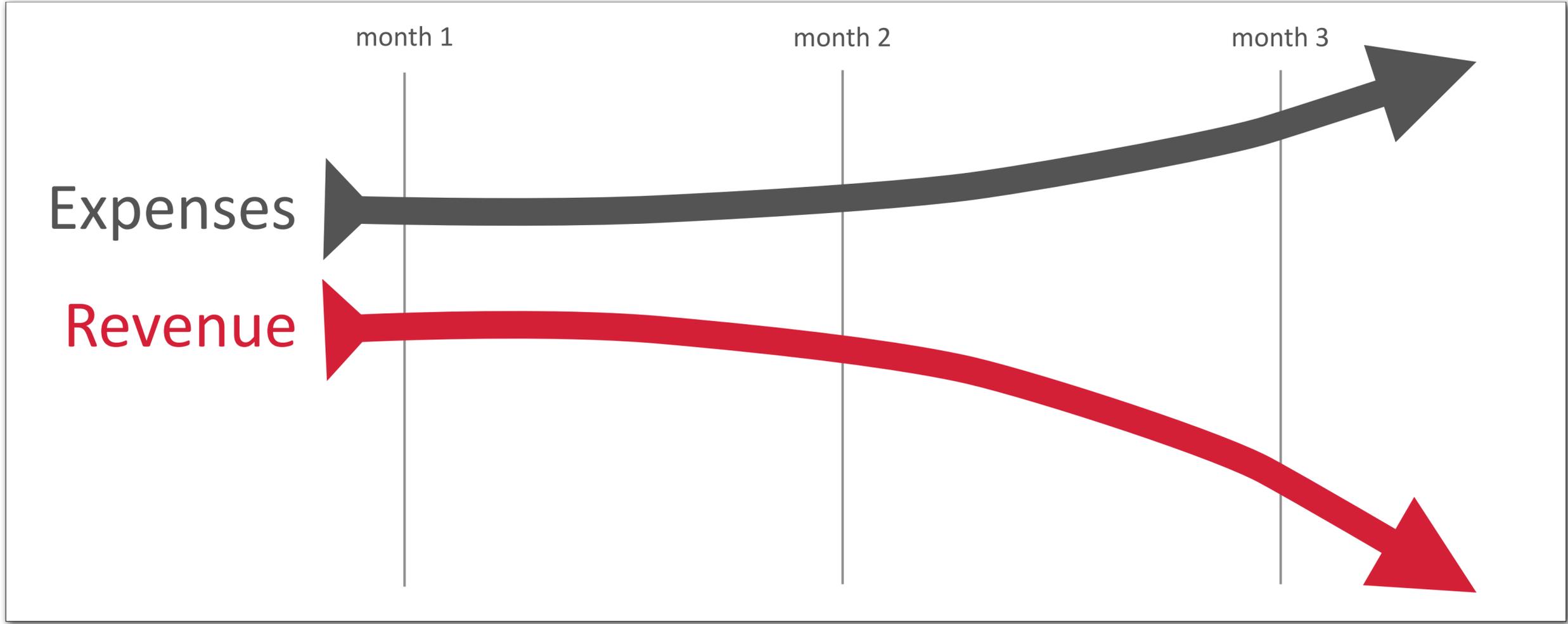
- Invoices are not being paid in a timely way. Some architects report a **90 to even a 180 day payment period** on invoices.



CURRENT PROBLEMS

Invoicing

- Additionally, we are given Notice to Proceed on projects that are being pushed forward to get them completed quickly, and for which we have negotiated with MWH and signed a contract. However, since we cannot get the required signature from the Mayor's office on the contract, we are not allowed to invoice on these projects that are ongoing. Therefore, it may be 3 months of time that we are working on a project before we can even submit an invoice, then it takes another few months to get paid. At some point, it becomes unaffordable to do City work.



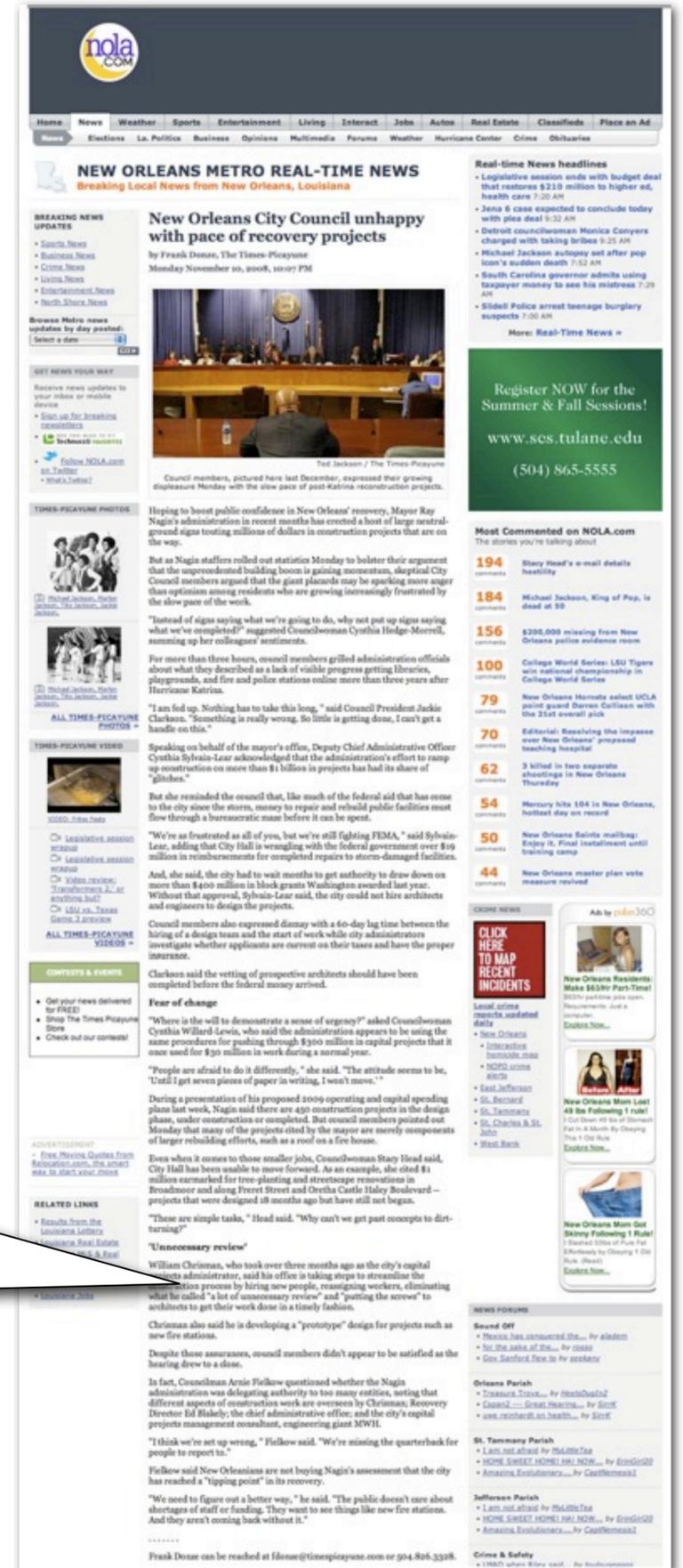
SUMMARY

- The project process outlined in the contract is over burdensome, takes too much time, costs the architect too much of his fees, and focuses on a bureaucratic process rather than the actual production of the project.
- It seems inconceivable that the recovery projects would require as much in project management fees as they do architectural fees. This process is flawed and does not work toward the City's goal of getting projects built.

SUMMARY

- The relationship between the architect and the City (MWH and Capital Projects) is adversarial rather than a team.
- The Director of Capital Projects has made comments on numerous occasions about firing architects, and made the following comment to the City Council in November as quoted by the *Times-Picayune*:

William Chrisman, who took over three months ago as the city's capital projects administrator, said his office is taking steps to streamline the construction process by hiring new people, reassigning workers, eliminating what he called "a lot of unnecessary review" and "putting the screws" to architects to get their work done in a timely fashion.



SUMMARY

- Architects do not need the “screws put to them,” rather we need **less bureaucracy hindering our progress.**

POSSIBLE SOLUTIONS

Contracting

- Standard Form of Agreement – We strongly urge the use of a standard form of agreement such as the AIA Standard Form of Agreement Between Owner and Architect (AIA Document B101). This document has been tested over decades of use. This would streamline the contracting process and would protect both the City and the Architect.

DRAFT AIA® Document B101™ – 2007
Standard Form of Agreement Between Owner and Architect

AGREEMENT made as of the _____ day of _____ in the year _____
(In words, indicate day, month and year)

BETWEEN the Architect's client identified as the Owner:
(Name, address and other information)

and the Architect:
(Name, address and other information)

for the following Project:
(Name, location and detailed description)

no name

The Owner and Architect agree as follows.

ADDITIONS AND DELETIONS:
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed.

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User Notes:

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POSSIBLE SOLUTIONS

Contracting

- Standardized Fee – We have no objection to the state fee formula, but it must be used for standard services such as those outlined in the AIA Agreement form.

EXHIBIT "B"
2009

COMPUTATION OF FEE

PROJECT No.: PART:

PROJECT NAME:

FUNDS AVAILABLE FOR CONSTRUCTION (AFC) =

FEE COMPUTATION:

FEE % for calculation = $\frac{46.10}{\text{Log}(AFC(1975\ BCI/Current\ BCI))}$ = 7.6239%

BASE FEE = FEE % (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI) = \$ 339,766.00

BASE FEE as a percentage of AFC 8.4942%

RENOVATION FACTOR (RF) =

MODIFICATION FACTOR (MF) =

FEE:

INDICES:		BCI	CPI
1975		<input type="text" value="1306"/>	<input type="text" value="53.8"/>
Current	2009	<input type="text" value="4691"/>	<input type="text" value="215.3"/>

Professional Liability Insurance Coverage shall be in the amount required by the following schedule unless otherwise indicated. No deductible shall be in excess of 5% of the amount of the policy. The prime Designer shall be fully responsible to the Owner for his associates and his professional consultant's work. Professional liability coverage for the total project design (including all professional consultants) rests solely with the prime Designer.

SCHEDULE
LIMITS OF PROFESSIONAL LIABILITY

Construction Cost	Limit of Liability
0 to \$1,000,000	\$500,000
\$1,000,000 to \$10,000,000	\$1,000,000
\$10,000,000 to 20,000,000	\$1,500,000
\$20,000,000 to \$50,000,000	\$3,000,000
Over \$50,000,000	To be determined by Owner

POSSIBLE SOLUTIONS

Contracting

- Insurance Requirements – We suggest that the City follow the State’s lead and use its insurance requirements.

EXHIBIT "B"
2009

COMPUTATION OF FEE

PROJECT No.: PART:

PROJECT NAME:

FUNDS AVAILABLE FOR CONSTRUCTION (AFC) =

FEE COMPUTATION:

FEE % for calculation = $\frac{46.10}{\text{Log}(AFC(1975\ BCI/Current\ BCI))}$ = 7.6239%

BASE FEE = FEE % (AFC(1975 BCI/Current BCI)(Current CPI/1975 CPI) = \$ 339,766.00

BASE FEE as a percentage of AFC = 8.4942%

RENOVATION FACTOR (RF) =

MODIFICATION FACTOR (MF) =

FEE: **\$498,800.00**

INDICES:

	1975	BCI	CPI
Current	2009	1306	53.8
		4691	215.3

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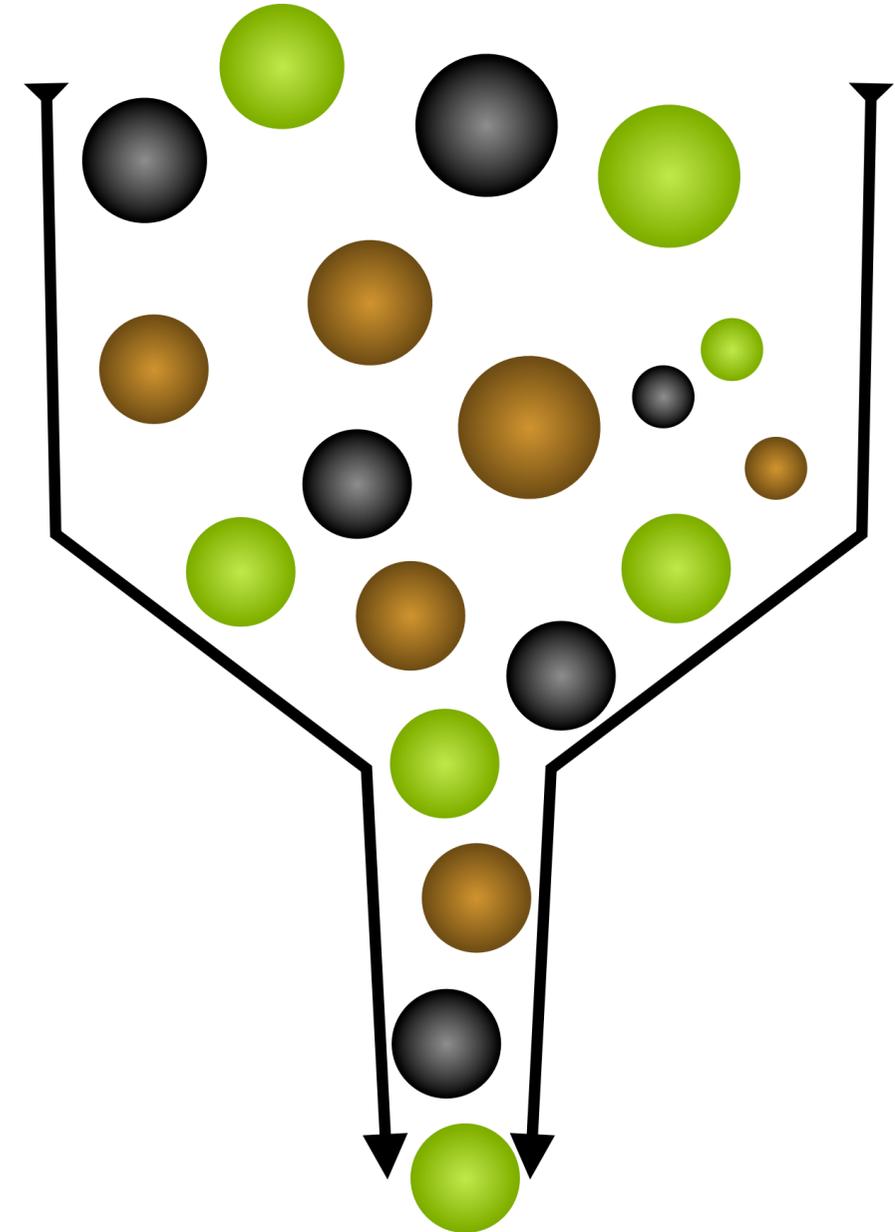
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Over \$50,000,000	To be determined by Owner

POSSIBLE SOLUTIONS

Contracting

- Legal Support - We suggest that an outside legal firm be hired as counsel for recovery projects. This firm would issue contracts and handle any negotiations. They should be given authority to do what it takes to get the contracts signed by an appropriate party without delay. The standardized contract form should streamline this process significantly.
- Delegation of Authority for Recovery Projects – Someone other than one person, the Mayor, should have the authority to sign these contracts to alleviate the bottleneck that this has become. Could this be ORDA or PDU?



POSSIBLE SOLUTIONS

Project Process

- The project process should be overhauled.
- Use of the standardized form of agreement would facilitate this automatically relative to the architect's scope and project delivery process.
- The administrative/project management side should be relegated to those expert in the necessary arenas: a legal firm for supporting the contracting process; the project manager for administering the contract.

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AGREEMENT made as of the _____ day of _____ in the year _____
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POSSIBLE SOLUTIONS

What should be the role of the City's project manager?

- **Administer** the contract with architects, rather than **developing** a new contract.
 - Provide timely and thoughtful direction to the Architect, including **making decisions** based on information from user groups and other interested parties.
 - **Provide written review comments** in a timely way.
 - **Approve invoices** and ensure they are paid in a timely way (within 30 days after receipt of invoice).
 - The project manager should **monitor the project schedule, scope and budget**.
-

POSSIBLE SOLUTIONS

What should be the role of the City's project manager?

- The scope of services contained in MWH's contract should be revisited to align with standard project management services that are compatible with standard architectural, engineering, and construction industry services.
- The project management team should be a *much smaller group of highly trained and seasoned people* who understand the design and construction process. They should **act as a team player** along with the architect and City in getting the projects completed.
- Since the Architect of Record represents the party who is liable and responsible for the delivery of the project, **less time needs to be spent by the Project Manager in reviewing documents.** In most cases, an individual project manager cannot truly interpret the professional's drawings anyway unless he/she is a licensed professional. This is very rare, and certainly not the case with the MWH project managers.
- The project manager's responsibilities during construction should not overlap with or alter the architect's construction phase services (for which we are covered by professional liability insurance).

Thank you.