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AMENDMENT TO
AGREEMENT FOR PROFESSIONAL SERVICES BETWEEN
THE CITY OF NEW ORLEANS
AND
BRUNO AND TERVALON

THIS AGREEMENT is made and entered into as of the 1st day of January 2015 by and between the Council of the City of New Orleans, represented by Stacy Head, President of the Council (hereinafter referred to as “City”) and the firm of Bruno and Tervalon, LLP (hereinafter referred to as “Contractor”)

WITNESSETH

WHEREAS, to address the complex technical accounting issues necessary to properly meet its utility regulatory responsibility, the Council has selected Contractor, whose Taxpayer ID Number is 72-0877929, in accordance with the competitive selection process required by the Home Rule Charter; and

WHEREAS, pursuant to Rule 45, the City Council adopted Motion M-11-406 on September 1, 2011, directing the Council staff to issue a Request for Qualifications to initiate a competitive selection process to obtain consultants with expertise essential to assisting the Council in effectuating its regulatory authority over electric and gas utilities in New Orleans; and

WHEREAS, pursuant to Motion M-11-578, the City Council approved the recommendation of the Council Utilities Committee that the firm of Bruno and Tervalon, LLP be retained to provide utility consulting services in the area of the Council’s electric and gas regulatory responsibility; and

1 **WHEREAS**, City entered into a contract with Contractor as of the 1st day of
2 January 2012 which has been subsequently amended; and

3 **WHEREAS**, the City desires to authorize a contract amendment and extension
4 with Bruno and Tervalon, LLP on a month-to-month basis to assist in meeting the
5 Council's regulatory responsibility to the City and its ratepayers; and to that end has
6 adopted Motion M-14-514 authorizing the Council President to sign a professional
7 services contract to retain Contractor as Consultant to the City Council on a month-to-
8 month basis; and

9 **WHEREAS**, the Contractor, herein represented by Alcide J. Tervalon, Jr.,
10 Managing Partner as authorized by letter to enter into agreement on behalf of the firm,
11 desires to serve as Consultant to the City Council on a month-to-month basis and has the
12 authority to commit to do so; and

13 **WHEREAS**, the President of the Council is hereby authorized to sign a contract
14 amendment with Contractor, to address and further the City's interests identified in the
15 preceding paragraphs on a month-to-month basis, for compensation in an amount not to
16 exceed \$16,666.67 per month.

17 **NOW, THEREFORE**, the City and Contractor for the consideration, and under
18 the conditions set forth, do agree as follows:

19 **I. SCOPE OF SERVICES:**

20 A. Contractor Agrees To:

21 Provide advice, counsel and representation to the City Council while
22 providing accounting and related consulting services to the Council in all
23 local, state and federal regulatory and legislative matters pertaining to

1 electric and natural gas utilities and to suppliers providing electric and
2 natural gas utility services in New Orleans, including but not limited to
3 Entergy, its unregulated subsidiaries and its regulated operating
4 subsidiaries; Entergy Louisiana and Entergy New Orleans; as may be
5 required from time to time by the City Council, and its staff.

6 **B. The City Agrees To:**

- 7 1. Provide contract administration through the City Council Utilities
8 Regulatory Office.
- 9 2. Provide access to records, documents and other information as may
10 be required. Requests for support and information may be directed
11 to the Council Utilities Regulatory Office.

12 **II. COMPENSATION:**

13 The compensation to be paid for services rendered will be at the hourly
14 billing rate of:

15 Partners	\$250 per hour
16 Engagement Director	\$200 per hour

17 The compensation to be paid Contractor for such services shall not exceed
18 \$16,666.67 per month. If there are any necessary and ordinary expenses
19 attached to the work of Contractor these expenses, in addition to the fees
20 outlined above, shall be reimbursable by the City but the total amount of
21 such expenses and fees shall not exceed \$16,666.67 per month.

22 Contractor shall submit to the City a detailed monthly invoice for payment
23 of services provided. Contractor's work shall be billed in increments of

1 one-tenth of an hour. This agreement is contingent upon the appropriation
2 and allocation of funds by the City of New Orleans.

3 **III. PAYMENT:**

4 Payment under this agreement shall be made pursuant to detailed monthly
5 invoices submitted by the firm, subject to review and approval by the City
6 for payment. Upon authorization through the City Council Utilities
7 Regulatory Office the invoices may be submitted to the Finance
8 Department for payment by the City or, alternatively, when the invoices
9 would be reimbursable by a utility subject to regulation under Section 3-
10 130 of the Home Rule Charter and reimbursable pursuant to Section 3-130
11 (5) of the Home Rule Charter, the City Council Utilities Regulatory Office
12 may submit the invoices for payment to the regulated utility company.
13 Payments in the name of the firm under this provision shall then be sent to
14 the Council Utilities Regulatory Office which shall immediately forward
15 the authorized payment to the firm. The Council Utilities Regulatory
16 Office shall maintain records of the payments which shall be public
17 records and shall also forward copies of such records as required to the
18 CAO and Department of Finance. The payments, when made by the utility
19 company through the City Council's Utilities Regulatory Office shall fully
20 discharge the City's obligation for such payment under this contract and be
21 included in and applied to the maximum compensation limits of this
22 contract. Pursuant to Motion M-11-578 the payments shall be recoverable
23 as regulatory expense by such utility in the same manner as

1 reimbursements to the City for such payments pursuant to Section 3-130
2 (5) of the Home Rule Charter.

3 **IV. EQUAL EMPLOYMENT OPPORTUNITY:**

4 In all hiring or employment made possible by or resulting from this
5 contract there (1) will not be any discrimination against any employee or
6 applicant for employment because of race, color, religion, gender, age,
7 physical or mental disability, national origin, sexual orientation, creed,
8 culture or ancestry, and (2) where applicable, affirmative action will be
9 taken to ensure that the Contractor's employees are treated during
10 employment without regard to their race, color, religion, gender, age,
11 physical or mental disability, national origin, sexual orientation, creed,
12 culture or ancestry. This requirement shall apply to, but not be limited
13 to the following: employment, upgrading, demotion, or transfer;
14 recruitment or recruitment advertising; layoff or termination; rates of
15 pay or other forms of compensation; and selection for training, including
16 apprenticeship. All solicitations or advertisements for employees shall
17 state that all qualified applicants will receive consideration for
18 employment without regard to race, color, religion, gender, age,
19 physical or mental disability, national origin, sexual orientation, creed,
20 culture or ancestry.

21 **V. ASSIGNABILITY:**

22 The Contractor shall not assign any interest in this contract, and shall not

1 transfer any interest in the same without prior written consent of the City
2 Council.

3 **VI. CONFLICT OF INTEREST:**

4 In the interest of ensuring that efforts of the Contractor do not conflict
5 with the interest of the City, and in recognition of the Contractor's
6 professional responsibility to the City, the Contractor agrees to decline
7 any offer of employment if its independent, professional work on behalf
8 of the City is likely to be adversely affected by the acceptance of such
9 employment. The initial determination of such a possibility rests with
10 the Contractor. It is incumbent upon the Contractor to notify the City
11 Council and provide full disclosure of the possible effects of such
12 employment on the Contractor's independent, professional work in
13 behalf of the City Council. Final decision on any disputed offers of
14 other employment for the Contractor shall rest with the City Council.

15 **VII. INDEMNIFICATION:**

16 The Contractor shall indemnify and save harmless the City of New
17 Orleans against any and all claims, demands, suits, judgments of sums of
18 money to any party accruing against the City for loss of life or injury or
19 damage to persons or property growing out of, resulting from, or by
20 reason of any act or omission of the operations of the Contractor, their
21 agents, servants, or employees while engaged in or about or in
22 connection with the discharge or performance of the services to be done

1 or performed by the Contractor hereinunder, and shall also hold the City
2 harmless from any and all claims and/or liens for labor, services, or
3 materials furnished to the Contractor in connection with the performance
4 of their obligation under this Agreement unless such labor, services, or
5 materials have been specifically authorized, in writing and in advance,
6 through an appropriate purchase order or purchasing memo signed by an
7 authorized representative of the City.

8 **VIII. ACKNOWLEDGMENT OF EXCLUSION OF WORKER'S**
9 **COMPENSATION COVERAGE:**

10 Contractor herein expressly agrees and acknowledges that they are
11 independent Contractors as defined in R.S. 23:1021 (6) and as such, it is
12 expressly agreed and understood among the parties hereto, in entering
13 into this personal services contract, that the City of New Orleans shall
14 not be liable to the Contractor for any benefits or coverages as provided
15 by the Workmen's Compensation Law of the State of Louisiana and
16 further, under the provisions of R.S. 23:1034 anyone employed by the
17 Contractor shall not be considered an employee of the City for the
18 purpose of Worker's Compensation Coverage.

19 **IX. ACKNOWLEDGMENT OF EXCLUSION OF UNEMPLOYMENT**
20 **COMPENSATION COVERAGE:**

21 Contractor herein expressly declares and acknowledges that it is an
22 independent contractor and as such is being hired by the City under this

1 contract of hire as noted and defined in R.S. 23:1472 (E); and,
2 therefore, it is expressly declared and understood among the parties
3 hereto, in entering into this professional services contract or contract for
4 hire, and in connection with unemployment compensation coverage only,
5 that:

6 A. Contractor has been and will be free from any control or
7 direction by the City over the performance of the services covered by
8 this contract; and

9 B. Service(s) to be performed by Contractor are outside the normal
10 course and scope of the City's usual business; and

11 C. Contractor has been independently engaged in performing the
12 service(s) listed herein prior to the date of this contract. Consequently,
13 neither Contractor nor anyone employed by Contractor shall be
14 considered an employee of the City for the purpose of unemployment
15 compensation coverage, the same being hereby expressly waived and
16 excluded by the parties hereto.

17 **X. WAIVER OF SICK AND ANNUAL LEAVE BENEFITS:**

18 It is expressly agreed and understood among the parties entering into this
19 professional services contract that the Contractor, acting as an
20 independent agent, shall not receive any sick and annual leave benefits
21 from the City of New Orleans.

22 **XI. JURISDICTION:**

1 The undersigned Contractor does further hereby consent and yield to the
2 jurisdiction of the State Civil Courts of the Parish of Orleans and does
3 hereby formally waive any pleas of jurisdiction on account of the
4 residence elsewhere of the undersigned contractor.

5

6 **XII. DURATION OF AGREEMENT:**

7 This service to be provided under the terms of this agreement shall be
8 begin on January 1, 2015 and end no later than December 31, 2015.

9 **XIII. CANCELLATION:**

10 Either party to this contract may terminate the contract at any time
11 during the term of the contract by giving the other party written notice of
12 said intention to terminate at least thirty (30) days before the date of
13 termination.

14 **XIV. CONVICTED FELON:**

15 The Contractor swears that it complies with Section 2-8 (c) of the Code of
16 the City of New Orleans. No Contractor principal, member, or officer has,
17 within the preceding five years, been convicted of, or pled guilty to, a
18 felony under state or federal statutes for embezzlement, theft of public
19 funds, bribery, or falsification or destruction of public records.

20 **XV. SOLICITATION:**

21 The Contractor has not employed or retained any company or person,
22 other than a bona fide employee working solely for Contractor, to solicit
23 or secure the subject contract. The Contractor has not paid or agreed to

1 pay any person, other than a bona fide employee working for Contractor,
2 any fee, commission, percentage, gift, or any other consideration
3 contingent upon or resulting from the subject contract.

4 **XVI. OFFICE OF INSPECTOR GENERAL:**

5 It is agreed that the contractor or applicant will abide by all provisions of
6 City Code §2-1120, including but not limited to City Code §2-1120(12),
7 which requires the contractor to provide the Office of Inspector General
8 documents and information as requested. Failure to comply with such
9 requests shall constitute a material breach of the contract. In signing this
10 contract, the contractor agrees that it is subject to the jurisdiction of the
11 Orleans Parish Civil District Court for purposes of challenging a
12 subpoena.

13 **XVII. OWNERSHIP INTEREST:**

14 The Contractor shall provide a sworn affidavit listing all persons, natural
15 or artificial, with an ownership interest in the Contractor and stating that
16 no other person holds an ownership interest in the contractor via a counter
17 letter. For the purposes hereof, an "ownership interest" shall not be
18 deemed to include ownership of stock in a publicly traded corporation or
19 ownership of an interest in a mutual fund or trust that holds an interest in a
20 publicly traded corporation. If the Contractor fails to submit the required
21 affidavits, the City may, after 30 days' written notice to the prime
22 Contractor, take such action as may be necessary to cause the suspension
23 of any further payments until the required affidavits are submitted.

1 **XVIII. SUBCONTRACTOR REPORTING:**

2 The Contractor shall provide a list of all persons, natural or artificial, who
3 are retained by the Contractor at the time of the contract's execution and
4 who are expected to perform work as subcontractors in connection with
5 the Contractor's work for the city. In regard to any subcontractor proposed
6 to be retained by the Contractor to perform work on the contract with the
7 city, the Contractor must provide notice to the city within 30 days of
8 retaining said subcontractor. If the Contractor fails to submit the required
9 lists and notices, the City may, after 30 days' written notice to the prime
10 Contractor, take such action as may be necessary to cause the suspension
11 of any further payments until the required lists and notices are submitted.

12 **XIX. EXPENSES:**

13 Unless otherwise approved by the Contracting Officer of the City Council,
14 reimbursable expenses shall be limited as follows: meals at reasonable and
15 customary costs for the city in which they are consumed absent charges
16 for alcoholic beverages, air transportation limited to lowest available
17 coach fares the time of booking, lodging expenses in New Orleans not to
18 exceed federal per diem rate for hotels in New Orleans to the extent
19 achievable without an official governmental identification for the
20 personnel; postage, overnight delivery or courier services at contractor's
21 actual cost; facsimile transmissions and long distance telephone charges at
22 contractor's actual cost; copies at \$0.10 per page; computerized research at
23 contractor's actual cost;
24 contractor's actual cost.

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XX. LIMITATIONS:

For the attendance at all meetings of the Council, the Utility, Cable, Telecommunications and Technology Committee, briefings of Councilmembers, and appearance before any court or regulatory body, and during the conduct of regulatory proceedings before the Council and other regulatory bodies, the Council will only provide labor fee reimbursement for one consultant from any applicable firm, unless otherwise specifically approved by the Contracting Officer of the City Council. Contractor further agrees to avoid the unnecessary duplication of personnel and costs in the performance of services under this agreement and accordingly, shall staff all assignments with only qualified and experienced personnel so as to only charge for the minimum number of personnel and incur the least costs reasonably necessary to perform the assignments.

XXI. SEVERABILITY:

In the event a Court of competent jurisdiction finds any clause or provisions pertaining to the retention of Contractor invalid, unless said Court expressly states otherwise, said findings shall not affect Contractor's

1 right to continue providing utility-related accounting services to the City
2 with respect to any clause or provision not found to be invalid.
3 For the consideration and under the conditions set forth above, the Contractor has
4 agreed to perform the specified services for the City of New Orleans.

5 IN WITNESS WHEREOF:

6 ATTEST

CITY COUNCIL

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Stacy Head

Stacy Head
Stacy Head
Council President

Date *5/6/15*

BRUNO AND TERVALON

Ruth H. Evans

Alcide J. Tervalon, Jr.
By: Alcide J. Tervalon, Jr.,
Managing Partner

4298 Elysian Fields
New Orleans, LA 70122

72-0877929
Federal ID Number

Law Department

Approve: *Sharonda Williams* Deputy
Sharonda Williams, City Attorney
Julie P. Meyer