

K16-624

PROFESSIONAL SERVICES AGREEMENT
BETWEEN
THE CITY OF NEW ORLEANS
AND
BRUNO AND TERVALON, LLP

THIS PROFESSIONAL SERVICES AGREEMENT (the “**Agreement**”) is made and entered into this 1st day of January, 2016 (the “**Effective Date**”), by and between the City of New Orleans, through the Council of the City of New Orleans (the “**Council**”), represented by Stacey Head, President of the Council (the “**City**”) and Bruno and Tervalon, LLP, represented by Alcide J. Tervalon, Jr., Managing Partner (the “**Contractor**”).

WHEREAS, on April 22, 2015, the Council issued a request for qualifications pursuant to Motion M-15-135, seeking a qualified accounting professional individual or firm to serve as an electric and natural gas utility regulatory advisor (the “**RFQ**”);

WHEREAS, by the June 1, 2015 deadline one response to the RFQ was received, from Contractor, and through Motion M-15-251, the Council selected the Contractor to perform the professional services described in the RFQ; and

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

I. THE CONTRACTOR’S OBLIGATIONS.

A. Services. The Contractor will, in accordance with the schedule approved by the City:

a) Perform services and provide testimony as needed in connection with matters affecting New Orleans ratepayers as they may arise in docketed and undocketed proceedings at the New Orleans City Council, the Federal Energy Regulatory Commission (FERC), and the Securities and Exchange Commission (SEC); provide analysis, financial auditing, sampling, evaluation, reporting and further address as necessary: fuel adjustment clause (FAC) and other utility periodic reports, inter-affiliate transactions, accumulated deferred income taxes, community development block grants, storm costs, financial statements, and/or other financial accounting matters as they may arise in, but not limited to, the following:

1. Ratemaking, cost allocation, audit, utility mergers and acquisitions, transmission access and ratemaking proceedings arising before the FERC pursuant to the Federal Power Act and Natural Gas Policy Act;
2. Electric utility system planning, management auditing, rate design, cost of service, service regulations and reliability of service issues, finance and accounting matters, including litigation and expert testimony before the SEC, FERC and state regulatory commissions;
3. Agreements between the operating subsidiaries of Registered Holding Companies, including the principles of reserve sharing, reserve equalization, energy pool dispatch and the cost allocation principles employed in support thereof;
4. Regional Transmission Organizations (RTO’s), FERC, and the North American Electric Reliability Corporation (NERC);
5. Registered Holding Companies subject to the jurisdiction of the SEC and FERC;

6. Management auditing, rate design, cost of service, policies for provision of service and related reliability issues, finance and accounting matters, including expert testimony and litigation before the FERC and state regulatory commissions;

7. Energy efficiency initiatives, such as development of electric utility net metering regulations and standards, rate decoupling, integrated resource plans, and home improvement financing programs;

8. Inter-affiliate transaction issues, including codes of conduct and principles of cost allocation for service provided by affiliates to regulated utilities;

9. The operation or conclusion of the Entergy New Orleans System Agreement; and

10. Disaster recovery matters.

b) Perform all other services and obligations as set forth in any the following documents that are incorporated fully into this Agreement: the RFP and the Contractor's proposal dated June 1, 2015.

c) In addition, Contractor shall:

- Submit complete and accurate invoices, maintain records, submit to audits and inspections, maintain insurance, and perform all other obligations of the Contractor as set forth in this Agreement;
- Promptly correct any errors or omissions and any work deemed unsatisfactory or unacceptable by the City, at no additional compensation;
- Monitor, supervise, and otherwise control and be solely responsible for all persons performing work on its behalf;
- Perform all requirements set forth in La. R.S. 38:2192, including without limitation the payment of any associated costs, and submit a copy of any recorded documents to the City within thirty (30) days after the approval of the associated plan change or amendment; and
- Cooperate with the City and any person performing work for the City.

d) The City's 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. Standards. The Contractor, and any person performing work on its behalf, will perform all work under this Agreement in accordance with the professional and occupational standards in effect for Louisiana Accountants.

C. 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.

D. Schedule.

The Contractor will timely perform all work assigned pursuant to this Agreement.

E. Invoices.

1. The Contractor will submit monthly invoices for work performed under this Agreement to the City no later than ten (10) calendar days following the end of the period 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 and supporting documentation: date work performed; description of work including any related docket numbers, time spent on work reported in increments of one-tenth of an hour.

2. All invoices must be signed by an authorized representative of the Contractor under penalty of perjury attesting to the validity and accuracy of the invoice.

3. The City may require changes to the form of the invoice and may require additional supporting documentation to be submitted with invoices.

F. Records and Reporting.

1. The Contractor will maintain all books, documents, papers, accounting records, invoices, materials records, payrolls, work papers, personnel records, and other evidence pertaining to the performance of services under this Agreement, including, without limitation, of costs incurred through the later of five (5) years from: (a) the completion of this Agreement (including any renewal or extension periods); (b) from the resolution of any dispute relating to the Agreement; and (c) the conclusion of dockets, administrative and court proceedings related to the work. If this Agreement is terminated for any reason, the Contractor will deliver to the City all plans and records of work compiled through the date of termination.

2. The Contractor will provide reports as requested by the City and is solely responsible for the relevance and accuracy of all items and details included in any reports relating to the work performed under this Agreement, regardless of any review by the City.

G. 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 New Orleans, Louisiana.

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, subject to attorney work product protection. 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.

H. Insurance.

1. Except as otherwise noted, at all times during this Agreement or the performance of work required by this Agreement, the Contractor will maintain the following or comparable insurance in full force and effect for the duration of the work under this Agreement:

a. Commercial General Liability insurance against risks and in amounts indicated in Certificate of Liability Insurance #CL1510219699 dated 11/12/2015.

2. The Contractor will provide the City with the following documents within ten (10) calendar days of this Agreement's effective date and at any other time at the City's request:

a. Proof of coverage for each policy of insurance required by this Agreement;

b. Copies of all policies of insurance, including all policies, forms, and endorsements; and

- c. Statements disclosing any policy aggregate limit.
- 3. Without notice from the City, the Contractor will:
 - a. Replenish any policy aggregate limit that is impaired before commencement of any work or continuation of any work under this Agreement;
 - b. Substitute insurance coverage acceptable to the City within thirty (30) calendar days if any insurance company providing any insurance with respect to this Agreement is declared bankrupt, becomes insolvent, loses the right to do business in Louisiana, or ceases to meet the requirements of this Agreement; and
 - c. Notify the City's Risk Manager in writing within forty-eight (48) hours of its receipt of any notice of non-renewal, cancellation, or reduction in coverage or limits affecting any policy of insurance maintained under this Agreement.

I. Indemnity.

1. To the fullest extent permitted by law, 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 Indemnified Parties: for loss of life or injury or damage to persons or property arising from or relating to any act or omission or the operation of the Contractor, its agents, subcontractors, or employees while engaged in or in connection with the discharge or performance of any work under this Agreement; and for any and all claims and/or liens for labor, services, or materials furnished to the Contractor in connection with the performance of work under 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:

1. The Contractor, through its duly authorized representative, has the full power and authority to enter into and execute this Agreement;

2. 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;

3. 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;

4. 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;

5. 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 and incorporated into this Agreement;

6. The Contractor is not in breach of any federal, state, or local statute or regulation applicable to the Contractor or its operations;

7. 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;

8. The Contractor has read and fully understands this Agreement and is executing this Agreement willingly and voluntarily; and

9. 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 (i) it is in compliance with La. R.S. 38:2212.10, and is registered and participates in a status verification system to verify that all employees in the State of Louisiana are legal citizens of the United States or are legal aliens; (ii) it shall continue, during the term of this Agreement, to utilize a status verification system to verify the legal status of all new employees in the State of Louisiana; and (iii) it shall require all subcontractors to submit to the Contractor a sworn affidavit verifying compliance with items (i) and (ii) above. Any violation of the provisions of this paragraph may subject this Agreement to termination, and may further result in the Contractor being ineligible for any public contract for a period of three years from the date the violation is discovered. The Contractor further acknowledges and agrees that it shall be liable for any additional costs incurred by the City occasioned by the termination of this Agreement or the loss of any license or permit to do business in the State of Louisiana resulting from a violation of La. R.S. 38:2212.10. The Contractor will provide to the City 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 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.

III. THE COUNCIL'S OBLIGATIONS.

A. **Administration.** The Council will:

1. Administer this Agreement through the Council Utilities Regulatory Office ("CURO");
2. Provide the Contractor with documents deemed necessary for the Contractor's performance of any work required under this Agreement; and
3. Provide access to CURO personnel to discuss the required services during normal working hours, as requested by the Contractor.

B. **Payment.** Payment under this agreement shall be made pursuant to detailed monthly invoices submitted by Contractor, subject to review and approval by the City for payment. Upon authorization through CURO such invoices may be submitted to the Finance Department for payment by the City or, alternatively, when such invoices would be reimbursable by a utility subject to regulation under Section 3-130 of the Home Rule Charter and reimbursable pursuant to Section 3-130 (5) of the Home Rule Charter, the CURO may submit such invoices for payment to such regulated utility company. Payments under the name of the firm under this provision shall then be sent to the CURO which shall immediately forward such authorized payment to the firm. The CURO shall maintain records of such payments which shall be public records and shall also forward copies of such records as required to the CAO and Department of Finance. Such payments, when made by such utility company through the CURO shall fully discharge the City's obligation for such payment under this contract and be included in and applied to the maximum compensation limits of this contract. Such payments shall be recoverable as regulatory expense by such utility in the same manner as reimbursements to the City for such payments pursuant to Section 3-130 (5) of the Home Rule Charter.

Payment shall be made to the Contractor at the rate of compensation established in this Agreement based upon the Contractor's certified invoices, except:

1. The obligation to pay is contingent upon the Contractor's: (a) submission of a complete and accurate invoice; (b) satisfactory performance of the services and conditions required by this Agreement;
2. The Council, in its discretion, may withhold approval of payment of any disputed amounts, and no interest shall accrue on any amount withheld pending the resolution of the dispute;
3. The Council may set off any amounts due to the Contractor against any amounts deemed by the Council to be owed to the Council by the Contractor pursuant to this Agreement; and
4. If payment is not made by the regulated utility, the compensation owed to the Contractor under this Agreement is contingent upon the appropriation and allocation of funds for work under this Agreement by the City.
5. The Council or City is not obligated under any circumstances to pay for any work performed or costs incurred by the Contractor that: exceed the maximum aggregate amount payable established by this Agreement; are beyond the scope or duration of this Agreement; arise

from or relate to the correction of errors or omissions of the Contractor or its subcontractors; or the Council or City is not expressly obligated to pay under this Agreement.

6. The Council, 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.

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

IV. COMPENSATION.

A. Rate of Compensation.

1. Contractor's personnel will charge the following:
 - Alcide J. Tervalon, Jr., Engagement Partner, \$250.00 per hour;
 - Errol R. Smith, Engagement Director, \$200.00 per hour;
 - Manager, \$180.00 per hour; and
 - Senior, \$150.00 per hour.

Mr. Tervalon and Mr. Smith may not be replaced without consent of CURO.

2. This Agreement does not guarantee any amount of work or compensation except as specifically authorized by the Council in accordance with the terms and conditions of this Agreement.

3. The stated compensation is inclusive, and includes no additional amounts for 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. Unless otherwise approved by CURO, reimbursable expenses shall be limited as follows: air transportation limited to coach fares, lodging expenses not to exceed federal per diem rate for hotels in New Orleans; postage, overnight delivery or courier services at contractor's actual cost; facsimile transmissions and long distance telephone charges at contractor's actual cost; copies at \$0.10 per page; computerized research at contractor's actual cost. Otherwise, the Council or City will not consider or be obligated to pay or reimburse the Contractor any other charges or fees and the Contractor will not be entitled to any additional compensation or reimbursement, except otherwise specifically provided in the Agreement.

4. For the attendance at all meetings of the Council, the UCTT Committee, briefings of Councilmembers, and representation 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 CURO.

5. The Contractor immediately will notify the Council in writing of any reduction to the rate of compensation for its most favored customer and the rate of compensation established by this Agreement automatically will adjust to the reduced rate effective as of the effective date of the reduction for the most favored customer.

B. Maximum Amount. The maximum aggregate amount payable under this Agreement is \$220,000.00.

V. DURATION AND TERMINATION.

A. **Initial Term.** The initial term of this Agreement is one (1) year from the Effective Date.

B. **Extension.** The Council may extend the term this Agreement for no more than five (5) one (1) year periods pursuant to validly executed amendments, provided that: if not paid by regulated utility any extension of this Agreement is subject to and contingent upon the encumbrance of funds; the Council determines that the extension facilitates the continuity of services provided under this Agreement; and

C. **Termination for Convenience.** The Council 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.

D. **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 and the Council will not be liable for any amounts beyond the funds appropriated and encumbered for this Agreement.

E. **Termination for Cause.** The Council 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 without limitation any failure to comply with the requirements of City Code § 2-1120 or requests of the Office of Inspector General. If a termination for cause is subsequently challenged in a court of law and the challenging party prevails, the termination will be deemed to be a termination for convenience effective thirty (30) days from the date of the original written notice of termination for cause was sent to the challenging party; no further notice will be required.

F. **Suspension.** The Council 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 Council.

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. Incorporation into Subcontracts. The Contractor will incorporate the terms and conditions of this Article into all subcontracts, by reference or otherwise, and will require all subcontractors to comply with those provisions.

D. The Council 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 Council and will not hold itself or any of its employees, subcontractors or agents to be an employee, partner, or agent of the Council.

B. Exclusion of Worker's Compensation Coverage. The Council 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 Council 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 Council 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 Council 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 Council 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 Council'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 Council 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 Council under this Agreement.

VIII. NOTICE.

Except for any routine communication, any notice, demand, communication, or request required or permitted under this Agreement will be given in writing and delivered in person or by certified mail, return receipt requested as follows:

1. To the Council:

Chief of Staff, City Council Utilities Regulatory Office
City Hall

1300 Perdido St., Rm 6E07,
New Orleans, LA 70112

2. To the Contractor:

Alcide J. Tervalon, Jr.,
4298 Elysian Fields Ave.
New Orleans, LA 70122

Notices are effective when received, except any notice that is not received due to the intended recipient's refusal or avoidance of delivery is deemed received as of the date of the first attempted delivery. Each party is responsible for notifying the other in writing that references this Agreement, of any changes in its address set forth above.

IX. ADDITIONAL PROVISIONS.

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

B. Order of Documents. In the event of any conflict between the provisions of this Agreement and any incorporated documents, the terms and conditions of the documents will apply in this order: the Agreement; the RFQ, the Response to RFQ.

C. 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 Council may, after thirty (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.

D. Subcontractor Reporting. The Contractor will provide a list of all natural or artificial persons who are retained by the Contractor at the time of the Agreement's execution and who are expected to perform work as subcontractors in connection with the Contractor's work for the Council. For any subcontractor proposed to be retained by the Contractor to perform work on the Agreement with the Council, the Contractor must provide notice to the Council within 30 days of retaining that subcontractor. If the Contractor fails to submit the required lists and notices, the Council may, after 30 days' written notice to the Contractor, take any action it deems necessary, including, without limitation, causing the suspension of any payments, until the required lists and notices are submitted.

E. Prohibition of Financial Interest in Agreement. No elected official or employee of the Council 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 Council shall be deemed to be a financial interest of such elected official or employee of the Council. Any willful violation of this provision, with the expressed or implied knowledge of Contractor, shall render this Agreement voidable by the Council and shall entitle the Council to recover, in addition to any other rights and remedies available to the Council, all monies paid by the Council to Contractor pursuant to this Agreement without regard to Contractor's otherwise satisfactory performance of the Agreement.

F. 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.

G. Conflicting Employment. To ensure that the Contractor's efforts do not conflict with the Council's interests, and in recognition of the Contractor's obligations to the Council, 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 Council 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 Council will make the final determination whether the Contractor may accept the other employment.

H. Non-Exclusivity. This Agreement is non-exclusive and the Contractor may provide services to other clients, subject to the Council's approval of any potential conflicts with the performance of this Agreement and the Council may engage the services of others for the provision of some or all of the work to be performed under this Agreement.

I. Assignment. This Agreement and any part of the Contractor's interest in it are not assignable or transferable without the Council's prior written consent.

J. Terms Binding. The terms and conditions of this Agreement are binding on any heirs, successors, transferees, and assigns.

K. 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.

L. 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.

M. 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 Council 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.

N. 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.

O. 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.

P. 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.

Q. 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.

R. 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.

S. 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 Council and the Contractor, through their duly authorized representatives, execute this Agreement.

THE CITY OF NEW ORLEANS

BY: 

STACEY HEAD,
CITY COUNCIL PRESIDENT

BRUNO AND TERVALON, LLP

BY: 

ALCIDE J. TERVALON, JR.,
MANAGING PARTNER

72-0877929
CORPORATE TAX I.D.

FORM AND LEGALITY APPROVED:

Law Department

By: 

Printed Name: Julie L. Meyer