

K14-373

1                                   **AGREEMENT FOR PROFESSIONAL SERVICES**  
2   **BETWEEN**  
3   **THE CITY OF NEW ORLEANS**  
4   **AND**  
5   **DON A. ROUZAN & ASSOCIATES, LLC**

6  
7 THIS AGREEMENT made this 1st day of March, 2014 ("Effective Date"), by and  
8 between the City of New Orleans, herein represented by stacy s. Head  
9 Council President (hereinafter referred to as "the City"), and DON A. ROUZAN &  
10 ASSOCIATES, LLC, represented by Don A. Rouzan, Owner and Managing Member  
11 (hereinafter referred to as "Contractor").

12   **W I T N E S S E T H**

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15                   **WHEREAS**, Council Rule 45 establishes a competitive selection process for the  
16 selection of professional services contractors to the City Council; and

17                   **WHEREAS**, the Council's Competitive Selection Committee oversees the  
18 selection of professional services contractors when there is not an existing Council  
19 committee under whose purview the proposed contract already falls; and

20                   **WHEREAS**, on August 22, 2013, the City Council adopted Motion M-13-294,  
21 directing Council staff to issue a Request for Qualifications (RFQ) relative to the  
22 competitive selection process established by Council Rule 45 relative to the services of  
23 special counsel for the City Council; and

24                   **WHEREAS**, a Request for Qualifications relative to the special counsel position  
25 was issued on August 22, 2013; and

26                   **WHEREAS**, by the advertised deadline, four (4) responses to the RFQ were  
27 received; and

28                   **WHEREAS**, as directed, the staff Selection Review Committee evaluated the  
29 submissions and after review forwarded the four (4) submissions to the Competitive  
30 Selection Committee for its consideration; and

31                   **WHEREAS**, by Motion M-14-71, adopted by the Council on March 13, 2014, the  
32 Council authorized and requested the Council President to sign a professional services

1 contract to retain Don A. Rouzan & Associates, LLC, as special counsel to the City  
2 Council; now therefore,

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## ARTICLE I. SCOPE OF SERVICES

### 5 **Section 1. CONTRACTOR AGREES TO:**

6 **A.** In accordance with the procedure detailed herein in Article I, Section 1 B., when it is  
7 determined that a) there are conflicts or potential conflicts between the executive branch  
8 and the City Council and/or b) the Council's best interest will be served through the  
9 Council's receipt of advice and guidance of special counsel, contractor agrees to assist  
10 the Council with legal and policy matters where advice independent of the Department  
11 of Law is desired related to the legislative powers, regulatory powers and/or other  
12 functions of the City Council and which are not in conflict with and do not usurp the  
13 powers and functions that are provided exclusively to the City Attorney or Law  
14 Department under the City Charter.

15 **B.** At the direction and under the supervision of the Council's Chief of Staff, the  
16 Contractor, in cooperation with Curry & Friend, will provide services to the Council as a  
17 whole and its Committees. Services of Special Counsel Firms (Curry & Friend and Don  
18 A. Rouzan & Associates) shall be provided pursuant to the following process: a) by  
19 Council motion; or b) upon the request of one or more Councilmembers with the  
20 approval of the Council President, or if the Council President makes the request, with  
21 the approval of the Council Vice-President, subject, however, to disapproval by a  
22 majority of all members of the Council at its next regular or special meeting. The  
23 Councilmember(s) requesting the services of special counsel may identify/specify the  
24 firm/attorney that he or she desires to perform each task, and in the absence of such  
25 indication, the Council's Chief of Staff may allocate the assignments approximately  
26 equally among the special council firms. The Council Chief of Staff (COS) shall serve as  
27 contract manager for the special counsel; and accordingly (i) after compliance with the  
28 procedural process indicated hereinabove, special counsel may receive specific work  
29 assignments through the COS; (ii) the special counsel shall give the COS immediate  
30 notice of work authorized herein and COS shall, in turn, immediately notify all  
31 Councilmembers of same; and (iii) the COS shall review all bills submitted to ensure

1 that all services reflected in the bills or invoices are authorized as provided herein or  
2 otherwise authorized by the Council. The COS shall work with Special Counsel Firms  
3 (Curry & Friend and Don A. Rouzan & Associates) to ensure that work distributed by the  
4 Council is divided more or less equally between them, and in the event of a substantial  
5 or comprehensive project, that Special Counsel Firms (Curry & Friend and Don A.  
6 Rouzan & Associates) will work together on the same subject. The responsible  
7 attorneys at the Special Counsel Firms (Curry & Friend and Don A. Rouzan &  
8 Associates) will meet or conference approximately every six (6) weeks as necessary to  
9 report workload, progress, processes, and format to ensure a quality and consistent  
10 product for the Council and an approximately even distribution of assignments for the  
11 Special Counsel Firms

12 **C.** In conjunction with A and B above, the duties of special counsel may include but are  
13 not necessarily limited to the following illustrative list of examples:

- 14 • Review of ordinances, motions, resolutions, and related documents prior to and  
15 subsequent to introduction, and provide analysis as requested
- 16 • Attendance at Council or committee meetings or other meetings as requested
- 17 • Review of contract documents
- 18 • Review of state and federal legislation or administrative rules
- 19 • Review of City Attorney opinions, Attorney General opinions, and court or  
20 administrative decisions or orders
- 21 • Attendance at executive sessions
- 22 • Review and analysis of litigation
- 23 • Performance of such other legal services and provision of policy advice related to  
24 the legislative powers and functions of the City Council pursuant to the Home  
25 Rule Charter that are not in conflict with and do not usurp the powers and  
26 functions of the City Attorney or Law Department under the Charter.

27 **Section 2.** The City shall perform each of the following services:

- 28 1. Provide administration of the Agreement through the City Council Chief of  
29 Staff (COS); and

- 1           2. Provide access to all personnel and records deemed necessary for the  
2           performance of the Services by Contractor.  
3  
4  
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6                                   **ARTICLE II. REPRESENTATIONS AND WARRANTIES**

7   Section 1. Representations and Warranties of City. City represents and warrants that:

- 8           A. City has the legal authority to enter into this Agreement; and  
9           B. The undersigned Council President has the authority to execute this Agreement  
10          on behalf of City.

11   Section 2. Representations and Warranties of Contractor. Contractor represents and  
12   warrants that:

- 13          A. Contractor, through its duly authorized representative, has the full power and  
14          authority to enter into and execute this Agreement and, as such, this Agreement  
15          is legally binding upon and enforceable against Contractor in accordance with its  
16          terms;  
17          C. Contractor is not under any obligation to any other party that would be inconsistent  
18          with or in conflict with this Agreement or that would prevent, limit or impair in any  
19          way its performance of any obligations hereunder;  
20          D. Contractor has the requisite expertise, qualifications, staff, materials and  
21          equipment in place and available to enable it to fully perform the Services and  
22          Contractor, along with its employees, as required, and all sub-contractors, if any  
23          and as required, possess all necessary permits, licenses, consents, registrations  
24          and/or certifications required under federal, state and/or local law to perform the  
25          Services;  
26          E. As of the Effective Date of this Agreement, Contractor has no knowledge of any  
27          undisclosed fact that could materially adversely affect its condition (financial or  
28          otherwise), business operations or its ability to fulfill its obligations under this  
29          Agreement;  
30          F. Contractor is not in breach of any federal, state or local statute or regulation  
31          applicable to Contractor or its operations;

1 G. Contractor's work shall be accurate and free from any material errors.  
2 Contractor's duties as set forth in this Agreement shall at no time be in any way  
3 diminished by reason of any approval by City nor shall Contractor be released  
4 from liability by reason of such approval by City—it being understood that City, at  
5 all times, is ultimately relying upon Contractor's skill and knowledge in  
6 performing the Services;

7 H. Contractor is bonded, if required by law, and fully and adequately insured for the  
8 injury of its employees and any others incurring loss or injury as a result of the  
9 actions of Contractor or its employees or subcontractors in the performance of its  
10 obligations under this Agreement; and

11 I. Contractor has read and fully understands the terms, covenants and conditions  
12 set forth in this Agreement and is executing the same willingly and voluntarily of  
13 its own volition.

14 Section 3. Reliance on Representations, Warranties and Covenants. All  
15 representations, warranties, covenants and agreements made in this Agreement are  
16 intended to be material and shall be conclusively deemed to have been relied upon by  
17 the receiving party.

18 **ARTICLE III. COMPENSATION**

19 Section 1. Rate of Compensation. City shall compensate Contractor at the following  
20 rate per hour for the performance of the Services.

21 Don Rouzan: \$200 per hour

22 Dana Henry: \$200 per hour

23 Heather Smith: \$150

24 Sean Blondell: \$150 per hour

25 Paralegals: \$90 per hour

26 City shall not be liable for any costs or expenses paid or incurred by Contractor in the  
27 performance of the Services, unless specific exception is provided herein.

28 Section 2. Truth-In-Negotiation. As of the Effective Date of this Agreement, Contractor  
29 represents and warrants that the rates charged City as set forth in this Article III for the  
30 performance of the Services are no higher than those charged Contractor's most  
31 favored customer for the same or substantially similar services. In the event

1 Contractor's "most favored customer" rates are reduced during the term of this Agreement,  
2 Contractor shall be obligated to promptly notify City of such reduction in writing, and such  
3 reduced rates shall apply to any services provided on or after the date that Contractor first  
4 reduced such rates. City shall have the right to enforce this provision for up to one (1)  
5 year following the termination of this Agreement.

6 Section 3. Detailed Monthly Invoices. As a prerequisite to payment, Contractor shall  
7 submit to City monthly invoices describing in detail, at a minimum, the services  
8 performed and time expended in the performance of such services. Billing hours shall  
9 be invoiced in increments of not greater than one-tenth of an hour.

10 Section 4. Maximum Compensation; Subject to Appropriation. City's obligation to  
11 compensate Contractor hereunder shall not at any time exceed the maximum  
12 compensation, in the aggregate, of \$50,000.00. Further, all compensation owed  
13 Contractor pursuant to this Agreement is contingent upon the appropriation and  
14 allocation of funds by City.

15 Section 5. No Payment for Services Beyond Scope of Agreement. Except as may be  
16 provided by laws governing emergency procedures, officers and employees of City are  
17 not authorized to request Contractor to provide additional services that would result in  
18 the performance of services beyond the scope set forth in Article I, unless this  
19 Agreement has been amended in accordance with its terms to authorize such additional  
20 services and/or expenditures. City shall not be required to reimburse Contractor for any  
21 services that are provided by Contractor that are beyond the scope of this Agreement,  
22 in the absence of a duly authorized executed amendment hereto.

23 Section 6. No Payments in Excess of Maximum Compensation. Officers and  
24 employees of City are not authorized to offer or promise to Contractor additional funding  
25 for the contract in excess of the maximum amount of funding set forth above. Additional  
26 funding for services provided under this Agreement, unless this Agreement has been  
27 amended in accordance with its terms to authorize such increase and the Department of  
28 Finance has certified the availability of such additional funding. Absent the prior duly  
29 authorized amendment of this Agreement and the necessary certification of the  
30 Department of Finance, City shall not be required to honor—and will not remit to  
31 Contractor—any offered or promised additional funding for any of the Services

1 performed pursuant to this Agreement in excess of the maximum amount set forth  
2 above.

### 3 **ARTICLE IV. TERM**

4 Section 1. Initial Term. This Agreement shall commence on the Effective Date and  
5 shall continue until December 31, 2014. It is understood and acknowledged by  
6 Contractor that the Services described above are expected to be completed within this  
7 time period.

8 Section 2. Renewal. At the option of City, this Agreement may be renewed on an  
9 annual basis for no longer than five one-year periods, beginning January 1, 2015,  
10 provided that (A) additional funding, if required, is allocated by City and incorporated  
11 herein by a duly authorized amendment to this Agreement and (B) the renewal of this  
12 Agreement will facilitate the continuity of the services described herein.

13

### 14 **ARTICLE V. NON-DISCRIMINATION; EQUAL EMPLOYMENT OPPORTUNITY**

15 Section 1. Contractor Shall Not Discriminate. In the performance of this Agreement,  
16 Contractor agrees not to discriminate on the basis, whether in fact or perception, of a  
17 person's race, color, creed, religion, national origin, ancestry, age, sex, sexual  
18 orientation, gender identity, domestic partner status, marital status, physical or mental  
19 disability or AIDS- or HIV-status against (A) any employee of or any City employee  
20 working with Contractor in any of Contractor's operations within Orleans Parish or (B)  
21 any person seeking accommodations, advantages, facilities, privileges, services, or  
22 membership in all business, social, or other establishments or organizations operated  
23 by Contractor. Contractor agrees to comply with and abide by all applicable federal,  
24 state and local laws relating to non-discrimination, including, without limitation, Title VI  
25 of the Civil Rights Act of 1964, Section V of the Rehabilitation Act of 1973 and the  
26 Americans with Disabilities Act of 1990.

27 Section 2. Equal Employment Opportunity.

28 In all hiring or employment made possible by or resulting from this Contract, there (1)  
29 will not be any discrimination against any employee or applicant for employment  
30 because of race, color, religion, gender, age, physical or mental disability, national  
31 origin, sexual orientation, creed, culture or ancestry, and (2) where applicable,

1 affirmative action will be taken to ensure that the Contractor's employees are treated  
2 during employment without regard to their race, color, religion, gender, age, physical or  
3 mental disability, national origin, sexual orientation, creed, culture or ancestry. This  
4 requirement shall apply to, but not be limited to the following: employment, upgrading,  
5 demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates  
6 of pay or other forms of compensation; and selection for training, including  
7 apprenticeship. All solicitations or advertisements for employees shall state that all  
8 qualified applicants will receive consideration for employment without regard to race,  
9 color, religion, gender, age, physical or mental disability, national origin, sexual  
10 orientation, creed, culture or ancestry.

11 Section 3. Subcontracts. Any and all subcontracts by the Contractor relating to work  
12 under this contract shall be approved in advance by motion of the Council. The Council  
13 may require information on ownership interests in the subcontractor prior to approval of  
14 the subcontractor's retention. Contractor shall incorporate by reference in all  
15 subcontracts the provisions of this Article and shall require all subcontractors to comply  
16 with such provisions. Contractor's failure to comply with the obligations in this  
17 subsection shall constitute a material breach of this Agreement.

18

19

## **ARTICLE VI. INDEMNIFICATION**

20 The Contractor shall indemnify and save harmless the City of New Orleans against any  
21 and all claims, demands, suits, judgments of sum of money to any party accruing  
22 against the City for loss of life or injury or damage to persons or property growing out of,  
23 resulting from, or by reason of any act of omission of the operation of the Contractor,  
24 his agents, servants or employees while engaged in or about or in connection with the  
25 discharge or performance of the services to be done or performed by the Contractor  
26 hereunder, and shall also hold the City harmless from any and all claims and/or liens for  
27 labor, services, or materials furnished to the Contractor in connection with the  
28 performance of its obligation under this Agreement.

29

## **ARTICLE VII. INDEPENDENT CONTRACTOR STATUS**

30 Section 1. Acknowledgment Of Exclusion Of Worker's Compensation Coverage: The  
31 Contractor herein expressly agrees and acknowledges that it is an independent

1 Contractor as defined in R. S. 23:1021 (6) and as such, it is expressly agreed and  
2 understood between the parties hereto, in entering into this professional services  
3 contract, that the City of New Orleans shall not be liable to the Contractor for any  
4 benefits or coverage as provided by the Worker's Compensation Law of the State of  
5 Louisiana, and further, under the provisions of R.S. 23:1034 anyone employed by the  
6 Contractor shall not be considered an employee of the City for the purpose of Worker's  
7 Compensation Coverage.

8 Section 2. Acknowledgment Of Exclusion Of Unemployment Compensation Coverage:

9 The Contractor herein expressly declares and acknowledges that it is an independent  
10 contractor and as such is being hired by the City under this contract of hire as noted and  
11 defined in R.S. 23:1472 (E); and, therefore, it is expressly declared and understood  
12 between the parties hereto, in entering into this professional services contract or  
13 contract for hire, and in connection with unemployment compensation in coverage  
14 only, that:

- 15 A. The Contractor has been and will be free from any control or direction by  
16 the City, over the performance of the services covered by this contract;  
17 and
- 18 B. Service(s) to be rendered by the Contractor are outside the normal course  
19 and scope of the City's usual business; and
- 20 C. The Contractor has been independently engaged in performing services  
21 listed herein prior to the date of this contract.

22 Consequently, neither the Contractor nor anyone employed by the Contractor shall be  
23 considered an employee of the City for the purpose of unemployment compensation  
24 coverage, the same being hereby expressly waived and excluded by the parties hereto.

25 Section 3. Waiver Of Sick And Annual Leave Benefits: It is expressly agreed to and  
26 understood between the parties entering into this professional services contract that the  
27 Contractor, acting as an independent agent, and its agents assigned and employees  
28 shall not receive any sick and annual leave benefits from the City of New Orleans.

29

30 **ARTICLE VIII. GOVERNING LAW, JURISDICTION AND VENUE**

31 Section 1. Governing Law. This Agreement shall be construed and enforced in

1 accordance with the laws of the State of Louisiana, excepting its conflict of laws  
2 provisions.

3 Section 2. Exclusive Jurisdiction and Venue. For all claims arising out of or related to  
4 this Agreement, Contractor hereby consents and yields to the exclusive jurisdiction and  
5 venue of the Civil District Court for the Parish of Orleans and expressly waives any (A)  
6 pleas of jurisdiction based upon Contractor's residence and (B) right of removal to  
7 federal court based upon diversity of citizenship.

8

9 **ARTICLE IX. RETENTION, ACCESS AND OWNERSHIP OF RECORDS**

10 Section 1. Retention. Contractor agrees to keep all such business records related to or  
11 arising out of this Agreement as would be kept by a reasonably prudent practitioner of  
12 Contractor's profession for a period of six (6) years after the termination of this  
13 Agreement. All accounting records shall be maintained in accordance with generally  
14 accepted principles and practices.

15 Section 2. Right to Audit; Access. At any time during normal business hours, upon  
16 receipt of reasonable notice and as often as City may deem necessary, Contractor shall  
17 make all data, records, reports and all other materials relating to this Agreement  
18 available to City for examination and copying. In addition, Contractor shall permit City  
19 to audit, and shall cooperate fully in any such audit of, all invoices, materials, payrolls,  
20 work papers, personnel records and other data necessary to enable City to verify the  
21 accuracy of Contractor's invoices for payment for the performance of the Services.

22 Section 3. Ownership. All data collected and all products of work prepared, created or  
23 modified by Contractor in the performance of its obligations under this Agreement,  
24 including, without limitation, any and all notes, tables, graphs, reports, files, computer  
25 programs, source code, documents, records, disks, original drawings or other such  
26 material, regardless of form and whether finished or unfinished, (collectively, "Work  
27 Product") shall become the exclusive property of City, and no reproduction of any  
28 portions of such Work Product may be made in any form without the express written  
29 consent of City. City shall have all right, title and interest in such Work Product,  
30 including, without limitation, the right to secure and maintain the copyright, trademark  
31 and/or patent of Work Product in the name of City. All such Work Product may be used

1 and distributed for any purpose deemed appropriate by City without the consent of and  
2 for no additional consideration owing to Contractor.

3  
4 **ARTICLE X. DURATION OF AGREEMENT**

5 Section 1. Termination. The services to be provided under the terms of this Agreement  
6 shall begin on March 1, 2014 and shall end no later than December 31, 2014. It is  
7 understood and acknowledged by all signatories to this agreement that work described  
8 under these terms is to be accomplished during the time period specified herein. The  
9 terms, conditions and/or duration of this contract may be modified by an executed,  
10 written amendment to this contract. City and Contractor shall each have the right to  
11 terminate this Agreement without cause by giving the other party written notice of its  
12 intent to terminate at least thirty (30) days prior to the date of termination. In the event  
13 City elects to terminate for convenience, City shall be obligated to pay Contractor only  
14 for those Services performed up to and through the date of termination.

15 Section 2. Renewal. At the option of the City, this Agreement may be renewed on an  
16 annual basis for no longer than five one-year periods, beginning January 1, 2015, provided  
17 that (A) additional funding, if required, is allocated by City and incorporated herein by a  
18 duly authorized amendment to this Agreement, and (B) the renewal of this Agreement will  
19 facilitate the continuity of the services described herein.

20 **ARTICLE XI. INSURANCE**

21 During the term of this Agreement, Contractor shall, at all times, maintain (a) adequate  
22 worker's compensation and unemployment insurance coverage for its employees in  
23 accordance with state law and (b) comprehensive general liability insurance in amounts  
24 not less than \$1,000,000 per occurrence.

25 **ARTICLE XII. NOTICE**

26 Section 1. Any notice, demand, communication or request required or permitted  
27 hereunder shall be in writing and delivered in person or by certified mail, return receipt  
28 requested as follows:

29  
30 If to City: Evelyn F. Pugh, Interim City Council Chief of Staff  
31 New Orleans City Council, Room 1E06

1 City Hall, 1300 Perdido St.  
2 New Orleans, Louisiana 70112

3  
4 and Sharonda Williams  
5 City Attorney  
6 City of New Orleans  
7 1300 Perdido St., Room 5E03  
8 New Orleans, LA 70112

9  
10 If to Contractor: Don A. Rouzan  
11 Don A. Rouzan & Associates, LLC  
12 2555 Ursulines Avenue, Suite B  
13 New Orleans, La. 70119

14

15 Section 2. Notices shall be effective when received by each of the above-referenced  
16 individuals at the addresses specified above. Each party shall be responsible for  
17 notifying the other in writing of any changes in the respective addresses set forth above.

18 Section 3. Nothing contained in this Article shall be construed to restrict the  
19 transmission of routine communications between representatives of City and  
20 Contractor.

21  
22 **ARTICLE XIII. GENERAL PROVISIONS**

23 Section 1. No Assignment Without Consent. This Agreement is personal to each of the  
24 parties hereto, and neither party may assign or delegate any rights or obligations  
25 hereunder without first obtaining the written consent of the other party. Subcontractors  
26 must be approved by Motion of the City Council. The Council may require information on  
27 ownership interests in the subcontractor prior to approval of the subcontractor's retention.  
28 Contractor shall incorporate by reference in all subcontracts the provisions of this section  
29 and shall require all subcontractors to comply with such provisions. Contractor's failure to  
30 comply with the obligations in this subsection shall constitute a material breach of this  
31 Agreement.

1 Section 2. Conflict of Interest.

2 **A.** Contractor agrees to decline any offer of work, whether as an independent  
3 contractor or employee, if such work would (a) affect Contractor's independent  
4 professional judgment with respect to its performance of the Services or (b) in  
5 any way interfere with Contractor's ability to discharge any of its obligations  
6 under this Agreement. The initial determination of whether any offer of work  
7 would present such a conflict of interest shall rest with Contractor. However,  
8 Contractor shall be obligated to notify the Council Chief of Staff and provide full  
9 disclosure as to any possible adverse effects of such work as it relates to  
10 Contractor's independent professional judgment or the discharge of any of its  
11 obligations under this Agreement. Final decision as to whether any such work  
12 proposes a prohibited conflict of interest shall rest with the Council of the City of  
13 New Orleans. Such decision by the Council as to whether any such work  
14 constitutes a prohibited conflict of interest should be made only after the Council  
15 seeks advice from the City Attorney. The City Attorney may provide any advice  
16 to the Council that he/she deems appropriate.

17 **B.** Determination of a conflict of interest shall be made in accordance with the  
18 following process:

- 19 • The Council Chief of Staff shall immediately notify (either electronically or in  
20 writing) each Councilmember of any notice received pursuant to this section or in  
21 the event knowledge of a potential conflict of interest is acquired independently.
- 22 • If any Councilmember objects to the Contractor's proposed undertaking, he or  
23 she must notify the Chief of Staff (either electronically or in writing) within seven  
24 working days of the receipt of notice from the Chief of Staff of such objection.  
25 The Chief of Staff shall prepare a motion for the Councilmember(s) objecting  
26 calling for the approval or disapproval of the proposed undertaking by a majority  
27 of all members of the Council at the next regular or special meeting of the  
28 Council.

29 Section 3. Office of Inspector General: The Contractor understands and will abide by all  
30 provisions of the Code of the City of New Orleans, Chapter 2, Art. XIII, Sect. 2-1120, as  
31 adopted by City Ordinance No. 22,888 M.C.S., (relative to the operations and authority

1 of the City Inspector General), incorporated herein by reference.

2 Section 4. Non-waiver. The failure of either party to insist upon strict compliance with  
3 any provision of this Agreement to enforce any right or to seek any remedy upon  
4 discovery of any default or breach of the other party at such time as the initial discovery  
5 of the existence of such noncompliance, right, default or breach shall not affect, nor  
6 constitute a waiver of, any party's right to insist upon such compliance, exercise such  
7 right or seek such remedy with respect to that default or breach or any prior,  
8 contemporaneous or subsequent default or breach.

9 Section 5. Severability. In the event a Court of competent jurisdiction finds any clause  
10 or provisions pertaining to the retention of Contractor invalid, unless said Court  
11 expressly states otherwise, said findings shall not affect Contractor's right to continue  
12 providing legal services to the City with respect to any clause or provision not found to  
13 be invalid.

14 For the consideration and under the conditions set forth above, the Contractor has  
15 agreed to perform the specified services for the City of New Orleans.

16 Section 6. Exhibits. The following Exhibits shall be and hereby are incorporated into  
17 this Agreement as if fully rewritten herein:

18  
19           Exhibit A     Corporate Resolution—Authorization to Sign;

20           Exhibit B     IRS Form W-9.

21  
22 Section 7. Rules of Construction. The headings and captions of this Agreement are  
23 provided for convenience only and are not intended to have effect in the construction or  
24 interpretation of this Agreement. Whenever herein the singular number is used, the  
25 same shall include the plural, where appropriate, and neutral words and words of any  
26 gender shall include the neutral and other gender, where appropriate. Neither this  
27 Agreement nor any uncertainty or ambiguity herein shall be construed or resolved in  
28 favor of or against City or Contractor on the basis of which party drafted the uncertain or  
29 ambiguous language. On the contrary, this Agreement has been reviewed by all parties  
30 and shall be construed and interpreted according to the ordinary meaning of the words  
31 used so as to fairly accomplish the purposes and intentions of all parties hereto.

32 Section 8. Amendment. No amendment of or modification to this Agreement shall be

1 valid unless and until executed in writing by the duly authorized representatives of both  
2 parties to this Agreement.

3 Section 9. No Third-Party Beneficiaries. This Agreement is entered into for the  
4 exclusive benefit of the parties, and the parties expressly disclaim any intent to benefit  
5 anyone not a party hereto.

6 Section 10. Solicitation: The Contractor has not employed or retained any  
7 company or person, other than a bona fide employee working solely for him, to  
8 solicit or secure the subject contract. The Contractor has not paid or agreed to  
9 pay any person, other than a bona fide employee working from him, any fee,  
10 commission, percentage, gift, or any other consideration contingent upon or  
11 resulting from the subject contract.

12 Section 11. Convicted Felon: The Contractor swears that it complies with Section 2-8  
13 (c) of the Code of the City of New Orleans. No Contractor principal, member, or officer  
14 has, within the preceding five years, been convicted of, or pled guilty to, a felony under  
15 state or federal statutes for embezzlement, theft of public funds, bribery, or falsification  
16 or destruction of public records.

17 Section 12. Expenses: Unless otherwise approved by the Contracting Officer of the City  
18 Council, reimbursable expenses shall be limited as follows: postage, overnight delivery  
19 or courier services at contractor's actual cost; facsimile transmissions and long distance  
20 telephone charges at contractor's actual cost; copies at \$0.10 per page; computerized  
21 research at contractor's actual cost.

22 Section 13. Limitations: For the attendance at all meetings of the Council, briefings of  
23 Councilmembers, and representation before any court, the Council will only provide  
24 labor fee reimbursement for one attorney, unless otherwise specifically approved by the  
25 Contracting Officer of the City Council. Contractor further agrees to avoid the  
26 unnecessary duplication of personnel and costs in the performance of services under  
27 this agreement and accordingly, shall staff all assignments with only qualified and  
28 experienced personnel so as to only charge for the minimum number of personnel and  
29 incur the least costs reasonably necessary to perform the assignments.

30 Section 14. Non-Exclusive. This Agreement shall be non-exclusive. Accordingly,  
31 Contractor shall be free to provide services to other clients, and City shall be free to

1 engage the services of other contractors for the provision of some or all of the Services set  
2 forth in this Agreement.

3 Section 15. Prohibition Against Financial Interest in Agreement. No elected official or  
4 employee of City shall have a financial interest, direct or indirect, in this Agreement. For  
5 purposes of this Section, a financial interest held by the spouse, child or parent of any  
6 elected official or employee of City shall be deemed to be a financial interest of such  
7 elected official or employee of City. Any willful violation of this provision, with the  
8 expressed or implied knowledge of Contractor, shall render this Agreement voidable by  
9 City and shall entitle City to recover, in addition to any other rights and remedies  
10 available to City, all monies paid by City to Contractor pursuant to this Agreement  
11 without regard to Contractor's satisfactory performance of such Services.

12

13 IN WITNESS WHEREOF:

CITY OF NEW ORLEANS

14  
15 Lyman Hallin

Stacy S. Head

17  
18 Jonathan Hair

BY: STACY S. HEAD  
COUNCIL PRESIDENT

19  
20 IN WITNESS WHEREOF:

DON A. ROUZAN & ASSOCIATES, LLC

21  
22 Lyman B. Terrance

Don A. Rouzan

BY: DON A. ROUZAN  
OWNER AND MANAGING MEMBER

25

26

27 APPROVED:

Julien P. Meyer

LAW DEPARTMENT

28

29

30